

From: [Robbie Owen](#)
To: [Julian Boswall](#)
Cc: [Matthew Fox](#); [Paula McGeady](#)
Subject: RE: Thurrock Power Limited
Date: 13 August 2021 23:34:02
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Dear Julian,

Thank you for your email.

I can respond to each of your points in turn.

1. The Rule 8 letter clearly provides for a Deadline 8 this evening. Furthermore, the ExA's Rule 17 letter of 29 July includes provision for Interested Parties to comment on your Deadline 7 response at Deadline 8; and so we will be making our submission further to that invitation.
2. As in all negotiations, the Heads of Terms are crucial to ensuring that all parties are agreed on the principal terms before getting into the legal niceties of the full documentation. As has been particularly evidenced over the last few weeks, given that TPL have sought to re-open or debate elements of the Heads of Terms that were understood to be settled and thought agreed (e.g. the extent of 'the Development' to which the access rights will relate) we are still in the process of finalising those principal terms. The request to see legal documents before TPL would be willing to agree heads of terms has only come about from your client (rather than yourselves) earlier this week and does not accord with the discussions (in good faith) up to that date or usual practice. Furthermore, it would have likely elongated the process rather than shortened it to have debates about the Heads and the legal documents at the same time. We have always said (and indeed you and I had this very conversation 2-3 weeks ago) that we were developing draft legal documents in the background alongside the HoTs so that they would be 'ready to go' as soon as the Heads of Terms had been signed, but these had not been asked to be circulated before the HoTs were agreed until earlier this week, when we explained in response that because the Heads were not agreed we were not practically able to complete the drafts of the legal documents.
3. PoTLL absolutely remains open to reaching agreement with TPL in this matter; and I can reassure TPL that PoTLL will continue to seek to do this once the Examination closes. You will also understand, as set out in our submissions throughout the Examination, that PoTLL's primary focus has been and remains to remove the causeway and to protect and maintain the operation of the Port now and in the future.
4. We have heard your submissions throughout that TPL would only remove the causeway if full agreement is reached, yet we are in a position where matters that were thought to be agreed have since been re-opened. PoTLL still therefore needs to protect its position to seek to get the DCO into a position where the causeway can be removed.
5. The Heads of Terms approach is being suggested such that it can assist TPL – you have raised in your submissions concerns about PoTLL having any form of consent to the use of DCO powers, which we have argued and evidenced is well precedented and does not in any way form a veto. But to give TPL (and the ExA) the reassurance it wants, the suggested approach will ensure that PoTLL's controls on the use of your powers align with the good faith discussions that we have had to date. Furthermore, for both the access easement and the handling agreement, we will be suggesting the creation of statutory obligations for the agreements to be reached – so not the 'agreement to agree' approach you have been critical of.
6. In terms of the approach, I note that you were surprised to read our Deadline 7 submission that PoTLL is intending to submit the Heads of Terms with a link to the DCO at Deadline 8. This should not have come as a surprise as I said that we were going to take this approach at the Hearings on 26 July. You did not I recall make any objection to this at the hearing or in your subsequent summary of hearing submissions.
7. We are discussing with RWE the appropriate approach for their land, but as set out in our Deadline 7 submissions the DCO will need to cater for the scenarios where PoTLL owns the RWE land in the future; and where it does not. We welcome that between us the three parties have been working together to try and reach an agreed approach that works for all in all circumstances.
8. Finally, we note your table of correspondence. We do not wish to get into a tit for tat and it helps neither party to do so as I think it is a fair reading to say that have both parties have sought to engage, but we do think that the table misses key points and so is rather misleading, namely:
 - a. it negates to mention the extensive discussions via email that have taken place over the past 9 months as points of principle have sought to be discussed in between the time periods given;
 - b. it doesn't mention the calls and emails that have taken place between clients without lawyer involvement;
 - c. it does not set the context of the initial discussions (noting also that they were pre-Examination) being that the original Access Easement was a simple document, and that as our discussions have progressed the issues and process became more complex; and
 - d. it particularly does not reflect that as we have reached the 'crunch' of the last two weeks, TPL and its team have not responded promptly on the Heads of Terms and have not made time to have calls to finalise the remaining points; and when responding by email have raised new points or re-opened old ones.
9. As I said above, PoTLL does want to reach full agreement with TPL, but in the context of this DCO Examination it needs to ensure that it is best able to protect its position, interests and duties and so will be progressing with the approach foreshadowed in my oral submissions at the 26 July hearing.

We are also including this email in our submission today to assist the ExA.

Regards,

Robbie

Robbie Owen
Partner and Parliamentary Agent

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Subject: [EXTERNAL] Thurrock Power Limited

Dear Robbie

You suggested in an email on 1st August regarding the way forward that we take stock on the 12th to discuss where we had reached on the negotiations at that time.

As you will be aware, the ExA has not issued a Rule 17 letter requesting information for Deadline 8, despite a specific invitation from PoTLL at the hearing on 26 July to do so. It is not clear why the ExA has not done so.

Whilst we are assuming he will accept submissions today; we await confirmation from the ExA on their status and whether they will be formally accepted.

As you know, TPL has always been negotiating with PoTLL on the basis that TPL will only request removal of the causeway in the event that the legal documents with PoTLL and RWE have been signed, with (non-binding) Heads of Terms as a stepping stone towards this in the usual way.

We have still not seen the draft legal documents, despite having requested them and suggested moving the negotiations onto the legal documents if that would allow quicker progress overall. It is always the case that there are significant discussions on detailed legal documents in a matter like this. Whilst parts of the Heads of Terms are detailed, parts are not. The Heads of Terms do not, for example, set out the detail of the handling agreement, which is a crucial point and is essential to avoid an agreement to agree.

We think it is useful for the ExA to understand the considerable effort that has been involved in relation to the Heads of Terms' negotiation and we provide a summary of the exchange of documents at the end of this email. This goes up to 5 August. There have been further exchanges and client calls since that time, including a further draft from Walker Morris on behalf of PoTLL last night.

Separately, as you are aware, we have not agreed the RWE Heads of Terms, because they depend in important respects on agreement of the PoTLL Heads of Terms first. We have been in separate negotiations with Eversheds acting for RWE and there has been liaison between PoTLL and RWE. We have not seen a detailed RWE agreement either, as this will reflect whatever approach Walker Morris has taken in the PoTLL agreement.

We were extremely surprised to see in PoTLL's Deadline 7 submission a proposal that if the PoTLL Heads of Terms were agreed by Deadline 8 (which strictly does not exist as there has been no Rule 17 letter, as already noted) that PoTLL would then put forward a mechanism in the DCO to give a legal role to non-binding Heads of Terms between PoTLL and TPL which have not been submitted or summarised in any form to the Examination and without any time remaining in the Examination for TPL to respond to this proposal.

This proposal has never been discussed with TPL, let alone agreed. The first TPL was aware of it was from reading PoTLL's D7 submission.

Despite the effort on all sides and progress made, we have not been able to reach agreement on either (non-binding) Heads of Terms at this point and discussions on the detailed legal documents have not begun.

It remains TPL's intention to continue to negotiate after the Examination closes with PoTLL and RWE and the draft Heads of Terms envisage this approach. TPL intends to update the Secretary of State on the position directly no later than early November i.e. just before the ExA submits his report to the Secretary of State.

We are including this email in our submission today to assist the ExA.

Kind regards

Julian

Date	Description	Action	Time with PoTLL or its lawyers	Time with TPL or its lawyers
Friday 4 December 2020	Draft Access Agreement	Birketts issuing v1 agreement to BS (Birketts role has been overtaken by Walker Morris (WM), advising	•	•

		on real estate issues, alongside Pinsent Masons (PM) advising on DCO and wider issues.		
Friday 11 December 2020	Draft Access Agreement	Burges Salmon (BS) issuing v2 agreement to Birketts		5 working days
Tuesday 30 March 2021	HoTs – Option for Easement	TPL issuing v1 HOTs to PoTLL	78 working days	
Thursday 8 April 2021	Email PoTLL to TPL. PoTLL RWE TPL Framework Agreement HoTs Updated (08.04.21)	PoTLL issuing v2 HOTs to TPL	6 working days	
Tuesday 13 April 2021	All parties call	Discussing HOTs	•	•
Wednesday 14 April 2021	PoTLL RWE TPL Framework Agreement HoTs Updated (13.04.21)	BS issued v3 HOTs to PM		1 working day
Wednesday 5 May 2021	PoTLL TPL Framework Agreement HoTs Updated - PM and WM comments - 05 May.._	PM issued v4 HOTs to BS	15 working days	
Friday 7 May 2021	PoTLL TPL Framework Agreement HoTs Updated - PM and WM comments - 05 May.._	BS issued v5 HOTs to PM		2 working days
Friday 21 May 2021	PoTLL TPL Framework Agreement HoTs Outstanding Points v2(123722047.1)	PM issued v6 HOTs to BS	10 working days	
Wednesday 2 June 2021	Correspondence	BS providing comments on v6 HOTs		8 working days
Thursday 3 June 2021	PoTLL TPL Framework Agreement HoTs 03.06.21 (124001748.1)	PM issued v7 HOTs to BS	1 working day	
Friday 4 June 2021	Correspondence	BS providing comments by email		1 working day
Wednesday 9 June 2021	Correspondence	PM providing comments by email	3 working days	
Monday 14 June 2021	Correspondence	BS providing comments by email		3 working days
Wednesday 16 June 2021	PoTLL TPL Framework Agreement HoTs 03.06.21 (124001748.1)	BS issuing v8 HOTs to PM and WM		5 working days
Wednesday 23 June 2021	Correspondence	Lawyers call discussing v8 HOTs	•	•
Thursday 24 June 2021	Correspondence	BS providing comments by email		1 working day
Monday 5 July 2021	Correspondence	Lawyers call discussing v8 HOTs	7 working days	
Monday 12 July 2021	Heads of Terms (with draft plans) 12.7.21 4160-0257-7200	PM issuing v9 HOTs to BS	5 working days	
Tuesday 13 July 2021	Heads of Terms (with draft plans) 12.7.21 4160-0257-7200	BS issuing v10 HOTs to WM		1 working day
Thursday 15 July 2021	WORK_41764464_1_Heads of Terms (with draft plans) 15.7.21 WM and PM amends clean; submitted 4160-0257-7200 (002) 4123-4986-5264 v.1(125055535.1) 4139-3976~	WM issuing v11 HOTs to BS	2 working days	
Thursday 22 July 2021	Correspondence	Lawyers call discussing v11 HOTs		
Friday 23 July 2021	WORK_41764464_1_Heads of Terms (with draft plans) 22.7.2021 4158-0342-2768 v.1 PM(125277686.1) RECEIVED BY BS 23.07.21	WM issuing v12 HOTs to BS	1 working day	
Tuesday 27 July 2021	Heads of Terms (with draft plans) 22.7.2021 4158-0342-2768 v.1 PM(125277686.1) RECEIVED BY BS 23.07.21)	BS issuing v13 HOTs to WM		4 working days
Thursday 29 July 2021	Heads of terms. WM and PM amendments 29.7.2021 4133-6090-1680 [1]	WM issuing v14 HOTs to BS	2 working days	
Friday 30 July 2021	Correspondence	Lawyers call discussing v14 HOTs		•
Thursday 5 August	Heads of terms. WM and PM	WM issuing v14 HOTs	4 working days	

2021	amendments Clean Submitted 5.8..2021 4133-6090-1680 1 (003) 4126-5869-0864 [1]	to BS		
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Julian Boswall



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