Western Riverside Waste Authority

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Date: 4th June 2019

Mr. B. Butler,
Cory Environmental Ltd.,
2, Coldbath Square,
LONDON EC1R 5HL

SUBJECT TO CONTRACT

Dear Ben,

RE: CORY - RIVERSIDE ENERGY PARK

I write in response to the proposals within your letter of 24th April 2019 (the "**Second Cory Letter**") with respect to Cory's proposed Riverside Energy Park ("**REP**") to be owned and operated by Riverside Energy Park Limited ("**REPL**").

(1) AUTHORITY DUTIES

The Authority's focus is ensuring the continued provision of waste disposal services for its constituent councils both now and in the future.

In this regard, as was explained in its letter of 5 April 2019, the Authority remains very concerned that RRRL is not acting prudently, in that it seems to be acceding to proposals which prevent it from future proofing its operation. The DCO would deprive RRRL of land for its own use at the site.

Had RRRL and REPL not both been part of the Cory group[1], the Authority has no doubt that RRRL would have objected to the DCO and the expropriation of its land in favour of a competitor in the strongest possible terms. Instead it appears to support the expropriation of its own land, which severely constrains its own ability to adapt to and mitigate the effects of changing circumstances, to the detriment of the Authority.

(2) COMPENSATION

As you know, the Authority has been prepared to explore with you whether certain aspects of the proposed arrangements can be made the subject of monetary compensation, but as you

[1] See p.24 paragraphs 1.9.2 and 1.9.5 of the Applicant responses to ExA First Written Questions May 2019 (EN010093)

appreciate, any such arrangement would also require amendment to the terms of the WMSA: not all of the important changes in the balance of risk within the WMSA are capable of being addressed adequately by a monetary sum.

(3) CONDITIONALITY

In your offer letter of 25th March 2019 (the "**Offer Letter**") Cory made any negotiated settlement conditional both upon (i) RRRL lender consent and (ii) the Authority's agreement to honour the terms of an (at that point unseen) Master Interface Agreement ("**MIA**"). The Authority pointed out in its response of 5th April 2019 (the "**First Authority Response**") that the Authority could not reasonably be expected to accept this conditionality.

(i) RRRL Lender Consent

On 19 May 2019 Tess Bridgman sent across a draft Deed of Understanding, but this continued to give RRRL's lenders a veto and as such gets us no further forward.

Even if the parties could agree terms, the Authority would not be in a position to withdraw its objection until legally binding protections for the Authority were put in place. You argue that "no deal can be completed and binding until financial close of the REP project", but that does not prevent the parties (with the consent of RRRL's lenders) from agreeing legally binding terms now. This does not prevent the parties agreeing alternative terms as part of the REP financing at a later date.

Otherwise the Authority would be unilaterally giving up its objection without any certainty that Cory would be in a position to honour the agreed terms (as RRRL's lenders could always reject the deal).

In your Second Cory Letter, you seek to persuade the Authority to rely upon possible necessary changes to the Direct Agreement as an enforcement mechanism for any agreed terms. The Authority could not reasonably be expected to rely upon this as no such changes are certain to be necessary and if that were the case and the Authority in effect had a veto over arrangements then Cory should be willing to agree not to exercise any DCO powers over land leased to the Authority without the Authority's consent, something which it has not offered.

(ii) Master Interface Agreement ("MIA")

On 3rd May 2019 (just two weeks before the deadline for the submission by the Authority of its Representation), Cory sent the Authority an early draft of the MIA to which it referred in the Offer Letter and (as clarified by the Second Cory Letter) the acceptance of whose principles and key terms by the Authority is being made a condition of any deal by Cory.

Unfortunately the MIA is not sufficiently advanced for the Authority to properly evaluate, let alone agree to abide by (even in principle). Perhaps most importantly, after an initial phase the MIA appears to be terminable by either party upon 12 months' notice, without any mechanisms for how the shared use assets should be operated following any such termination.

(4) CONCLUSION

Cory will have seen the Authority's representation to the Examining Authority submitted on 20 May and will appreciate given the issues set out in the representation and the points raised in this letter that it is not in a position to withdraw its objection at this time.

Yours sincerely,

MARK BROXUP
GENERAL MANAGER