

From: [REDACTED]
To: [Immingham OCGT](#)
Cc: [REDACTED]
Subject: Proposed VPI Immingham OCGT DCO (Application ref. EN010097) – Response to ExA's request for further information [BDB-BDB1.FID10522908]
Date: 01 November 2019 11:24:35
Attachments: [REDACTED]

Dear Sirs

We are instructed by Able UK Limited (Able) in relation to the above project.

We set out Able's response to the Examining Authority's Request for Further Information below.

ExQ	Question to:	Question	Able's response
1a.1.10	Able UK Limited	Please provide an update on discussions and give an indication of whether there is likely to be a need to hear oral evidence on any outstanding matters related to CA or TP. If so, please indicate the matter(s) upon which it is considered that oral evidence should be heard.	<p>Able and the Applicant have agreed amendments to Part 8 of Schedule 9 (Protective provisions for the protection of Able Humber Ports Limited) and Schedule 13 (Modifications to the Able Marine Energy Park Development Consent Order 2014) of the draft DCO.</p> <p>A copy of the agreed provisions is attached.</p> <p>Given that the provisions are now agreed and provided that the Applicant makes the changes it has undertaken to make, Able does not intend to give oral evidence on any outstanding matters.</p>

If you have any queries please do not hesitate to contact me using the details below. I should be very grateful if you would confirm receipt.

Kind regards

Andrew



Andrew Lister **Associate**

[REDACTED]
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For and on behalf of BDB Pitmans LLP
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THE IMMINGHAM OPEN CYCLE GAS TURBINE ORDER 20[X]

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 8

FOR THE PROTECTION OF ABLE HUMBER PORTS LIMITED

78. For the protection of Able Humber Ports Limited (Company No. 107029) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Able.

79. In this part of this Schedule—

“Able” means Able Humber Ports Limited (Company No. 107029) whose registered office is at 44 Esplanade, St Helier, Jersey JE4 9WG;

“the Able authorised development” means the development authorised by the Able Order;

“the Able Order” means the Able Marine Energy Park Development Consent Order 2014;

“the Able Order land” means the Order land (as defined in the Able Order) or any part of it;

“the Able Order limits” means the Order limits as defined in the Able Order;

“the OCGT authorised development” means the development authorised by this Order; and

“the respective authorised developments” means the OCGT authorised development and the Able authorised development”.

Co-operation during construction

80. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

(a) the construction, operation, use or maintenance of the Able authorised development; or

(b) access to all parts of the Able authorised development,

otherwise than with the prior written consent of Able.

81. If the undertaker proposes to alter the layout of the existing highway access points within plots 2, 8 or 9, it must not submit written details for numbered work 2 so far as it is within those plots for approval to the relevant planning authority in accordance with requirement 5(3) or requirement 8(1) without first obtaining the written consent of Able in respect of the design and layout of the relevant part of numbered work 2.

82. The undertaker must not submit written details for numbered work 6 so far as it is within plots 6 or 7 for approval to the relevant planning authority in accordance with requirement 5(6) without first obtaining the written consent of Able in respect of the siting, design and layout of the relevant part of numbered work 6.

83.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Able Order land otherwise than with the prior written consent of Able.

(2) The articles referred to in sub-paragraph (1) are—

(a) article 8 (power to alter layout etc. of streets);

(b) article 9 (street works);

(c) article 10 (construction and maintenance of new or altered means of access);

(d) article 11 (temporary prohibition or restriction of use of streets);

(e) article 12 (access to works);

(f) article 14 (traffic regulation);

(g) article 16 (authority to survey and investigate the land);

(h) article 18 (compulsory acquisition of land);

(i) article 19 (power to override easements and other rights);

(j) article 21 (compulsory acquisition of rights etc);

(k) article 22 (private rights)

(l) article 26 (rights under or over streets);

(n) article 27 (temporary use of land for carrying out the authorised development);

(o) article 28 (temporary use of land for maintaining the authorised development); and

(n) article 29 (statutory undertakers).

(3) In the event that Able withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

84.—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Able, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Able may require), and must not be unreasonably withheld or delayed.

(2) In the event that Able does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Able is deemed to have given its consent, without any terms or conditions.

85. Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker shall—

(a) co-operate with Able with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works; and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

86. Any difference or dispute arising between the undertaker and Able under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration.”

SCHEDULE 13

MODIFICATIONS TO THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014

“Schedule 9 to the Able Marine Energy Park Development Consent Order 2014

After paragraph 120 of Schedule 9 insert new Part 16—

“Part 16

FOR THE PROTECTION OF VPI IMMINGHAM B LIMITED

Application

121. For the protection of VPI Immingham B Limited (Company No. 10630563) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and VPI.

Interpretation

122. In this Part of this Schedule—

“the OCGT authorised development” means the development authorised by the OCGT Order;

“the OCGT Order” means the Immingham Open Cycle Gas Turbine Order 2020;

“the OCGT Order land” has the same meaning as the term “Order land” in article 2(1) of the OCGT Order;

“the OCGT water connection” means that part of work number 2 of the OCGT authorised development which is to be carried out within plots 6 and 7 of the OCGT Order land;

“VPI” means VPI Immingham B Limited (Company No. 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London SW1E 5LB, or any person having the benefit of the OCGT Order pursuant to article 6 and/or 7 of it;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the OCGT Order respectively.

Regulation of powers over Rosper Road

123.—(1) Subject to VPI complying with paragraphs 59, 60, 61 and 64 of Part 8 of Schedule 9 to the OCGT Order the undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

(a) the construction, operation, use or maintenance of the OCGT water connection; or

(b) access between all parts of the OCGT authorised development and Rosper Road, otherwise than with the prior written consent of VPI.

(2) Wherever in this Schedule provision is made with respect to the approval or consent of VPI, that approval or consent must be in writing (and subject to such reasonable terms and conditions as VPI may require), but must not be unreasonably withheld or delayed.

(3) In the event that VPI does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, VPI is deemed to have given its consent, without any terms or conditions.

124.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the OCGT Order land otherwise than with the prior written consent of VPI.

(2) The articles referred to in sub-paragraph (1) are—

(a) article 15 (street works);

(b) article 16 (temporary stopping up of streets);

(c) article 17 (access to works);

(d) article 22 (authority to survey and investigate land);

(e) article 30 (compulsory acquisition of land);

(f) article 31 (power to override easements and other rights);

(g) article 34 (compulsory acquisition of rights etc);

(h) article 35 (private rights of way);

(i) article 39 (rights under or over streets);

(j) article 40 (temporary use of land for carrying out the authorised development);

(k) article 41 (temporary use of land for maintaining authorised development); and

(l) article 42 (statutory undertakers).

(3) In the event that VPI withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

125. Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

(a) co-operate with VPI with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works; and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and VPI and their respective contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

126. Any difference or dispute arising between the undertaker and VPI under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and VPI, be referred to and settled by arbitration.”