

From: Philipps, Poppy [REDACTED]@marinemanagement.org.uk>
Sent: 06 July 2023 10:30
To: Gate Burton Solar Project <GateBurtonSolar@planninginspectorate.gov.uk>
Cc: White, Katherine [REDACTED]@marinemanagement.org.uk>; Trakos, Amy [REDACTED]@marinemanagement.org.uk>
Subject: GABE-SP022, Marine Management Organisation's position on Gate Burton Energy Park Development Consent Order project

Good morning,

I hope this email finds you well.

I am contacting you regarding Gate Burton Energy Park Development Consent Order (DCO) project, EN010131. Our reference is GABE-SP022. My name is Poppy Philipps, and I am the Marine Management Organisation's (MMO) case officer assigned to this DCO, alongside the Case Manager (Katherine White) and Senior Case Manager (Amy Trakos) (cc'd). I wanted to give you an update on MMO's involvement with this project so far and our position, as I am aware the Preliminary hearing was two days ago and the Issue Specific hearing was yesterday. Unfortunately, we were unable to register to speak at either, due to a lack of communication from the applicant and because we received the Rule 6 letter later than the registration date.

The MMO's position is that we do not consider a deemed marine licence (dML) is required for this DCO, as the proposed activity of a bored tunnel as we understand it at present, falls under Article 35 of The Marine Licensing (Exempted Activities) Order 2011.

Please find below further information on the project and MMO's engagement with the applicant.

Overview of the project:

The Gate Burton Energy Park comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility and energy storage facility, based in Lincolnshire, with a total capacity exceeding 50 megawatts (MW) and export connection to the National Grid. The MMO are of the opinion that the project works that fall within mean high water springs, and are therefore considered licensable by the applicant, are a bored tunnel, however we consider this to be exempt following Article 35 of the 2011 Exempted Activities Order where it states, '*Article 4 applies to a deposit of works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel*'. Alongside the trenchless crossing the order states that their activities will also be: laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and construction compounds, including site and welfare offices and areas to store materials and equipment. It is unclear from this wording what exactly they consider a licensable marine activity as a number of these would not be considered by us to be so.

MMO involvement:

The applicant has had minimal communication with the MMO during the pre-application stage, including not accepting our discretionary and statutory fee estimates, therefore leaving the MMO

unable to engage in wider pre-application discussions, which usually involve meetings, and the formation of a statement of common ground (SoCG).

In November 2022, the MMO had an initial stakeholder meeting with the applicant whereby the applicant outlined the project and suggested that part of the works would be within the marine environment in the River Trent. In this meeting they were advised to read the Marine and Coastal Access Act 2009 (MCAA) carefully and consider whether their activity fell under any of the licensable activities identified in MCAA. At this point, the applicant was also told that they needed to accept a fee estimate for our discretionary advice about these works and that until they did so, we would not be able to engage in further discussions.

Following this, the applicant did not accept the fee estimate stating *'As we are now including a marine license within our DCO, this fee (and any time and advice) would be covered at a later date once the MMO starts to engage with the DCO application through the examination process. My understanding is that we will not personally need to engage for a few months now, and the MCMS relates to marine license applications submitted to the MMO, which will be covered during our examination later this year.'*

Katherine White, the case manager, contacted the applicant stating that we would be able to have further conversations regarding their works if they accepted the fee estimate. Specifically, they were also told to consider Article 35 of the 2011 Exempted Activities Order:

<https://www.legislation.gov.uk/ukxi/2011/409/article/35>.

Post this, no fee estimates were accepted and the applicant did not acknowledge our guidance on exempt activities and have chosen to proceed regardless and include a dML in the DCO.

The applicant contacted the MMO on 5 May 2023, stating that they *'noted that the MMO didn't submit a relevant representation for Low Carbon's proposed solar DCO project near Gainsborough in Lincolnshire - Gate Burton Energy Park. I wanted to let you know that a deemed Marine License has been included in our Development Consent Order, can you please let me know if you're happy with the drafting of this license or if you have any comments?'*. The applicant was then contacted explaining that without a fee estimate being accepted, the MMO is unable to review the DCO or the Deemed Marine Licence until we are asked to as a statutory party by yourselves at PINS, which we have now been.

Future Actions:

Looking forward, the MMO also intends to explain our position at Deadline 1 of examination, **18 July 2023**, which is that we do not consider the DCO to require a dML as the activity is considered exempt. However, we have contacted you today as well to ensure that you are aware, as we were unable to raise our comments at the Preliminary or Issue Specific hearing. If you have any questions you would like us to address at Deadline 1, we would welcome the inclusion of these in the Examiner's Questions.

Thank you for taking the time to review this, and please do let us know if you require anything further from us at this time. I would be grateful if you could also confirm receipt of this email.

Kind regards,

Poppy

Poppy Philipps | Marine Licensing Case Officer | Marine Management Organisation

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