



HERBERT
SMITH
FREEHILLS

**Statement in relation to AQUIND
Interconnector requesting a direction pursuant
to Section 35 of the Planning Act 2008**

Herbert Smith Freehills LLP

1. INTRODUCTION

- 1.1 This statement is produced by Herbert Smith Freehills LLP on behalf of AQUIND Limited with the registered office at OGN House, Hadrian Way, Wallsend, NE28 6HL and registered number 06681477 ("**AQUIND**") in connection with the application to the Secretary of State for Business, Energy & Industrial Strategy pursuant to Section 35 of the Planning Act 2008 (the "**Act**") for a direction that the elements of AQUIND Interconnector within England and the waters adjacent to England up to seaward limits of the territorial sea (the "**Development**") is to be treated as development for which development consent is required.
- 1.2 In that regard, the purpose of this statement is to provide the Secretary of State with all necessary information to satisfy him that the relevant legal requirements for a direction pursuant to Section 35 of the Act are met by the Development, to allow the issue of the direction.
- 1.3 In addition, this statement provides information in relation to the Development which it is considered will assist the Secretary of State to understand more fully the Development and the progress made to date in relation to it.

2. LEGAL REQUIREMENTS FOR THE ISSUE OF A DIRECTION PURSUANT TO SECTION 35 OF THE ACT

- 2.1 Section 35(1) of the Act provides that "*the Secretary of State may give a direction for development to be treated as development for which development consent is required*".
- 2.2 Section 35(2) of the Act provides that such a direction may only be issued if:
- 2.2.1 development is or forms part of a project (or proposed project) in the field of energy transport, water, waste water or waste;
 - 2.2.2 will (when completed) be wholly located in England or waters adjacent to England up to the seaward limits of the territorial sea; and
 - 2.2.3 the Secretary of State thinks the project (or proposed project) is of national significance by itself.
- 2.3 Further, Section 35ZA(1) provides that the power in section 35(1) of the Act to give a direction is only exercisable in response to a qualifying request if no application for a consent or authorisation mentioned in Section 33(1) or (2) of the Act has been made in relation to the development to which the request relates.
- 2.4 A qualifying request for the purpose of Section 35ZA(1) means a written request, for a direction under Section 35(1), that:
- 2.4.1 specifies the development to which it relates; and
 - 2.4.2 explains why the conditions in Section 35(2)(a) and (b) (set out at paragraphs 2.2.1 and 2.2.2 above respectively) are met in relation to the Development.
- 2.5 Accordingly, where the above requirements are satisfied the Secretary of State may give the direction requested.

3. INFORMATION IN RELATION TO AQUIND AND AQUIND INTERCONNECTOR

Project Information

- 3.1 The proposals for AQUIND Interconnector are being developed and promoted by AQUIND.
- 3.2 AQUIND Interconnector is a proposed High Voltage Direct Current (HVDC) subsea and underground electric power transmission link between the south of England and Normandy in France, with the capacity to transmit up to 2,000 MW of electricity between the France and Great Britain net of transmission losses (**GB**).
- 3.3 It is estimated that AQUIND Interconnector will have sufficient capacity to transmit up to 16,000,000 MWh of electricity annually between GB and France, accounting for

approximately 5% and 3% of their respective total electricity consumption and enough to keep the lights on in up to 4 million British households¹.

3.4 A plan showing an indicative location of AQUIND Interconnector is contained at Appendix 1 to this statement.

3.5 AQUIND Interconnector is comprised of three principal elements, being the onshore elements in GB, the offshore elements and the onshore elements in France. The three elements comprise the following:

3.5.1 UK onshore elements:

- (A) works at the existing National Grid Lovedean substation in Hampshire where AQUIND Interconnector will connect to the existing GB grid;
- (B) underground alternating current (**AC**) cables, connecting Lovedean substation to the proposed nearby converter station;
- (C) the construction of a converter station comprising a mix of buildings and outdoor electrical equipment. The building roofline will vary in height but will approximately be 22m at its peak and may also include lightning masts; and
- (D) two pairs of underground high voltage direct current (**DC**) cables together with smaller diameter fibre optic cables for data transmission from the proposed landfall site in Eastney (near Portsmouth) to the converter station at Lovedean, approximately 20km in length. The intention is to locate the cables within existing highway or road verges where practicable. Signal enhancing and management equipment may also be required along the land cable route in connection with the fibre optic cables.

3.5.2 Offshore elements:

- (A) four submarine cables between England and France, which can be bundled in pairs, and small diameter fibre optic cables for data transmission. The offshore cable route can be divided into the following sections:
 - (1) approximately 47km within the UK territorial limit, i.e. 12 nautical miles from the mean high water mark;
 - (2) approximately 53km from the UK territorial limit to the boundary of the Exclusive Economic Zone (EEZ);
 - (3) approximately 58km from the boundary of the EEZ to the French territorial limit; and
 - (4) approximately 29km within the French territorial limit, i.e. 12 nautical miles from the mean high water mark.

3.5.3 French onshore elements:

- (A) works to an existing switching station/substation at Barnabos, to be carried out by Reseau de Transport d'Electricite (RTE);
- (B) AC cable planning, installation and connection, undertaken by RTE;
- (C) the construction of a converter station near Barnabos, which will be similar in nature to the UK equivalent; and
- (D) two pairs of underground high voltage direct current cables together with smaller diameter fibre optic cables for data transmission from the landfall

¹ Based on the average household electricity consumption of 4MWh/year, DECC, Energy Consumption in the UK (2015), Chapter 3, p. 7, <http://webarchive.nationalarchives.gov.uk/20160510033717/https://www.gov.uk/government/statistics/energy-consumption-in-the-uk>.

on the French shore to the newly built converter station near Barnabos switching station/substation, approximately 35km in length. It is proposed that the landfall site in France will be near Dieppe or Pourville-sur-Mer, with the exact location to be confirmed subject to further environmental and technical assessments. Data cables may require installing signal enhancing and management equipment along the land cable route.

- 3.6 Further information in relation to the project can be located within the Non-Technical Summary produced in connection with the requirements of the TEN-E Regulations (EU 347/2013) (discussed further at Section 6 below), a copy of which is provided with this statement at Appendix 4 and may also be located at the following web address: <https://aquindconsultation.co.uk/wp-content/uploads/sites/13/2018/03/Aquind-Non-Technical-Summary-PUBLICATION-VERSION-FINAL.pdf>

The Development and how this meets the legal requirements for a Direction

- 3.7 AQUIND is seeking a direction pursuant to Section 35(1) of the Act in relation to only that part of AQUIND Interconnector located in England and within the waters adjacent to England up to the UK territorial limit, being the Development.
- 3.8 The Development, being a part of an electricity interconnector, forms part of a proposed project within the field of energy. The Development is not and does not form part of a project of the types listed in Section 14 of the Act, and therefore does not currently fall within the definition of a "nationally significant infrastructure project". Accordingly, the Development meets the requirement provided for at Section 35(2)(a) of the Act.
- 3.9 Once completed, the Development will be wholly located within England and the waters adjacent to England up to the seaward limits of the territorial sea. As such, the Development meets the requirement provided for at Section 35(2)(b) of the Act.
- 3.10 A plan showing the indicative location of the Development onshore in England is located at Appendix 2 to this statement.
- 3.11 A plan showing the indicative location of the Development offshore within the UK seaward limits is located at Appendix 3 to this statement.

Associated Development

- 3.12 It is also the intention of AQUIND when seeking development consent for AQUIND Interconnector to seek development consent to use the spare fibre optic cable capacity for the provision of commercial telecommunications services. Development consent for this commercial telecommunications use would be sought on the basis that it is associated development in accordance with Section 115 of the Act.

4. INFORMATION RELATING TO THE NATIONAL IMPORTANCE OF AQUIND INTERCONNECTOR

- 4.1 As is noted above at Section 2 to this statement in addition to meeting the requirements addressed above in Section 3 it is also necessary for the Secretary of State to consider that the project, of which the Development forms part, is of national significance.
- 4.2 In order to assist the Secretary of State in his determination of whether the Development forms part of a project which is of national significance, we set out below the reasons why it is considered AQUIND Interconnector is a project of national significance:
- 4.2.1 As outlined at Section 3 to this statement, AQUIND Interconnector will have a capacity of 2,000 MW and it is estimated will transmit up to 16,000,000 MWh of electricity between GB and France, accounting for approximately 5% of GB's total electricity consumption.² It is considered that AQUIND Interconnector will make a significant contribution to improving GB's security of electricity supply and achieving greater affordability by improving competition, making the GB energy

² 356.7 TWh in 2016. BEIS, Digest of United Kingdom Energy Statistics 2017, July 2017, p. 134, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643414/DUKES_2017.pdf

market more efficient and enabling greater energy flexibility. This should ultimately benefit consumers via increased access to lower prices due to competitive pressures on domestic energy generators.

- 4.2.2 Interconnectors are important participants of the UK capacity market. The technology AQUIND Interconnector will use will enable AQUIND to take part in capacity market tenders, which would further contribute to achieving lower prices for energy consumers while improving the security of supply.
- 4.2.3 Further, AQUIND Interconnector will help to integrate a greater proportion of non-fossil fuel energy sources and intermittent renewables generation into the GB energy mix. It is also expected that electricity imported from France will have much lower CO₂ intensity.³ This will reduce reliance on fossil fuel power generation plants and in turn reduce GB's CO₂ emissions from the burning of such fuels. AQUIND Interconnector will therefore make a significant contribution to the decarbonisation of the GB electricity grid and meeting the net UK carbon reduction targets by the year 2050, set in accordance with Section 1 of the Climate Change Act 2008.
- 4.2.4 AQUIND Interconnector has recently been awarded status as a Project of Common Interest ("**PCI**") as a Priority Thematic Area Electricity Highway within the Northern Seas Offshore Grid Priority Corridor pursuant to the TEN-E Regulations (EU 347/2013). In awarding AQUIND Interconnector PCI status the European Commission has acknowledged the project will have a significant cross-border impact on the capacity available for commercial electricity flows. Whilst this is recognition of the public benefits and significance of the Project at the European rather than the national level, it is considered to be strongly indicative of the project being of national significance also.
- 4.2.5 In addition to the above, AQUIND Interconnector will provide valuable ancillary services to the national grid including, but not limited to, frequency response and "black start" capabilities. These ancillary functions help ensure safe and reliable operation of national electricity transmission systems and are considered to be of national benefit and significance.

5. **PROGRESS OF THE DEVELOPMENT TO DATE**

Basis on which the Development has been progressed to date

- 5.1 To date, the Development has been progressed on the basis that it will be necessary to obtain up to four separate planning permissions from the relevant affected local planning authorities, together with a Marine Licence from the Marine Management Organisation ("**MMO**").
- 5.2 In addition, it is considered highly likely that it will be necessary to compulsorily acquire land or rights to facilitate the Development and that a Compulsory Purchase Order ("**CPO**") will be required to do so. In this regard it should be noted that by virtue of their Electricity Interconnector Licence AQUIND benefits from the ability to make a CPO, which would need to be confirmed by the Secretary of State.
- 5.3 Additional ancillary consents, for instance in relation to carrying out of works in highways, are also highly likely to be required.
- 5.4 In light of the numerous consents and authorisations described above that will be required it is considered the Development will greatly benefit from the single authorisation process offered by the Act.

Initial Feasibility, Connection Agreement and Licences

³ Around 30 – 45 gCO₂/kWh, <https://www.rte-france.com/fr/eco2mix/eco2mix-co2>, comparing to in excess of 200 gCO₂/kWh in the UK (p. 36, BEIS, Updated Energy and Emissions Projections 2017, January 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671187/Updated_energy_and_emissions_projections_2017.pdf)

- 5.5 Work on the technical feasibility of AQUIND Interconnector began in May 2014, with the initial project feasibility study being completed by August 2014.
- 5.6 Following extensive studies by National Grid Plc (**NG**) to establish the optimal grid connection point, an application for a connection agreement was submitted to NG in October 2015, and the connection agreement was entered into with NG in respect of Lovedean substation on 1 June 2016.
- 5.7 An Electricity Interconnector Licence was granted to AQUIND pursuant to Section 6 (1) (e) of the Electricity Act 1989 on 9th September 2016, authorising it to participate in the operation of AQUIND Interconnector.
- 5.8 A technical and financial proposal (PTF) with RTE was signed on 6 March 2017.

Engagement with Local Planning Authorities and the MMO

- 5.9 Engagement with the Local Planning Authorities within whose administrative boundaries the onshore elements of the Development may be located or who may be affected by the Development commenced in early 2017 and continued throughout that year. The authorities who have been engaged with in this regard are as follows:
 - 5.9.1 Winchester City Council;
 - 5.9.2 East Hampshire District Council;
 - 5.9.3 Portsmouth City Council;
 - 5.9.4 Havant Borough Council;
 - 5.9.5 South Downs National Park Authority.
- 5.10 In addition, the MMO were first engaged with on the offshore elements of the Development in September 2016.
- 5.11 Engagement with all local planning authorities and the MMO is continuing as the proposals for the Development progress.

Consultation

- 5.12 AQUIND has consulted and continues to consult with stakeholders and communities who may be affected by, or interested in, the Development. As a brief overview, AQUIND has engaged with the following consultees:
 - 5.12.1 District / Borough Councils, Unitary Authorities & County Councils (in multiple capacities)
 - 5.12.2 Members of Parliament
 - 5.12.3 The Department for Business, Energy & Industrial Strategy/ relevant Government Ministers
 - 5.12.4 MMO
 - 5.12.5 Marine Safety Organisations (e.g. Maritime Coastguard Agency, Trinity House)
 - 5.12.6 Highways England
 - 5.12.7 Nature and Historic Conservation Agencies (e.g. Natural England and Historic England)
 - 5.12.8 Marines users / fisheries community
 - 5.12.9 Harbour Authorities
 - 5.12.10 Parish Councils
 - 5.12.11 Landowners & Tenants
 - 5.12.12 Third Party / Community Groups
 - 5.12.13 Ofgem & other Statutory Consultees
 - 5.12.14 Members of the public and businesses located in the vicinity of the Development

5.12.15 General public.

- 5.13 In January 2018 AQUIND hosted a series of exhibitions to display its proposals to the local communities. These events presented the proposals as at that time, giving local residents the opportunity to ask questions and provide feedback. Feedback received at and following those exhibitions is currently being considered further as part of the process of refining the Development proposals.
- 5.14 A public consultation exercise has also been carried out in France in accordance with the decision of CNDP, which completed on 4 May 2018 and a report on such consultation was approved by CNDP on 6 June 2018.⁴

Environmental Impact Assessment Regulations Applicability and Scoping

- 5.15 The Development is not of a type that is detailed within either Schedule 1 or Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regs**"). However, due to the environmental and human sensitivities within and surrounding the Development the decision has been taken to voluntarily undertake an environmental impact assessment for the Development and to submit an environmental statement in support of any application for consent to report any likely significant environmental effects.
- 5.16 On 20 February 2018 a request for a scoping opinion was made to the MMO pursuant to regulation 13 of the Marine Works (Environmental Impact Assessment) regulations 2007 (as amended).
- 5.17 On 22 February 2018 AQUIND submitted requests for scoping opinions in connection with the Development pursuant to Section 15 of the Town and County Planning (Environmental Impact Assessment) Regulations 2017 to the relevant local planning authorities.
- 5.18 Scoping opinions have been received from the four local planning authorities within whose administrative boundaries the Development may be located. Copies of the scoping opinion requests together with copies of the responses received are provided with this statement at Appendices 5 to 10.
- 5.19 The joint scoping opinion of Portsmouth City Council and the MMO relating to the onshore Development has been issued in draft only. We understand this should be issued as a final version shortly in the same form. A copy of the final joint scoping opinion will be forwarded further to this request upon receipt.
- 5.20 A scoping opinion is awaited from the MMO in respect of the offshore aspects of the Development. This is due to be provided on 25 June 2018. A copy will be forwarded further to this request upon receipt.

Ground Investigations and Survey Works

- 5.21 Various survey and ground investigations have taken place to inform the location and technical specification of the Development. As a brief summary this has included:
- 5.21.1 Detailed geotechnical desk studies of proposed onshore cable routes in mid-2017.
- 5.21.2 A geophysical survey of the proposed offshore cable route, which commenced in December 2017 and concluded in March 2018.
- 5.21.3 A first phase of preliminary ground investigations works for the options for the converter station, which commenced in April 2018 and concluded in May 2018.
- 5.21.4 A geotechnical survey of the proposed offshore cable route, which commenced in June 2018 and is expected to conclude in August 2018.
- 5.22 A second phase of preliminary ground investigations to inform the final cable route is currently scheduled to be undertaken in July 2018.

⁴ Commission nationale du debate public, <https://www.debatpublic.fr/projet-aquind-dinterconnexion-electrique-entre-france-royaume-uni>

6. **AQUIND INTERCONNECTOR AND THE TEN-E REGULATIONS**

- 6.1 In addition to the national consenting procedures, AQUIND Interconnector by virtue of having been awarded PCI status pursuant to the TEN-E Regulations is also subject to additional regulatory and procedural requirements.
- 6.2 We do not seek to explain the consenting requirements provided for by the TEN-E Regulations within this statement, however the need to co-ordinate the TEN-E Regulations and the consenting process for development consent is acknowledged by the AQUIND project team. Should the Secretary of State require any further information regarding these requirements please do not hesitate to inform us.

7. **CONCLUSION AND REQUESTS**

- 7.1 It is considered that the information provided in Section 3 of this statement is sufficient to constitute a qualifying request in accordance with Section 35ZA(11) of the Act and that Section 4 to this statement explains why AQUIND Interconnector should be considered to be of national significance.
- 7.2 Accordingly, we kindly invite the Secretary of State to issue a direction for the Development to be treated as development for which development consent is required pursuant to Section 35(1) of the Act.
- 7.3 Further, we request on behalf of AQUIND that the Secretary of State when issuing the aforementioned direction directs that any proposed application for a consent or authorisation mentioned in section 33(1) or (2) of the Act in relation to the Development is to be treated as proposed development for which development consent is required.
- 7.4 We also request with regard to the environmental statement to be submitted in support of the application for development consent, that the Secretary of State when issuing the direction confirms the environmental scoping opinions issued by the respective authorities (and yet to be issued in the case of the Marine Scoping Opinion to be provided by the MMO) may be used as the basis on which the environmental statement for the Development is based, in accordance with Regulation 14(3)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("IP EIA Regs").
- 7.5 Certain persons who are required to be consulted under the IP EIA Regs on any scoping opinion request have not been consulted pursuant to the requests made of the MMO and the local planning authorities. We invite the Secretary of State to consult any additional persons whom he considers necessary using the information provided with this statement. Should further information be required to assist identification of the additional persons the Secretary of State may wish to consult with on the scoping opinion request this firm would be happy to provide assistance.
- 7.6 We also remind the Secretary of State that there is nothing to preclude him from requiring additional information to be included with an environmental statement in connection with an application for development consent. Accordingly, where the Secretary of State confirms that the above referred to scoping opinions may be used as the basis for the environmental statement, he may request further environmental information is provided in connection with any environmental statement if considered necessary.
- 7.7 Lastly, where the Secretary of State is minded to issue a direction in relation to the Development, we kindly request that this statement is treated as a notification pursuant to Regulation 8 (2)(b) of the IP EIA Regs that AQUIND proposes to provide an environmental statement in relation to the Development and that the Secretary of State proceeds to carry out the procedural requirements provided for by Regulation 11(1) of the IP EIA Regs.
- 7.8 Should the Secretary of State require any further information in connection with this request, AQUIND Interconnector or the Development, please do not hesitate to contact Catherine Howard (020 7466 2858 / Catherine.Howard@hsf.com) or Martyn Jarvis (020 7466 2680 / Martyn.Jarvis@hsf.com) of this firm.

8. **LIST OF APPENDICES**

- 8.1 **Appendix 1:** Plan showing an indicative location of the AQUIND Interconnector
- 8.2 **Appendix 2:** Plan of the indicative location of the Development onshore in England
- 8.3 **Appendix 3:** Plan of the indicative location of Development offshore within the UK seaward limits
- 8.4 **Appendix 4:** Non-Technical Summary
- 8.5 **Appendix 5:** Scoping opinion request – UK Onshore
- 8.6 **Appendix 6:** Scoping opinion request – UK Offshore
- 8.7 **Appendix 7:** Scoping opinion of East Hampshire District Council
- 8.8 **Appendix 8:** Scoping opinion of Winchester City Council
- 8.9 **Appendix 9:** Scoping opinion of Havant Borough Council
- 8.10 **Appendix 10:** Interim joint scoping opinion of Portsmouth City Council and the MMO

Herbert Smith Freehills LLP

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