

AUDIO_AQUIND_CAH1_Session3_10122020

Thu, 12/10 2:29PM • 53:51

SUMMARY KEYWORDS

exemption, Jarvis, relation, applicant, funding, limits, land, matters, point, agenda item, question, permanent, project, pci, Goldberg, works, transcript, addressed, relating, Portsmouth

00:00

Right, the time is now 10 past 12. And the hearing is resumed. We were within agenda item 4.3. And we'd come to the start of Section 10 Eastney. land for within the applicant's transcript on the north to south run through of the scheme on section 10. I didn't have any particular points to raise anything from you, Mr. Jarvis. And nothing further, sir. No, thank you. Anybody else?

00:31

Okay, nothing heard. Thank you.

00:34

On to the next section, which is onshore connection works.

00:39

I didn't have anything on that section. Anything, Mr. Jarvis? No, thank you, sir. Anybody else?

00:50

Nothing heard. Thank you.

00:54

on now to the temporary possession of land. I didn't have anything on that. Anything from you? Mr. Jarvis? No, thank you, sir. Anybody else?

01:04

Miss Colquhoun.

01:09

Thank you, sir. I'm coming back to my permanent limits. Point.

01:17

The, as I understood that, Mr. Jarvis this morning.

01:23

The permanent limits are to identify. And I will actually look at the transcript because that's far, far better. Paragraph 4.7.

01:36

of the applicant transcript.

01:42

Miss Colquhoun? I don't actually have a 4.7. It's, you've gone back a long way. Have you? Oh, yes.

01:50

Sorry, because I thought it was far better to use the applicant's words themselves and try to remember it properly.

01:58

So, there's the description of the permanent limits, which include a limit of deviation in respect of the onshore cable route known as the onshore cable corridor. And as we've just discussed that onshore cable corridor is identified on the works plans,

02:15

says where the order limits for the onshore cable corridor relate to the highway, they've been drawn to reflect the highway boundary. The reason why a limited deviation is provided is to ensure that there is necessary and necessary level of flexibility to allow the applicant to route around existing constraints, for example, in highway land, existing utilities, and we've had to justify that, by taking this approach the likely impacts or lessen for instance, in relation to the highway, there'll be more opportunity to route around utilities, which will improve the rate of delivery of the onshore cable route by requiring This works to be taken overall. So, so far, so good, sir, but the, my understanding was that the permanent limits are supposed to reflect also, that the land that is wanted or required permanently.

03:03

And this is where, why I stopped at temporary possession of land.

03:09

Because there are

03:12

as far as I can see, there are some areas that are required temporarily that are also still identified within the onshore cable route.

03:25

But equally, if the permanent limits are supposed to reflect the land that is required permanently, aside from what one deals with, I know we were looking at Milton common and there were a number of options there. But there are there are options elsewhere.

03:44

Clearly, that the permanent limits will change the point where those options are decided upon and we can deal with options later. But, so, Article 30 of the draft DCO

03:59

contains a provision and that deals with temporary give me its temporary possession temporary use.

04:09

Article 34

04:13

clearly says before giving up possession of land or which temporary possession has been taken, the undertaking must either acquire the land or rights over the land or unless otherwise agreed to remove etc. So, there is still potential there for other

04:32

temporary land or this briefly used as temporary land to be permanent land. So, the bottom line is, I think the use of permanent limits could be slightly

04:46

confusing, because

04:50

there is on the one hand the order limits, and then there is the notion of permanent limits and the permanent limits as far as I can see. Don't

05:00

Thoroughly cover everything that might be ultimately required permanently.

05:06

So, I think permanent limits can also include temporary land. That's my bottom-line supposition. Right, thank you, Miss Colquhoun, just for my clarity. At the moment, I'd been it'd been said to me this morning that the permanent limits include everything with the exception of temporary possession.

05:32

So, I had taken them the permanent limits to be effectively like another version of an order limit around the irrelevant plots, and I thought I saw a nod from you then, Mr. Jarvis. So how can I continue?

05:49

And so effectively, they don't they don't reflect what would be the construction, right, sought, or even the operation or

06:04

maintenance, right sought, if I can call it that.

06:08

They would just be the boundaries within which that could take place. Now, I'm not using that to prevent the answer to your question, which, which would cover other areas as well. But I just wanted to make sure that my understanding of that was correct. Before I heard the answer to what you just put as Colquhoun. So, Mr. Jarvis was the description that I've just given? Generally, correct.

06:36

Yes, that is correct. Effectively, the permanent limits identify the area within which the proposed development may be located. And the area within which the proposed development is located is confirmed at a later stage once detailed design has happened. Thank you, sir. Right. And then on now to the further points raised by Miss Colquhoun.

06:56

So, with regards to the yellow land, which as we discussed earlier today is not within the permanent limits. Article 39 confirms that the land that's referred to in paragraph one, A, which is the land so paragraph 181, which is the land that's detailed in schedule, 10, which is all of the land shaded yellow cannot be permanently acquired. So, there is no ability to permanently acquire any of the land shaded yellow by virtue of the order.

07:22

Thank you. This.

07:25

Was there anything you wish to add?

07:29

So now, I will look at that. I'm very grateful to Mr. Jarvis. The

07:35

I still, though, have a query about

07:41

perhaps it was my misunderstanding, no doubt, but if, if the permanent limits are where the actual stuff is, to use a more correlative is going to be placed, then the permanent limits is something that's

08:00

not well,

08:03

there's still a number of options to be

08:07

worked out. So how can you identify the permanent limits? Now?

08:14

Let's go here. And I think I think that I don't quite follow your reasoning in terms of your description of the permanent limits. And in my own mind, I'm then getting confused between the permanent width of the rights, the final width of the rights sought, and the permanent limits in the explanation that I've just given him that that's been confirmed, they are different.

08:45

And they are in existence at different times, if you like, join the progress of the proposed development relating to a particular point, a

08:56

particular geographical point.

08:59

But Mr. Jarvis's does anything that you can give further on this, please do.

09:06

And I think the confusion seems to be arising from the use of the word permanent. And I think irrespective of the use of that word, it is very clear from the explanation I've gathered in how the orders drafted as to what the position is. Nonetheless, if it's helpful to address the concern, I can think about using a different defined term to describe the same thing.

09:26

That would be useful and and possibly you could include it in the in the post hearing note that you'll do to cover additional things that have come out of this particular agenda item. Yes. My immediate thought is that referring to works limits might be preferable. Thank you.

09:43

I'm very grateful. So

09:45

thank you, right, just on that final point, then, Mr. Jarvis referring to

09:53

works limits.

09:57

Works limits may well be

10:01

Different works, there would be the right sort during construction, as we said yesterday, they will be different to the right sort for future operation. Operational maintenance, if you like after the five-year period that was talked about.

10:18

When you talk about works limits, they may well get confused with limits of deviation or things to do with the works plans. I would just be grateful if you would consider the way that they could be looked at from different external parties, which you obviously will when you when you look at the drafting, it could be that there is an offline discussion between certain parties to brainstorm what terms might be the most useful in terms of the

10:50

if it goes this way, the operation of the DCO in the future. So, an offline discussion in on this maybe helpful is my is my point.

11:00

Anything else on that before we move on?

11:02

Just that I'll give it some further thoughts on the solution. I'll circulate that wording for others to consider and comments on. Thank you. Thank you.

11:13

Right, then we were on set the section relating to the temporary possession of land. Was there anything else from anybody else on that?

11:23

Nothing heard. Thank you.

11:25

So just on that agenda item 4.3. Mr. Jarvis, you were going to do a note which would expand on things that weren't identified in your transcript.

11:38

And

11:41

that brings me to the end of item 4.3.

11:46

Agenda Item 4.4. Then,

11:50

which is the envisage locations and extents for non-HDD satellite contractors' compounds lay down areas and non-HDD junk bays along the onshore cable corridor?

12:03

I don't know this has been

12:06

responded to I don't have anything further that I wish to add. Mr. Jarvis. Is there anything from you?

12:13

Nothing further, sir. But to note my earlier comments around the work that's ongoing in that regard. Thank you, sir. I am conscious of that. Yes. Was there anything from anybody else on agenda item 4.4?

12:26

Nothing here. Thank you.

12:29

On to section five of the agenda, which is funding.

12:35

It's the first item 5.1 relates to further updates to the funding statement. I've seen what has been written there in terms of

12:48

an update, including matters raised at CAH one. And that an update would be provided following CAH one. Is there anything further on this Mr. Jarvis?

12:59

And no, nothing in particular, sir. Thank you. Thank you. Anybody else?

13:04

Nothing heard. Thank you.

13:09

Agenda Item 5.2,

13:12

which relates to the compulsory acquisition costs, and their relationship with preconstruction costs that have been identified previously.

13:24

I've got a couple of questions on this. Is there anything Mr. Jarvis that you would wish to start off on before I do that? No, sir, happy to go into questions. Thank you.

13:39

It's actually the first point actually involves Portsmouth. And I

13:47

think it was paragraph 2.25

13:51

of their deadline five,

13:55

submission relating to this hearing. And it suggests that

14:04

claim could be made for 90% of the compensation owed once the DCO has been made.

14:14

Miss Colquhoun and I don't know if there's anything that you want to say about that. Before I asked Mr. Jarvis to respond.

14:26

Miss Colquhoun? No, sir. Thank you. Mr. Jarvis. Do you have anything in response to that paragraph 2.25 in Portsmouth submission relating to the 90%

14:39

Yes, my understanding is that one needs to be in possession of the land before such a request can be made. It's not just the making of the order that allows for that request.

14:53

Right.

14:54

So, I'm just thinking about that about the timescale now so possession of the land in terms of your time

15:00

Scale then would mean that effectively, what point would that be in risk in relation to the appointment of a contractor in relation to the start of construction? Mr. Jarvis.

15:15

I mean, it would be following the appointment of contractors, but it would also be following the financing of the project because you wouldn't proceed to appoint contractors and move forward with the project until it's financed, and the funds are secured to build it.

15:27

Okay.

15:28

Miss Colquhoun. Was there anything further you wish to add on this point?

15:35

So, it's, it's a, it's a different, slightly different point. But yes, I did want to say something about this.

15:42

So, if we go back to the order and profit discussion we had yesterday, which is the article that deals with transfer of

15:52

rights in the order, transfer the benefit of the order.

15:58

As far as I can see from article seven,

16:05

there is no time constraint upon when, or no trigger upon when the undertaker

16:14

can transfer the benefit of the order, whether with or without Secretary of State's consent.

16:21

And given what we were just discussing about timing of, in effect, taking possession of the land,

16:31

how that and also given that it's accepted by the applicant, that compulsory acquisition costs are not front, costed into the current funding arrangements, how you and the Secretary state can be as well as those whose land is going to be acquired, can be assured that

16:53

the person who we're dealing with now can fund the compulsory acquisition,

17:00

there is no that

17:03

given that the applicant themselves and then the explanation as to their funding requirements, that they can

17:11

deploy or show that they have plans upon which they can base. Any funding of the construction and compulsory acquisition of the land is from their own evidence, we are potentially here in a position where

17:29

the DCO as far as I understand it, the DCO could be confirmed.

17:35

And the perhaps the contractor appointed, and then the order is, is transferred to one two or a number of another Undertaker's, so

17:49

it's more surety and clarity as to

17:54

compulsory acquisition and the funding there of

17:57

what's going on. Is this really a point relating to transfer of the order? Because is it not the case that that this could the situation that that you've outlined could occur in in other matters as well as funding?

18:19

I don't consider it to be purely a funding thing in terms of the transfer or are you saying that funding is the only thing that can be affected by transfer?

18:27

To be? Well, sir, the

18:30

because we're looking at compulsory acquisition and the requirement to show that the funding is in place. It's one of the one of the questions that you have to have answered. And if there is no connection between the person who is in effect before you as the applicant, who is the person who needs to show that they've got the funding available, and ultimately the person who takes benefit of the order, there is a gap, sir,

19:02

to be to cut to cut through this, that the

19:06

I went back to look at the Thames tideway order, which made it clear that no transfer could take place until after compulsory acquisition had been addressed.

19:20

I haven't got the wording right in front of me, but so I'm happy to provide that but there was a there was a closer connection between

19:29

ensuring that compulsory acquisition and compensation payments could be ensured before any transfer of the benefit of the order took place. Right, right.

19:43

Mr. Jarvis, anything in response.

19:47

Just to note that article seven six e confirms that you cannot transfer the benefit of the order, whilst the time limits for claims for compensation in respect of the acquisition of the land not elapsed without a second

20:00

States consent. So, the secretary of state would have to consent to any such transfer, and with no doubt taking into account matters relevant to funding and compulsory acquisition when being asked to do so. Okay. Okay. Miss Colquhoun. Well said that's extremely helpful. Is there

20:18

is, is there a consequence?

20:23

So just in terms of understanding this process for

20:29

there's a requirement that the Secretary of State determined and the application to transfer within a specific period of time.

20:38

Can I understand what the what the consequence of the Secretary of State going beyond that time limit?

20:45

I'm sorry, the question that you put there. So, article seven for

20:55

Secretary state must determine an application made under this article within a period of no more than eight weeks

21:02

unless otherwise agreed. Sarah, consequence of the of the absence of that determination. Right, Mr. Jarvis. The Secretary of State is not subject to arbitration. So, it would just be a matter that would need to be resolved between parties.

21:19

Okay. Okay.

21:23

Was that's it on this particular point from you, Miss Colquhoun?

21:28

Yes, thank you, sir. Okay, Mr. Turney, I see your hands raised.

21:35

Thank you, Sir. Richard, Turney for Hampshire County Council. And I just want to flag a point here. I know we're going to discuss section 278. later on. But

21:46

the county council has got concerns about funding arrangements, which might go to discharge of liabilities when a developer works in the highway or carries out, access works and so on.

22:01

Normally, arrangements are made under Section 278. To ensure that indemnity is provided, often to ensure bonds are provided. There's no such arrangements in place here, we push for them. But of course, the question of funding arises because if a developer potentially might not have its funds at the right time, or may carry out part of the works, but not be fully funded, then those sorts of issues become more stark and the highways authority ultimately is going to bear the risk of a development is unable to fund the completion of their works.

22:42

remedying

22:44

experiences for the highway, which may be the creation of accesses or trenches and so on. So, I raised that now it's a matter more for discussion on the 278. I just flag it because it's relevant to funding.

22:56

Right. And so, your point then is there is a concern over The Undertaker's ability to provide

23:06

some kind of surety or funding or indemnity as you've as you've said, right. Okay. Thank you. Mr. Jarvis. Was there anything that you have on this at this stage?

23:16

Just to reconfirm my comments from yesterday afternoon, I appreciate Mr. Turney did have to leave yesterday afternoon. But I did confirm that I would rather discuss those matters with Hampshire County Council. And the points are noted, and we will look to address them as soon as possible. Thanks, sir.

23:31

Thank you.

23:35

Mr. Turney, I see that your hands still raised. I'm assuming that you've finished that point. Yes. Thank you.

23:42

Right. I just had a couple more things on agenda item 5.2.

23:48

In the transcript, paragraph 5.6 refers to the responses to various written questions. And it specifically reversed to ca 131.

24:01

And the applicant's response to that refers to some 2019 KPMG work in terms of funding, and the likely availability of funding, I think is sort of generally how it's described.

24:18

It's the job is would there be any extracts from that work, any reports produced in that work? That may be of help in terms of

24:32

the degree of confidence that can be put in the ability to fund a proposed development.

24:41

I will have to check with my client service the compliance course. Yes, I know that where it can be provided on confidential basis. I'm sure we could do so.

24:52

Leave that with me and it's something we'll come back to you on post hearing for deadline six, if that's okay.

24:57

Thank you.

25:06

And also, in addition to that on the same kind of subject, if you like,

25:12

the

25:15

paragraph 5.9, in that section actually refers to regulatory submissions to both CRG and off gem.

25:24

Of course, we've got commercial confidentiality

25:28

in there in a significant way. But if there was anything else in that particular sphere of operations, that is, there's anything more that you can give me on that, too. Okay.

25:45

Comfort that might have been provided to those bodies. Mr. Jarvis. Thank you, sir. I would need to check exactly what has been provided to create an offer in that regard will be at my understanding is that they have been provided with cost plans for the project for the base of undertaking their assessments. And more generally, as we'll move through questions, 5.3 to 5.5, my colleagues, who will address questions in relation to regulatory Matters, I'm sure we'll be happy to provide an update on where we are with those issues. Right. It's not particularly regulatory matters, and it's not particularly cost base, it is in relation to any comfort that might have been provided to those bodies, about the availability of funding for the proposed development. It's still on this question of

26:38

the likelihood of funding availability. And because it's this hearing funding availability for compulsory acquisition, which is, as you said previously, in the transcript and elsewhere, is part of the construction type costs, if you like, yeah.

26:57

That seems good, sir. I'm taking that away as a need to confirm how if at all, that is taken into account by those regulators and what comfort may have been provided where it is something that's taken into account by them in making their decision. Thank you. And I think that is grown into such a thing that it could well be opposed hearing that.

27:16

Thank you.

27:18

Right. Was there anything else from anybody on agenda item? 5.2?

27:26

Okay, nothing heard. Thank you.

27:31

All now to agenda item 5.3, which is the description of descriptions relating to additional exempt project, and fully merchant exempt. interconnector project. I didn't have any particular questions in relation to what's been put in the transcript. Was there anything that you wish to say on this Mr. Jarvis? No, sir. There's nothing further we wish to add. Thank you. And was there anything from anybody else?

28:03

Okay, nothing heard. Thank you.

28:09

On to agenda item 5.4.

28:13

And this related to the descriptions of additional exempt project and its relationship with the cap and floor award. I didn't have anything particular that I wanted to raise following the transcript on this. Anything from you, Mr. Jarvis? No, sir. Thank you.

28:36

Thank you, and anything from anybody else?

28:41

Okay, nothing hurt. Thank you.

28:51

Agenda Item 5.5.

28:55

Which concerns an explanation of the viability of the project if the current exemption request is refused.

29:08

I didn't actually have any points from a personal

29:14

position. But that was on page six of Portsmouth's transcript, there's a subheading impediment that I had possibly taken to be under this item. And I see Miss Colquhoun's hand has gone up. So, let's go here. And if I can ask you first, is there anything that you wish to say in relation to this agenda item.

29:41

Miss Colquhoun? I'm very grateful and ready to be educated

29:50

By well, whoever within the team is dealing with this issue. My understanding of the exemption that was refused it was that it was an exemption request.

30:00

requested by Aquind under the TEN-E regulations.

30:06

And that was at a time when Aquind was a project of common interest,

30:15

which is

30:18

specifically, what the TEN-E regulations as I understand it apply to

30:24

I

30:25

read carefully the judgment from the ECJU you as to their appeal.

30:33

And clearly, that's decided that Acer or Asis decision should be overturned and the matter could be looked at, again, the query I have, and Portsmouth's concern is that clearly, there is no longer any recognition of Aquind a PCI. And therefore, again, as I understand it, the TEN-E regulations no longer apply to each. And therefore, the issue of exemptions comes into question. And I'd be hugely grateful. So, if some explanation could be made for that and whether there is an impact from the loss of the PCI status.

31:18

Thank you. Mr. Jarvis. Is there anything that you can give in response to that? Yes, there is. But it's going to be given by my colleagues Silke Goldberg. Thank you, sir. Thank you, Miss Goldberg.

31:40

Good afternoon, sir. My name is Silke Goldberg. And I am representing aspirants in relation to regulatory matters and have advised in relation to the court case that is referenced here.

31:52

Please allow me sir to first address a point of law in relation to the PCI point as well as the TEN-E regulation that the colleague from Portsmouth just addressed.

32:05

The exemption for which Aquind applied was not under the 10 e regulation. It was under the European electricity regulation, which is a separate regulation, the 10 e regulation is relevant in relation to PCIs. The exemption for which Aquind applied, it's not relevant, the PCI status is not relevant in this status. In relation to this regard. PCI, the PCI status is nice to have in a number of ways, however, it is by no means an impediment for the development, the absence thereof is not an impediment for the development of the project either in France or here in the United Kingdom. So, it's nice to have but in no way necessary.

32:52

Perhaps, please also to perhaps expand for a couple of minutes or on the regulatory pathway for the project and it might just be helpful to give a little bit of context here. Um, the it is, there is a clear regulatory pathway for Aquind on the basis of the 2018 Acer application for an exemption, which of course following the judgment of the general court as being considered now by the board of appeal of Acer the European energy regulator. In the decision of 2018, Acer had assessed Aquind's exemption request against all six criteria. So, the electricity regulation at the time that was article 17, of the

electricity regulation that has now been changed, because the electricity regulation has been recast and is now article 3063 of the electricity regulation. And there are six criteria, which a project needs to fulfill in order to make the cut for an exemption.

33:54

In the assessment of its decision in its assessment. In the decision, Acer confirmed that Aquind passed five out of the six tests set out in the electricity regulation in relation to the one element that Acer at the time deemed that Aquind would not pass. The general court of the European Union has ruled that ACA acted unlawfully because it wrongfully created a type of hierarchy between two separate European Union regulations. And it also wrongly sought to further create a conditionality in relation to the exemption effectively through the backdoor trying to introduce a seventh condition. The court has been very clear in the exemption as there is judgment that that approach to the exemption was unlawful

34:45

on the basis that this approach was held to be unlawful and given that Aquind have met all other criteria. In the view of the European regulator, we are positive that there is a very clear pathway for an exemption in 2021

35:02

The question has been asked to do sort of has arisen is what happens if it's what if it isn't granted, Aquind has indeed a number of possibilities in relation to, to this should against our expectations, Acer, the Board of appeal not grant the exemption of 2018. It should be noted that Aquind has by way of mitigation also applied for a partial exemption, which is limited in geographically to France, to the French energy regulator.

35:32

This application is currently being considered by the French energy regulator the code and we understand the application is progressing in its normal course, to we expect that regulators have commencing a public consultation in relation to Aquind imminently.

35:54

Thank you.

35:57

Just right, I'm getting a bit of feedback from my own voice. I don't think it's from me, possibly, it's from somewhere else. That's that seems to be to be better now. Thank you. It's gone. But there was just one question on what you've just said. Can you what, can you explain the elements that Aquind didn't pass out of the elements that were discussed?

36:22

Yes, sir. One moment please, I will call up the relevant regulation. So out of the six criteria, the second criteria is that a new interconnected needs to have a level of risk attached to it. So that is of such a kind that the investment would not take place, but for the exemption. So and at this particular point, Acer believe that Aquind first needed to demonstrate that it couldn't be regulated in France and couldn't meet

the criteria set out in the 10 EU regulation for projects of common interest. Now, there are two things First of all, that approach was it was entirely unlawful. The court the call, the general court of the European Union has been very clear in the judgment.

37:12

My turn out that the general court has taken the not very usual step ought to also award costs to accurate as a result of, of Acer's decision, such cost allocations are not very usual at European level.

37:28

Secondly,

37:30

this given that Aquind is not a PCI, that conditionality sort of is not a concern whatsoever, it is unlawful. So therefore, we have every confidence that this this criterion will be met.

37:45

Thank you.

37:47

Mr. Jarvis. Was there anything that you wish to add before I go back to Miss Colquhoun?

37:58

Thank you, sir.

38:01

Right, just before I go back to Miss Colquhoun

38:09

just go back does the attendee fully apply at this stage then?

38:16

So, the 10 e regulation does not apply to Ackman. Right, it doesn't it doesn't apply at all. Thank you.

38:28

Right.

38:38

said that, thank you, that the Thank you, that's very helpful that so and indeed that was going to be my question is whether they apply anymore. So, these done partially right. But the, as I understand it, the PCI status is or the last of it is being appealed, as well.

39:00

So, that may be something that Miss Colquhoun and can confirm, but also,

39:08

I understood

39:11

that

39:14

that one of the points that was put before the CJ, you in terms of the appeal against the Acer's refusal

39:25

was that

39:27

that

39:28

the ISA had failed to take into account. I understand the term is that the legal impossibility to

39:40

the legal impossibility for the applicant to operate the proposed interconnector in France without an exemption.

39:47

That doesn't seem to accord with what Miss Goldberg said about there are other ways forward if there is no exemption. So perhaps that might be

39:59

addressed.

40:00

Right. Okay, just before it is addressed, we may get to a situation in this that it needs submissions, in addition to submissions relating to what's actually being said within the hearing.

40:16

I'll consider that and I'll ask your views on that when we get to the end of this particular section.

40:23

Miss Goldberg, then is there anything that you can give in response to those queries raised by Miss Colquhoun?

40:30

Yes, so just to confirm the PCI, the appeal against the withdrawal of the PCI status is an entirely separate legal matter. As I said earlier, the PCI status has no bearing on the development or the overall chances of development for this interconnector. However, for a number of reasons, it is a nice to have

edition four, but in particular circumstances in France, in particular, however, that is an entirely separate legal matter and has his outfit I would have said,

41:05

the issues that we are discussing in relation to the regulatory status

41:09

question Miss Goldberg, is it you said it was a thing Nice, nice to have? Is it something that is necessary for the element of the wider project in France? No, no, right. Okay, thank you.

41:25

Um, therefore, perhaps also, by way of wider context, the appeal against the withdrawal of the PCI status centers very much around sort of the rights of Aquind. Today, we've had a hearing in relation to this and then a number of procedural and fundamental rights matters that are being addressed in relation to that withdrawal. Again, nothing to do with the regulatory status or the chances of development.

41:52

The second question, I believe, centered around

41:57

the failure of Acer to take into consideration the legal impossibility that precisely goes is one of the arguments and Aquind made many arguments as to why the project is particularly risky. So that is precisely the legal risk that Acer failed to address. In its in its finding, that goes back to Article 326, one of the French energy codes which makes particular provisions for

42:27

the transmission lines to be operated and developed in France. The French energy regulator clue in its delivered as of March and July 2012, has laid down specific guidance that nonpublic transmission entities such as Aquind, for instance, can operate a transmission line in France on the basis of an exemption and there's this

42:55

regulator

42:58

network, the precise legal French legal scenario goes to risk the court has ruled EISA was unlawful in the way that it has considered this risk.

43:10

And, indeed, in the hearing in the general court, there was a longer expansion, sort of an explanation of the French legal situation, and

43:21

that went into the judgment and then in the consideration.

43:26

On that basis, should the current application, the 2018, application fail again, against our expectations, there is a second application, which is reduced in geography and scope. Again, by way of background, there are a number of things that an interconnected project needs to be exempt from. One is one pertains to tariff; one pertains to third party access for electricity shippers, one pertains to a fairly complicated unbundling regime in the European Union, which is also implemented separately in the UK. So there is a there's a huge amount of scope from which an applicant can choose to be exempt from what you apply to be exempt from the second exemption application is much reduced By way of comparison to the first and by way of mitigation and an insurance application so that we have every confidence that to the current application will be considered positively.

44:24

Right. Miss Colquhoun? Was there anything further you wish to say on this particular matter?

44:31

I listened very carefully. And I'm very grateful. But I don't think

44:40

that what I heard is that, that that kind of hopeful to receive a positive outcome from the 2018 reconsideration of their exemption and they have pared back their case and added more mitigation Forgive me, I am paraphrasing. But what I had understood is that if that is required,

45:00

used.

45:02

Miss Goldberg said that that there were that that wouldn't prevent anything. Okay, what would prevent the French authorities from allowing the scheme to go forward? But I had quoted from Aquind's own case, which was that that it is in there's a legal impossibility for the applicant to operate the proposed interconnector in France without an exemption. So, I don't understand therefore, why the exemption isn't key.

45:35

And I'd be very grateful to

45:38

hopefully,

45:39

it would help you to understand what why that exemption is or is not important. Right, just before I give you the opportunity to respond to that, Miss Goldberg, I'm conscious that Mr. Jarvis may have

something else on it in terms of the mechanism of responding to this particular point. But if there's anything that you wish to say on it at the present time has gone by then please do so.

46:09

Let's go back. It was just a response to what Miss Colquhoun has just said. Right.

46:17

Thank you. So

46:19

I'm not entirely sure I fully understood and fully understood the question. So, the issue is that there are two, two separate requests for an exemption to the first exemption request has been granted in all but one criterion two criteria. I wonder if I could just cut in here because it seems to me that there is a difference between what you've just said, or there appears to be a difference to Portsmouth, in terms of what you have just said, in terms of the availability of various routes to enabling the proposed development to proceed, what has been put in the submissions previously made to the inquiry by the applicant.

47:03

That's why I look to possibly the involvement of Mr. Jarvis in that, because he is more aware of the mechanism that the applicant may wish to use to actually explain or give an explanation in relation to that difference that seems to exist in them at the moment. So, Mr. Jarvis,

47:23

I'm just, I've, you've obviously been following the conversations that have been taking place. I'm wondering whether this is best dealt with by a submission to explain the difference between the previous documents that the applicant may have put into the examination on this matter. And then the position that Miss Goldberg has outlined in the hearing today. Anything from you on this? Thank you. So as confirmed in relation to question 5.1. We will update with funding statement further to developments that have happened since that was submitted, I will ensure this point is adequately addressed. I would just like to make one point clear, which appears to be misunderstood by Miss Cahoon.

48:07

The exemptions are essentially one exemption is being is being appealed or has been refused. Sorry, has been overturned. A partial exemption is also being applied for they're being applied for the same route. Essentially one's a fallback to the other, but they're also they're both exemptions. So, the legal impossibility applies to both of them equally. Portsmouth seem to be making the point that it doesn't, it definitely does.

48:30

Right. Thank you, Miss Colquhoun. Having heard that.

48:36

That would seem to me to be a way forward on this particular point. And then when that document comes out it deadline six then obviously there would be caught opportunity to comment specifically on what is said anything further from you miss Colquhoun?

48:52

So, I don't want to take up more time because especially if it's going to be made clear, but what I have noticed that there are two exemptions being requested.

49:03

One is reconsideration of the earlier one, which was

49:09

the subject of the CG recent judgment. And there is another one that Mr. Jarvis has referred to which he called a partial exemption.

49:20

The phrase that I have come back to a couple of times is the one used in respect of the first exemption, if I can call it that, which was the legal impossibility for the applicant to operate without an exemption.

49:38

It seems to me that that has not still been answered. So

49:46

but if that could be clarified, in other words, why is that not true?

49:53

And then perhaps we can proceed.

49:59

There are other

50:00

questions that I had about the French

50:05

procedure and how that is proceeding how progress is being made, because Mr. Jarvis said yesterday that it is all progressing very well. But I don't think you have evidence of that process and how far it has continued. And also, I have to say I don't recall reference to the application being within the

50:30

consents benefits and consents of sorting of benefits because of the consent documents. That's before you, sir. So, I just wanted whether more information on this could be applied and more explanation as to the process. Because as far as Portsmouth concedes, that there do seem to be a number of questions over the French side of the project.

50:54

Right.

50:57

Mr. Jarvis, you've obviously heard what has been said, and you will have the recording to go back to be able to

51:07

confirm what is being asked in that, from your view at the moment. Does it appear as though, though as though those questions could be those points could be covered in an updated funding statement?

51:21

Yes, they do. I would just like to make absolutely clear, both exemptions are made pursuant to the same regulations, the same criteria apply. The difference is that the first exemption which was sought apply to France and the UK, the partial exemption is being sought in relation to France only. And that's for matters related to the potential for a cabin floor window to open in relation to interconnectors in the UK, one does not affect the other, you would not operate with both that they do not preclude one another. And they do not conflict with one another.

51:49

Right. But your content that the points raised can be addressed in the funding statement. And then Portsmouth then would have the opportunity to come back to that in terms of comments on that document. Yes, sir. Thank you,

52:04

Miss Colquhoun in terms of that as a way forward on these matters, your views on that? That's acceptable. So, thank you very much. Yes, as long as clarity. That's all we want. Thank you. And Miss Goldberg, can I thank you for your contribution on this particular agenda item.

52:22

Thank you, sir.

52:24

Was there anything else on agenda item 5.5.

52:31

Okay, nothing heard.

52:35

And moving on then to agenda item 5.6, which is Document Submission arrangements for the funding statement? Well, that's what we've already talked about, amongst other things, and indeed, it was referred to as the initial agenda item under this section.

52:54

So that was an agenda item 5.1. And or updates mentioned then.

53:00

I don't have anything else on this. Mr. Jarvis. I think that

53:05

Thank you. Anybody else?

53:08

Okay, nothing here. Thank you.

53:12

And very conveniently, that brings us to three minutes past one. I'm minded now to have the lunch adjournment. Before I adjourn for lunch, is there anything anybody else wish to raise? Okay, nothing heard. Just to remind people on the live stream that if you when you return, you may need to refresh your browser.

53:33

I'll therefore adjourn the hearing to be resumed at two o'clock. That's two o'clock. Thank you very much.