Date: 15 February 2021

AQUIND Interconnector application for a Development Consent Order for the 'AQUIND Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030) in relation to Little Denmead Farm

Statement on Funding & Compulsory Acquisition Compensation

Submitted in relation to Deadline 7c of the Examination Timetable

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STATEMENT ON FUNDING

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SECTION A – EXECUTIVE SUMMARY

1. Mr. Geoffrey Carpenter and Mr. Peter Carpenter, the freeholders of Little Denmead Farm, ("the **Affected Party/AP**") **MAINTAIN** their positions, and the bases of those positions, submitted at Deadline 7. Please see the Affected Party's Statement on Funding, document reference number **[REP7-116].**

2. In essence, the AP submit that the Examining Authority (the "**ExA**") could not *rationally* recommend to the Secretary of State ("**SoS**") (and he could not rationally so grant) that compulsory acquisition powers should be granted in relation to the Affected Party's' land, nor could he consent to authorisation under Section 122 of the PA 2008 of any draft CPO provisions in the current draft DCO **[REP7-014]** of the Applicant for want of any funding.

3. As the Applicant has candidly now finally publicly stated in **[REP7-075]**:

> *"9.2 The Applicant has … confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition…"*

4. "*There is [no] reasonable prospect of requisite funds becoming available to cover land acquisition costs*" within the 5 year period when compulsory acquisition powers can be exercised as is required by paragraph 9 of guidance issued by the Ministry of Housing, Communities, and Local Government entitled 'Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land' (September 2013) ("**Planning Act CPO Guidance**").

5. *Unlike* the examples previously cited by the AP (where conditional CPO provisions have been included *where there was actual evidence of requisite funds* of the Applicant but they fell to be verified by the Secretary of State), **in this Application**, it has only recently been made expressly clear by the Applicant limited company that there is actual evidence of the complete *absence* of requisite funds (see the 2019 Accounts attached to the Deadline 6 Funding Statement (document reference **[REP6-021]**)) and a shortfall is intended (irrationally) to be supplied (the phrase "is to be" is used by the Deadline 6 Funding Statement) by the *hope* that the market might supply project financing. There remains, ***as* yet, *no* project financing document** before the ExA or Secretary of State, **nor any objective evidence of the *immediate* availability of draw down funds that can be enforced against by the Affected Party against the Applicant limited company nor any binding and certain framework to ensure, on terms, requisite funds becoming available (including for blight)**.

6. Consequently, the ExA and Secretary of State are not presently in a lawful position to be able to rationally *weigh* the public interest against the private loss for want of present ensured requisite funds. The same logic would apply to any other affected party within the Order Limits. If it were otherwise, the Secretary of State would be authorising a speculative CPO.

7. The Affected Party maintains that **all compulsory acquisition powers should be stripped out of the proposed draft DCO because a speculative CPO would be outside of the scope of section 122 of the PA 2008**, having regard to paragraphs 9-10 of the Planning Act CPO Guidance, and because the very principle of compulsory land take rests on the availability of funds.

8. Put in another way, compulsory acquisition powers should not be granted based on a simple promise by the Applicant that funds might become available at some unknown point in the future.

9. The Applicant's Deadline 6 Funding Statement (document reference **[REP6-021])** confirms the Affected Party's previous arguments in its 'Note on Funding' submitted at Deadline 6 (document reference **[REP6-138]**) that this is a financially wholly speculative project. The Applicant's Deadline 6 Funding Statement also shows the Applicant has just over a £1m in the bank, which is nowhere near enough to cover the Applicant's estimate that it needs nearly £5m to cover compulsory acquisition costs.

10. In light of new evidence submitted by the Applicant at Deadline 7, the Affected Party maintains that the Examining Authority (the "**ExA**") cannot *rationally* recommend to the Secretary of State ("**SoS**") that compulsory acquisition powers should be granted in relation to the Affected Party's' land.

11. In light of new evidence submitted by the Applicant at Deadline 7, the Affected Party also maintains it would be irrational for the ExA to recommend, and irrational for the SoS to consent to, the authorisation under Section 122 of the Planning Act 2008 of all the proposed compulsory acquisition powers in the current draft DCO **[REP7-014]**.

12. The Affected Party maintains that all the compulsory acquisition powers within the draft DCO need to be removed.

13. The Applicant has no funds at all to cover land acquisition costs, nor that it has secured identifiable funding for such costs that can be drawn down.

14. The Applicant has no funds at all to cover the costs of constructing the application project. Nor has the Applicant secured identifiable funding for such costs that can be drawn down.

15. The Applicant will rely completely on unidentified future project finance to fund both land acquisition costs and costs for the entire scheme's construction.

16. However, the Applicant will only be able to secure project finance if it secures an exemption under EU Regulation 2019/943.

17. Ofgem and CRE announced on 28 January 2021 that the exemption the Applicant needs in order to secure all finance for the project and for compulsory acquisition, is NOT available to the Applicant because the UK is no longer a member of the European Union. This means that without the exemption, the Applicant cannot secure any funding at all for compulsory acquisition or for the scheme.

18. The Applicant's entire funding case hangs on its hopes and wishes, not on objective evidence of funding that needs to be submitted during the Examination of the application. The Applicant hopes it may be able to benefit from a new exemption regime created under the Trade and Cooperation Agreement entered into between the UK and the EU on 24 December 2020 ("**TCA**"). However, the new exemption regime under the TCA there is ambiguity and unknowns surrounding the full nature of the regime the replacement regulatory framework included in the TCA. This is because the exemption regime in the TCA is not complete, and is not intended to be complete, for some time. Currently, it cannot be said that the regime set out in the TCA is an exact replication of that which was laid out in the EU Regulation. There is therefore a lot of uncertainty over WHEN any new exemption under the TCA could be granted and whether such new exemption will enable the Applicant to attract the funding it needs.

19. This is therefore a wholly speculative project. The AQUIND Interconnector is currently an unviable project without the EU Regulation exemption.

20. The Affected Party also attaches to this Statement expert evidence that proves the Applicant's land acquisition costs estimates are grossly undervalued. This demonstrates that as its CPO Compensation estimates are wrong, the Applicant cannot demonstrate there is a reasonable prospect of the requisite funds becoming available, because the Applicant has not correctly calculated what those requisite funds are.

SECTION B – The relevant tests for authorising compulsory acquisition powers in a DCO

22. We note the Applicant's inaccurate account of what the relevant tests are when considering funding in the context of compulsory acquisition in its Responses to the Examining Authority's ("**ExA**") Second Written Questions (please see the Applicant's responses to the funding questions CA2.3 in document reference **[REP7-038]**).

23. To assist the ExA, we set out the relevant tests below.

24. There is a presumption in favour of granting development consent orders ("**DCO**") in the Planning Act 2008 ("**PA 2008**").

25. Importantly, the PA 2008 counters the presumption in favour of granting a DCO by also establishing a presumption ***against*** taking land against a landowner's will unless certain conditions are met.

26. Section 122(1) of the PA 2008 does not allow development consent orders to contain powers of compulsory acquisition if two conditions are not met:

    a. **Condition 1**: the land is (a) required for the development to which the development consent relates, or (b) is required to facilitate or is incidental to that development, or (c) is replacement land which is to be given in exchange for the order land under section 131 or 132; and

    b. **Condition 2**: there is a compelling case in the public interest for the land to be acquired compulsorily.

27. The Planning Act CPO Guidance sets out what the Secretary of State ("**SoS**") must take into account when deciding whether the conditions set out in section 122 of the PA 2008 have been met.

28. Funding is one of the matters the Planning Act CPO Guidance requires the SoS to take into account when deciding whether the conditions in section 122 PA 2008 are satisfied. A full copy of the Planning Act CPO Guidance is attached at Appendix 6 to this Statement.

29. The common law also requires that funding must be examined and taken into account by a decision maker in relation to authorising compulsory acquisition powers.

30. The Court of Appeal in *Prest v Secretary of State for Wales* [1983] 1 WLUK 416 quashed the decision was quashed because no regard was given by the decision maker to the *question* of

increased acquisition costs. In that case, when considering a compulsory purchase order the Secretary of State must consider all relevant information and should not limit himself to those matters alone which have been dealt with by the inspector: the onus of showing that a compulsory purchase order has been properly made is on the authority seeking it. Land was sought urgently by a water authority for the construction of a new sewage plant. At a public enquiry the inspector treated the costs of construction as being a decisive factor, but made no reference to the costs of acquiring the land itself. Prior to the inquiry P had offered to make available, at agricultural rather than industrial prices, an alternative site for the plant. Notwithstanding the *increased* cost of acquisition the Secretary of State confirmed the order.

31. The Court allowed P's appeal and quashed the order, holding that (whilst the AP recognises (2) cannot apply outside of the statutory Examination framework of the PA 2008):

(1) the onus of showing that the order should be confirmed lay on the authority who sought the order;
(2) the Secretary of State should not limit his attention to the material put before the inspector and the matters canvassed at a public enquiry, but should take into account all matters which seemed to him to be relevant;
(3) on the facts of the case, the Secretary of State had failed to consider the question of the land acquisition cost, which was a material factor.

32. The Supreme Court in the *Sainsbury's* case [2011] 1 AC 437, applied *Prest* and held that the common law protects private interests against interference by the state, and also that the protections resulted in a presumption against taking land by requiring compulsory acquisition powers.

33. The guidance presumption in favour of granting a DCO for the particular project in the field of energy cannot usurp, subvert nor override the statutory requirement to satisfy the “conditions” in section 122 nor the common law protections presuming against compulsory land take. See sections 104(3) and (8) in relation to such a project. See also the Statement on Scope of the Purposes and The Development submitted by the AP for Deadline 7c with this Statement.

34. Recognising the statutory 6 month period in which to Examine the Application, and the paragraph 7 requirement on the Applicant “throughout the examination” to defend its proposal, with regard to funding, paragraph 17 of the Planning Act CPO Guidance requires funding statements examined during that statutory period to:

"*… provide **as much information as possible** about the resource implications of both acquiring the land and implementing the project for which the land is required….It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls **are intended to be met.** This should include*

the degree to which other bodies (public or private sector) ***have agreed*** *to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting* ***is to be made***."

35. The language used in paragraph 17 of the Planning Act CPO Guidance as emphasised above is expressed in the present tense – it requires details of how the scheme will actually be funded. It does not mean that funding statements should describe how a scheme *might* be funded in the future.

36. In respect of what is to be shown, paragraph 9 of the Planning Act CPO Guidance states:

"*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to* ***demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.*** *Otherwise,* ***it will be difficult to show*** *conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below)."* (our emphasis added).

37. Thus, paragraph 9 evidently requires the *Applicant* to demonstrate "that there is a reasonable prospect of the requisite funds for acquisition becoming available". Contrary to the Applicant's assertions in **[REP7-075]**, the Guidance does not state: "that there is likely to be" or "that might be" or "that there is desired to be" "a reasonable prospect of the requisite funds for acquisition becoming available". The relevant test for the ExA to evaluated from facts available during the statutory examination period and the Secretary of State to thereafter consider is:

> Has the Applicant ***demonstrate[d] that there is a reasonable prospect of the requisite funds for acquisition becoming available.*** *Otherwise,* ***it will be difficult to show*** *conclusively that the compulsory acquisition of land meets the two conditions in section 122.*

38. The current conclusive answer to that simple question is now demonstrated by the Applicant limited company to be as finally publicly stated in **[REP7-075]**:

> *9.2 The Applicant has … confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition…*

39. It logically follows, as at Deadline 7c, that: "***it will be difficult to show*** *conclusively that the compulsory acquisition of land meets the two conditions in section 122"* on the basis of the Applicant's own and current evidence.

40. The absence of the "requisite funds" results to preclude section 122 PA 2008 being satisfied on and fro Deadline 7c. If section 122 PA 2008 cannot be satisfied due to funding matters, the ExA should not recommend and the SoS cannot authorise the inclusion of compulsory purchase powers in a

DCO on the basis of his helpful guidance and, applying his paragraph 17, he can reasonably sever all cpo powers from the face of the draft DCO. That is the orthodox approach in such an Application as the instant one.

41. Removing compulsory acquisition powers from a DCO is sanctioned in an orthodox and unexceptional manner in such circumstances. The Planning Act CPO Guidance expressly states that the SoS can do so, and that such an approach accepted, rational, and also reasonable. The basis of removing compulsory acquisition powers from a DCO is contained in paragraph 16 of the Planning Act CPO Guidance.

42. Paragraph 16 of the Planning Act CPO Guidance states:

"***There may be circumstances where the Secretary of State <u>could reasonably</u> justify granting development consent for a project, but <u>decide against including in an order the provisions authorising the compulsory acquisition of the land</u>.*** *For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.*" (our emphasis added).

43. The ExA and the SoS must consider matters relating to funding based on the objective evidence before them <u>during the Examination of an NSIP</u>. If objective evidence does not exist <u>during</u> the statutory Examination period then it will not have been able to be "most carefully scrutinised" by the ExA and tested by an AP, (and here, the AP) in relation to the envisaged taking of their land against their will, and the SoS cannot rationally or fairly (in the context of the draconian power of cpo of land) recommend / authorise the inclusion of <u>any</u> compulsory acquisition powers in a DCO (including temporary possession or blight provisions). That is because of the requirement in paragraph 7 the Planning Act CPO Guidance, which requires the Applicant to defend its compulsory acquisition proposals during ("throughout") the Examination and not after the event of its cessation.

44. Paragraph 7 of the Planning Act CPO Guidance states:

"*Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also* ***<u>need to be ready to defend such proposals throughout the examination</u>*** *of the application…*" (our emphasis added).

45. Paragraph 9 of the Planning Act CPO Guidance also sets the "reasonable prospect" test in the present tense. The words used in paragraph 9 is that the applicant "*should also be able to demonstrate that **there is a** reasonable prospect…"* (our emphasis added).

46. Therefore, the ExA and the SoS need to determine matters relating to funding based on the situation **now, during Examination**. Not based on what the situation might be at some unknown point in the future.

47. The inclusion of compulsory acquisition powers in a DCO is therefore not a presumed given at all.

48. If the Applicant cannot, during this Examination, demonstrate on objective evidence that *presently* it is in a position before its cessation to be able to actually fund its proposed NSIP, then demonstrating that there is a reasonable prospect of the requisite funds for compulsory acquisition becoming available, becomes academic because project funding encompasses “requisite funds”. See paragraph 17 (“both acquiring the land and implementing the project”). Demonstrating "reasonable prospect" of compulsory acquisition funds is tied to demonstrating the resource implications of the NSIP itself.

49. The ExA and the Secretary of State would be acting irrationally if compulsory acquisition powers are included in a development consent order where the Applicant cannot demonstrate during the Examination period that the NSIP “will be funded” (as opposed to “might be” or is “hoped to be” funded “if…”).

50. Another requirement is to consider the timing of the availability of funding within the statutory period compulsory acquisition powers can be exercised under a DCO together with blight.

51. Paragraph 18 of the Planning Act CPO Guidance states:

    "*The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of*."

52. Furthermore, for compulsory acquisition powers to be justified, applicants must demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed. This requirement is contained in paragraph 19 of the Planning Act CPO Guidance.

53. Paragraph 19 of the CPO Guidance states:

"*The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:*

- *any potential risks or impediments to implementation of the scheme have been properly managed;*
- *they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent*."

54. That is, there must be no impediment to implementation, including financially and including consents that relate to financing of the NSIP.

55. Paragraph 10 of the Planning Act CPO Guidance states that the Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

56. Paragraph 10 of the Planning Act CPO Guidance states:

"*The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention*. "

57. Without truncating the terms of the guidance tests, we simply summarise for convenience the relevant tests for the ExA and SoS to apply in relation to funding below. Please however note that we have applied the full terms of the Planning Act CPO Guidance in our analysis, rather than the summary below:

a. Funding is one of the matters the Planning Act CPO Guidance and common law require the SoS to take into account when deciding whether the conditions in section 122 PA 2008 are satisfied (paragraph 9 of Planning Act CPO Guidance).

b. The ExA and the SoS must consider matters relating to funding based on the objective evidence that is before them during the Examination of an NSIP (paragraphs 7 and 9 of Planning Act CPO Guidance). Their decision cannot be based on what the Applicant thinks might be available in the future without presenting any objective conclusive evidence to support that during the Examination.

c. In light of the 6 month statutory period in which Examination must occur, applicants must also "… defend the proposals throughout the examination of the application" paragraph 7 of Planning Act CPO Guidance).

d. It is up to the *Applicant* to demonstrate, during the statutory period of Examination, that there is a reasonable prospect of the requisite funds for acquisition becoming available (paragraph 9 of Planning Act CPO Guidance). i.e. "there is" applies during the examination period and "reasonable" excludes the irrational.

e. The absence of the requisite funds would mean that section 122 PA 2008 cannot be satisfied (paragraph 9 of Planning Act CPO Guidance).

f. If during the statutory examination period section 122 PA 2008 cannot be satisfied due to “relevant facts” on funding matters, the ExA cannot recommend and the SoS cannot authorise the inclusion of compulsory purchase powers in a DCO. This would be the rational and orthodox approach to take. This is the approach sanctioned by paragraphs 9, 16 and 19, of the Planning Act CPO Guidance.

g. Funding statements must contain as much information as possible about how the scheme will actually be funded. It does not mean that funding statements should describe how a scheme *might be funded* in the future (paragraph 17 Planning Act CPO Guidance).

h. Applicants must also demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made (paragraph 18 Planning Act CPO Guidance).

i. Applicants must demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed. They must also take into account any other physical and legal matters pertaining to the application, including the need to

obtain any other consents which may apply in order for compulsory acquisition powers to be authorised in a DCO (paragraph 19 Planning Act CPO Guidance).

j. The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected (paragraph 10 Planning Act CPO Guidance).

SECTION C – THE PRICE OF BREXIT – NO REASONABLE PROSPECT OF FUNDING

58. Applying the tests summarised above, the Applicant cannot demonstrate that now, during the Examination, "that there is a reasonable prospect" of requisite funds becoming available nor that there are no impediments to financing of the NSIP and that prevent its implementation.

59. This is because:

    a. The consequences of a joint announcement made on 28 January 2021 by Ofgen and CRE that the Applicant cannot seek an exemption under the relevant European regulation. The Applicant asserts that it needs to secure this exemption in order to secure project-finance for the entire scheme (including compulsory acquisition); **and**

    b. The Applicant's candid submissions at Deadline 7 of the Examination that it does not currently have any funds to cover compulsory acquisition costs and that it will be relying on project financing to secure ALL funding (including for compulsory acquisition). It will not be able to secure such project-financing without securing the exemption mentioned above; **and**

    c. There being significant uncertainty over **whether and how** the Trade and Cooperation Agreement entered into between the UK and the EU on 24 December 2020 will treat the need for the Applicant's exemption. There is further uncertainty over whether any equivalent exemption under the TCA could be granted on terms (presently unknown) and for a duration (presently unknown) that could ensure the Applicant may secure the required project finance (which would have to also cover compulsory acquisition costs).

60. Therefore, since at this time it is clear "that there is no reasonable prospect" that funding can be obtained due to the legal impediments, the funding tests set out in the Planning Act CPO Guidance cannot be met, and consequently, the conditions in section 122 PA 2008 cannot be satisfied.

61. The ExA and SoS must act rationally and in consequence sever and delete all compulsory acquisition powers from the DCO, including temporary possession and blight provisions.

62. We explain this in detail as follows.

Exemption Request under Regulation (EU) 2019/943

63. The Applicant needs to secure an exemption under Regulation 2019/943 in order to attract funding for the entire scheme (including compulsory acquisition), and also in order to operate the Interconnector in France. This is confirmed by the Applicant itself in Section 4.5 of the Applicant's Exemption Request (at pages 14 to 17 attached at **Appendix 1 to this Statement**).

64. If there is no exemption granted, there is no funding for the entire scheme, and there is no scheme.

65. There is therefore no reasonable prospect of the requisite funds for land acquisition costs becoming available.

66. Even if land acquisition costs can be raised via private investors, this would be irrelevant if funding for the entire scheme itself cannot be raised. It would be irrational to compulsory acquire land where there is no scheme, as there would then be no justification or need for such land to be taken by force.

67. The exemption that the Applicant needs cannot be granted. It was announced by Ofgem and CRE on 28 January 2021 that the Applicant cannot apply for the exemption under Regulation 2019/9.

68. On the basis of this evidence now before the ExA and the SoS during the Examination, there is no funding available for the scheme, and therefore there is no scheme.

69. Therefore, without funding for the scheme itself, the ExA and SoS must refuse authorisation of compulsory acquisition powers to be included in the DCO. To allow such powers would be irrational. There is now no reason to allow the Applicant to have compulsory acquisition powers in the draft DCO if by its own admission it cannot secure any funding for the scheme without the exemption.

70. We explain in more detail as follows.

71. Under Article 63 of the *Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance) (Retained EU Legislation)* (the **"Regulation"**), a developer or operator may apply to be granted exemption from some of the standard conditions of an interconnector licenses, granted under s6(1)(e) of the Electricity Act 1989.

72. The Applicant made an exemption request (the **"Exemption Request"**) which was received by Ofgem on 29 May 2020, and by CRE on the 2 June 2020. Ofgem and CRE together are referred to as the "NRAs".

73. On the 31 July 2020, the NRAs formally acknowledged receipt of the Exemption Request.

74. A consultation document was published on the 18 December 2020, which marked the start of a six-week consultation into aspects of the Exemption Request.

75. French legislation does not provide a specific regime for the development, construction and operation of interconnectors by private investors. An exemption granted under the Regulation would have the effect of permitting the Applicant to build and operate the AQUIND Interconnector in France. In addition, it would give the Applicant the opportunity to make a financial return on the initial investment that reflects the risk of the project. This can potentially be higher than otherwise would be the case under a fully regulated regime because of the higher risks attached to the Applicant operating under an exemption without consumer underwriting in France.'[1]

76. Section 4 of the Exemption Request contains the Applicant's financial analysis of how it intends to fund the proposed interconnector project. A redacted copy of section 4 of the Exemption Request is attached at **Appendix 1 to this Statement**.

77. Section 4.5 of the Applicant's Exemption Request contains information about the Applicant's **indicative** financing plan for the interconnector project. This contains statements that were not produced as part of the Applicant's revised Funding Statement submitted at Deadline 6 of the Examination (document reference **[REP6-021]**). A copy of the Applicant's revised Funding Statement (document reference **[REP6-021]**) is attached at **Appendix 2 to this Statement**.

78. Section 4.5 of the Applicant's Exemption Request states (at pages 14 to 17 attached at **Appendix 1 to this Statement**) the following (our emphasis added):

    - *"**AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do**."*

      This is clear evidence and an admission from the Applicant that it does not have ANY money to finance any part of this project, including compulsory acquisition costs.

    - *'Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector **will not be able to attract non-recourse debt finance or equity**."*

      As the NRAs have confirmed the exemption process cannot apply to the Applicant means that this entire NSIP project cannot attract funding.

[1] ibid [2.29]

- "*…AQUIND Interconnector **can be** an attractive business proposition to project-finance providers, **subject to AQUIND being granted appropriate regulatory regimes**, including an Exemption as requested in this Request for Exemption*…"

  The reference to "*can be*" gives no certainty. It is a phrase that merely reflects the Applicant's subjective hope. Also, the project will only be attractive to investors if it first obtains the Exemption.

- "***…AQUIND is unable to operate an interconnector in France without an exemption…"***

  The Exemption cannot be granted to the Applicant. This was confirmed on 28 January 2021 by Ofgem and CRE (see the next paragraph). Therefore there is no scheme at present because the Applicant is now, at this point of the Examination, unable to operate the interconnector in France.

79. There are also many redactions within section 4.5 of the Exemption Request that prevent the figures being I evidence before the ExA and Secretary of State. For example, all the figures in table 4-5 on pages 16 and 17 of section 4.5 of the Exemption Request are redacted. There is therefore no evidence before the ExA and the SoS of what the actual project costs could be.

80. The Applicant also confirmed that the project finance (which is wholly dependent on obtaining the Exemption) will be used to cover its land acquisition costs. Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference **[REP7-075]**) states (our emphasis added):

    "*The Applicant has already confirmed in response to agenda item 5.2 of CAH1 that the **monies secured to date from its current investors do not include the costs associated with compulsory acquisition**, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, **which includes the costs associated with compulsory acquisition***".

81. This means that if the Applicant cannot secure the Exemption, it cannot secure funding to cover compulsory acquisition costs.

82. On 28 January 2021 Ofgem and CRE released a joint statement, that the Applicant could no longer benefit from the exemption process due to the United Kingdom no longer being a member state of the European Union.

83. The joint Ofgem and CRE statement on 28 January 2021 was as follows (our emphasis added):

"*In light of the new Trade and Cooperation Agreement (the **"TCA**") agreed between the UK and the EU on 24th December 2020, following the UK's departure from the EU, the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. **As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request**. Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process."*

84. As the Applicant itself has asserted in section 4.5 of the Exemption Request: (Emphasis added)

'Without the … exemptions … AQUIND Interconnector will not be able to attract non-recourse debt finance or equity.".

85. The Applicant also states on page 16 of Section 4.5 of the Exemption request that it needs to secure the Exemption in order to address risks associated with obtaining financing for the scheme. It states that the exemption : (Emphasis added)

" *As AQUIND is unable to operate an interconnector in France without an exemption*,…[the exemption] *would ensure that the project is able to address the following risks:…Actual terms and conditions of financing…market conditions…. Programme and costs risks*…".

86. As the Exemption cannot from 20th December 2020 be available to the Applicant as a result of the UK form that date being no longer a Member State of the EU, the Applicant cannot satisfy the ExA and the SoS that the requirements of paragraph 19 of the Planning Act CPO Guidance can be met by the consent in the form of an Exemption. This is because paragraph 19 requires applicants to demonstrate they have managed all potential risks and impediments to the implementation of the scheme before compulsory acquisition powers can be authorised. The Applicant has failed to demonstrate this here. Without securing the Exemption, on its own evidence, the Applicant will not be able to secure any financing for compulsory acquisition costs or funding for the entire scheme. Section 4.5 of the Exemption Request states:

"*'Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector **will not be able to attract non-recourse debt finance or equity***."

"AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do."

87. In light of the announcement by Ofgem and CRE that the Applicant cannot seek the Exemption, as of now during the Examination, the ExA and the SoS has a clear admission by the Applicant and

objective evidence that the entire scheme, including compulsory acquisition, cannot secure funding because it will not be able to attract debt and equity investors. This does not satisfy the requirement in paragraph 19 of the Planning Act CPO Guidance that any potential risks or impediments to implementation of the scheme have been properly managed, in order for compulsory acquisition powers to be authorised in a DCO.

88. Therefore there is no justification for the authorisation of compulsory acquisition powers if the Applicant is now not able to secure any funding for the scheme, not even funding to cover land acquisition costs. The conditions in section 122 Planning Act 2008 cannot be satisfied.

89. All the statements made by the Applicant of the types of future investment it hopes to attract in order to completely fund this project must now be ignored. They are all predicated on the Exemption being granted.

90. In its response to the ExA's Second Written Question CA2.3.6 (see page 1-18 of document reference [**REP7-038**]), the Applicant refers to an equivalent exemption regime being contained in the Trade and Cooperation Agreement ("**TCA**") that was entered into between the UK and EU on 24 December 2020.

91. The Applicant states at page 1-18 of document reference [**REP7-038**] that (our emphasis added):

"*The Trade and Cooperation agreements (TCA) agreed on December 24, 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the ongoing Exemption Request. Following* ***discussions*** *with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND* ***expects*** *that the NRAs will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request*".

92. Again, the assertions by the Applicant page 1-18 of document reference [**REP7-038**] are mere statements of hope. There is nothing certain about what will be decided by Ofgem and CRE in relation to the application of the TCA to the Exemption Request, and the ExA and SoS cannot pre-judge that. Please see the note at Appendix 10 to this Statement that explains the how the exemption process under the TCA could work when compared to the Applicant's Exemption Request submitted under EU Regulation 2019/943.

93. The note at **Appendix 10 to this Statement** explains that there is ambiguity and unknowns surrounding the full nature of the regime the replacement regulatory framework included in the TCA.

This is because the exemption regime in the TCA is not complete, and is not intended to be complete, for some time. Currently, it cannot be said that the regime set out in the TCA is an exact replication of that which was laid out in the EU Regulation.

94. The note at **Appendix 10 to this Statement** also explains that It is apparent from the TCA that whilst the exemption regime contained in the TCA does draw on the established principles and rules of the EU Regulation, it does not implement any exemption that reflects what the Applicant was wishing to be exempt from in its application to Ofgem and the CRE.

95. The Applicant states in its Deadline 7 response to question CA2.3.6 of the ExA's Second Written Questions (see page 1-18 of document reference **[REP7-038]**) that:

"*Following discussions with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND expects that the NRAs will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request*".

96. The Applicant needs to demonstrate now, during the Examination, that there is a reasonable prospects of funds becoming available. It cannot do this.

97. Whilst the Applicant might expect a published decision which will detail how the TCA impacts on exemption requests - it seems to be a moot point in regards to the Exemption Request as Ofgem and CRE have already released their decision in regards to this (on 28 January 2021) - that the Exemption Request be discontinued. To be of any relevance to this DCO process, any further decision or guidance from Ofgem and the CRE will therefore need to discuss elements of the exemption regime under the TCA that still require further agreement / implementation, and have this decision released and implemented before the end of the process of this DCO application. This does not seem likely.

98. Paragraph 9 of the Planning Act CPO Guidance is phrased in the present tense when it states that applicants "…*should also be able to* ***demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available…"***.

99. The word "reasonable" in paragraph 9 excludes the irrational. Actual current evidence of that funding being available now during the Examination period needs to be presented. Prospective availability does not qualify.

100. In light of the current status of the exemption process under the TCA and lack of an announcement from Ofem as to how it will apply to the Applicant's current Exemption Request, the

Applicant is unable to provide objective evidence to the ExA and SoS during the Examination hearing period (as is required by paragraph 7 of the Guidance) that there is a reasonable prospect of the requisite funds becoming available.

101. If the requisite funds required for compulsory acquisition and for funding the development of the entire scheme is dependent on securing project finance, and that project finance will only be secured after an exemption is obtained, there is no reasonable prospect of the requisite funds becoming available due to the uncertainties surrounding the exemption regime in the TCA.

102. It would therefore irrational for the ExA to recommend and for the SoS to authorise compulsory acquisition powers in the DCO. The evidence to justify such powers does not yet exist at this moment in time during the examination period.

103. All the Applicant can assert is that it has had discussions with the relevant regulators and it expects some form of decision on what will happen next. This in itself is not enough evidence to show "conclusively" (the requirement in paragraph 9 of the Planning Act CPO Guidance) that there is a reasonable prospect of funds. Therefore, this also is evidence that the Applicant cannot satisfy the requirements of paragraph 19 of the Planning Act CPO Guidance which requires it to demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed, in order for compulsory acquisition powers to be authorised in a DCO.

104. Any equivalent Exemption application process under the Trade and Cooperation Agreement 2020 has not yet been commenced, let alone concluded. Therefore it would be irrational for the ExA and the SoS to allow compulsory acquisition powers to be included in the Applicant's draft DCO (document reference [REP7-014]) based on an assumption that the Applicant *may be* granted an exemption under an equivalent process in the Trade and Cooperation Agreement that could unlock potential funding for the entire project.

105. The removal of the availability of the Exemption and the uncertainty over how the Trade and Cooperation Agreement will apply means that as at today, there is a potential risk and an impediment to the implementation of the Applicant's scheme. This is a situation where, according to paragraph 19 of the Planning Act CPO Guidance, the SoS should not authorise the inclusion of compulsory acquisition powers in a DCO.

106. The ExA and the SoS are not in a position to pre-judge the views of the relevant regulator or the outcome of any equivalent exemption process under the Trade and Cooperation Agreement. Any attempt to do so would be irrational.

107. Therefore, the ExA and SoS are also not in a position now, during the Examination, to know whether the requirement in paragraph 9 of the Planning Act CPO Guidance has been satisfied –

they are not in a position to know now, during Examination, if there is a reasonable prospect of the requisite funds becoming available.

108. Any reference by the Applicant to the Trade and Cooperation Agreement being a possible way forward in relation to funding, should be interpreted in accordance with the points we make above.

109. We respectfully remind the ExA and the SoS that it is a requirement under paragraph 7 of the Planning Act CPO Guidance, that with regard to compulsory acquisition powers, the Applicant must ***"be ready to defend such proposals throughout the examination*** *of the application".* The Applicant must also "***conclusively***" show there is a reasonable prospect of funds as per the requirement under paragraph 9 of the Planning Act CPO Guidance. The Applicant must demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made.

110. The Applicant cannot do any of this because right now, it cannot secure funds for the entire scheme. It also at present uncertain whether the Applicant can apply for and will secure any exemption under the Trade and Cooperation Agreement. No announcement has to date been made by Ofgem and CRE as to what the position us under the TCA. The Applicant itself admits it cannot fund the scheme without an exemption. Therefore the Applicant cannot during Examination show conclusively that there is a reasonable prospect of funding, that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the DCO being made, or that there are no risks or impediments to the implementation of the scheme. The disapplication of the current exemption process and the uncertainty surrounding the new process under the TCA represents a **current legal bar to the implementation of the scheme** (thus not satisfying the requirements of paragraph 19 of the Planning Act CPO Guidance).

111. The reliance in the CPO context and the context of the Planning Act 2008 CPO Guidance by the Applicant on commercial sensitivities to avoid publishing required financial information is a matter for the Applicant. It is not enough to satisfy that Guidance and the common law protections protecting the AP as private land owner, for the Applicant to present mere expressions of aspiring expectation and hope for funding, to assert it has no evidence due to "commercial sensitivities", and to assert that it might be able to secure evidence at some unknown point in the future but that all depends on securing an Exemption which is now not available to it by law and is unclear could be available in some alternative form under the Trade and Cooperation Agreement. The ExA and SoS need to assess matters relating to funding before it now during the Examination. The fact of the matter is that there is currently and there will be no funding in the future for this scheme.

112. The funding evidence presented to date by the Applicant during Examination is not enough. The Applicant has not even (as the applicant in the Hinkley Point C Nuclear Station DCO did)

presented any form of 'Letter of no Impediment' from Ofgem and CRE in relation to the outstanding exemption that is required in order to secure funding. This means that the entire scheme is not viable. Examples of the letters of no impediment produced for the Hinkley Point C Nuclear Station DCO are attached at **Appendix 12 to this Statement**.

113. There are multiple examples in other DCO applications, where the applicant did not have the requisite funding secured for the proposed NSIP at the time of the examination, but they at least were able to produce some more concrete evidence of future availability of funding in order to satisfy the SoS that compulsory acquisition powers could be authorised. There are also examples of other DCOs where other regulators issued 'Letters of no Impediment' to confirm that the absence of a particular regulatory consent would not act as an impediment to the DCO were it to be made. The examples are:

- **The Rookery South (Resource Recovery Facility) Order 2011 (SI 2013/680)** – the applicant here submitted an agreed form of a parent company guarantee during examination.

- **The Swansea Bay Tidal Generating Station Order 2015 (SI 2015/1386)** - even where the applicant did not have any funds during the Examination to prove that it satisfied the various relevant tests, the SoS became satisfied during the later stages of Examination when the Prudential confirmed its commitment to become the cornerstone investor in the project. There is no such comparable confirmation from an cornerstone investor has been provided by the Applicant during the examination of the AQUIND Interconnector.

- **The Thorpe Marsh Gas Pipeline Order 2016 (SI2016 No.297)** - here the SoS only authorised compulsory acquisition powers when during the examination, the applicant provided a letter from its parent company confirming its willingness to enter into a guarantee agreement, escrow arrangement, bond or other suitable alternative security. No such letter of guarantee has been provided by the Applicant during the examination of the AQUIND Interconnector.

- **The Hinkley Point C (Nuclear Generating Station) Order 2013** – here, the relevant regulators provided 'Letters of no Impediment' in relation to outstanding regulatory approvals yet to be obtained by the applicant. This was to remove any doubt and uncertainty over whether these could represent an impediment to the implementation of the scheme (as per the test in paragraph 19 of the Planning Act CPO Guidance). In the Applicant's case in relation to the AQUIND Interconnector, no such letter has been provided in relation to the outstanding exemption the Applicant needs in order to fund the entire scheme.

114. In light of the above it would be impossible for the ExA and the SoS to properly and lawfully evaluate any of the tests relating to funding, based on the lack of evidence before them presented during Examination. It may well be the case that at some point in the future the position with respect to the exemption required under the TCA will be clarified by the NRAs (Ofgem and CRE), but this is not in evidence in front of the ExA or the SoS during the current DCO Examination. The absence of evidence and materials precludes affected parties and the ExA and SoS from testing it and from taking it properly into account.

115. The Applicant asserts throughout its responses to the ExA's Second Written Questions on funding (ta copy of these responses are attached at **Appendix 3 to this Statement**) that it cannot disclose further information on funding due to commercial sensitivities. However, applicants in previous DCOs did not suffer from the same 'commercial sensitivity' issues as AQUIND and thus were untroubled by meeting the requirement in paragraph 9 of the Planning Act CPO Guidance of proving a reasonable prospects of funds. For example, in the Manston Airport DCO application, the applicant was able to provide a copy of a Joint Venture Agreement and a capital costs report. A copy of the Manston Airport funding statement is attached to our Deadline 7 Statement on Funding (document reference **[REP7-116]**).

116. On a separate note, the Applicant would have known that the transition period relating to Brexit would have ended in December 2020. Drafts of the Trade and Cooperation Agreement would have also been in public circulation well before then for the Applicant's lawyers to have considered.

117. Despite this, the Applicant still proceeded to promote its DCO application beyond December 2020 based on its Exemption Request, to the great cost of third parties affected by the proposals.

118. On its own case, the Applicant has confirmed that its entire funding case relating to compulsory acquisition is completely dependent on securing the Exemption.

119. Now that the Exemption is no longer available to the Applicant and it is unclear to what extent the new exemption process under the Trade and Cooperation Agreement would assist the Applicant, the only rational choice the ExA and SoS now have is to remove all compulsory acquisition powers from the Applicant's draft DCO (document reference **[REP7-014]).**

120. Also, given the uncertain position surrounding the exemption was foreseeable for some time by the Applicant, the Affected Party anticipates making an application for costs for its objection because on its own evidence on page 15 of section 4.5 of its Exemption Request, the Applicant "*will not be able to attract non-recourse debt finance and equity*" and "*…AQUIND is unable to operate an interconnector in France without an exemption*".

121. The Planning Act CPO Guidance does not mean that all an applicant needs to demonstrate is that it has just the funds to cover compulsory acquisition costs (or there is a reasonable prospect it will become available). The Guidance requires the SoS to ensure that, for the purposes of authorising the inclusion of compulsory acquisition powers, the project can be funded and delivered. If the project as a whole cannot be funded, compulsory acquisition powers should not be made available to an applicant.

122. The Applicant no longer has a viable project by reason of the Exemption no longer being available. The Applicant should not be given compulsory purchase powers for no purpose.

123. The Applicant refers to the possibility of the Trade and Cooperation Agreement providing some sort of replacement exemption.

124. However, the current position is that there are no relevant facts as to the terms of the new exemption regime under the TCA would apply in order to benefit the Applicant in the same ways the Exemption under the Regulation would have in respect of securing future funding nor any grant of such a consent before the ExA at this time.

125. It does not matter that there might in the future be some new beneficial regime in place on the specific terms that the Applicant needs. During the Examination, this has not been confirmed and it remains unknown. All the Applicant can assert is that it hopes that some exemption regime under the TCA theoretically might enable it to secure the requisite funding for both the NSIP and the acquisitions: but at present, there is no objective basis on which the ExA or the Secretary of State can lawfully conclude that Applicant has any objectively reasonable (as opposed to irrational) prospect of securing requisite funding, and avoiding financial impediments to implementation, without the Exemption under the Regulations.

126. The ExA and SoS are not in a position where they can each know whether there is a reasonable prospect of requisite funds becoming available nor whether it can be said that there are no financial impediments to implementation of the NSIP. See paragraphs 9 and 19 of the Planning Act CPO Guidance.

SECTION D: NO FURTHER FUNDING INFORMATION

127. The Applicant was asked by the ExA to provide any and all further information on funding, as part of the ExA's Second Written Questions. There is no further such information as at Deadline 6.

128. The ExA's Second Written Questions relating to funding and the Applicant's responses are in document reference [REP7-038]). For convenience, we have attached these questions and responses at Appendix 3 to this Statement.

129. The Planning Act CPO Guidance requires the ExA and SoS to seek objective rational evidence of *present* funding availability ("that there **is** a reasonable prospect") – not exclusively desirable prospective funding availability.

130. The test in Paragraph 9 of the Guidance is stated in the present tense; "…***there is*** *a reasonable prospect of the requisite funds …*".

131. The word "reasonable" in the test of "reasonable prospect of funds" in paragraph 9 of the Planning Act CPO Guidance requires rationality.

132. Also, the ExA and the SoS must consider matters relating to funding based on the objective evidence before them during the Examination of an NSIP. If objective evidence does not exist during the Examination, the ExA and the SoS cannot rationally recommend / authorise the inclusion of compulsory acquisition powers in a DCO. That is because of the requirement in paragraph 7 the Planning Act CPO Guidance, which requires the Applicant to defend its compulsory acquisition proposals during Examination.

133. Paragraph 7 of the Planning Act CPO Guidance states (our emphasis added):

"*Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals* ***throughout the examination of the application***…"

134. Therefore the Applicant needs to demonstrate what funding availability it has secured now, as opposed to what the Applicant would like to agree at an unknown point in the future.

135. Paragraph 17 of the Planning Act CPO Guidance requires funding statements to:

"… *provide* ***as much information as possible*** *about the resource implications of both acquiring the land and implementing the project for which the land is required….It may be that the project is*

not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls ***are intended to be met.*** *This should include the degree to which other bodies (public or private sector)* ***have agreed*** *to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting* ***is to be made***."

136. The language used in paragraph 17 of the Planning Act CPO Guidance as emphasised above is expressed in the present tense – it requires details of how the scheme will actually be funded. It does not mean that funding statements should describe how a scheme *might* be funded in the future. This is underpinned by the fact that the reasonable prospect of requisite funds test in paragraph 9 of the same Guidance assumes a rational basis of required funds – i.e. they are actually available.

137. The Applicant is unable to provide during the Examination objective evidence to the ExA and the SoS of present funding availability – i.e. evidence of how the scheme will *actually be funded*. The fails to meet the tests in paragraphs 7 and 17 (provide full information during Examination) and paragraph 9 (reasonable prospect) of the Planning Act CPO Guidance.

138. All the Applicant can present during the Examination are statements concerning *potential generic funding availability* based on its subjective expectations and hopes of how the scheme *might be* funded. There is no evidence of how the scheme will actually be funded nor of any funding actually having been secured (not even legally binding funding agreements the Applicant can enforce against in the future).

139. The Applicant has also failed to explain to the ExA what the ramifications are of the Exemption process under the EU Regulation no longer applying, on its ability to attract funding. In the Applicant's own words to date in section 4.5 of the Exemption Request:

"*"Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector* ***will not be able to attract non-recourse debt finance or equity***."

"AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do."

140. The Applicant has failed to explain to the ExA what the impact will be of the uncertainties surrounding the application of the Trade and Cooperation Agreement exception process, on its ability to attract future funding.

141. **This all points to the AQUIND Interconnector being an entirely speculative scheme.**

This is a 100% Speculative Scheme

142. The language used in the Applicant's Exemption Request (a copy of which is at **Appendix 1 to this Statement**) and in both versions of the Applicant's Funding Statements (copies of which are attached at **Appendix 2 to this Statement**) is instead couched in *prospective terms*.

143. **Appendix 5 to this Statement** sets out extracts taken from Section 4.5 of the Applicant's Exemption Request which illustrate this point. Those include the following quotes:

- *"AQUIND **is not in a position to finance the Project** on "balance sheet" as national TSOs and utilities may be in a position to do*."
- *AQUIND's financing strategy **is to attract** funds to invest in AQUIND interconnector on a project finance basis".*
- "*AQUIND **will seek** further equity funding and non-recourse project financing from wider **pools of potential** investors*…"
- "*The **target** combination of debt and equity **will be determined** through **ongoing discussions** around the most efficient investment approach with **potential** investors*…"
- "*A precise loan strategy will be determined through **further engagement** with debt providers and equity investors, **based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption***."

144. The extracts from the Exemption Request are clear evidence that the Applicant's funding case is at best aspirational and based on pure hope. It is irrational therefore to conclude that there is a reasonable prospect of funding becoming available.

145. **Appendix 4 to this Statement** sets out extracts from the latest version of the Applicant's Funding Statement (document reference **[REP6-021]**) that illustrate why the Applicant's funding case is at best aspirational and based on pure hope.

146. Example quotes from the latest version of the Applicant's Funding Statement (document reference **[REP6-021]**) are:

- "*The Applicant **continues to work** with its delivery partners to understand the costs of implementing the Order, which includes costs associated with… land acquisition*".

- "*Post the development stage the Proposed Development, and more broadly the Project, **is to be funded** through project finance …*"

- "***The Applicant expects** that the financing will be arranged on the basis of project finance debt …*"

- "***It is anticipated that** equity capital **will be** derived from leading international infrastructure funds, and that project debt financing **will be** secured from various banking sources and/or institutional investors.*

- "*The Applicant has been **engaging** with a number of **potential** investors….*"

147. The above is therefore evidence that this is an entirely speculative project.

148. The funding for the entire project and compulsory acquisition is at this point of the Examination, not available.

149. The Applicant is unable to provide any further information to the ExA to objectively evidence that this is not an entirely speculative project.

Applicant's inability to provide further objective funding evidence

150. The ExA's Second Written Question CA2.3.2 (as set out in the Applicant's Responses at Deadline 7 to the ExA's Second Written Questions on page 1-13 of document reference **[REP7-038]**) asked the Applicant to provide further evidence on funding.

151. The ExA's Question CA2.3.2 asked (emphasis added):

"*Beyond what is written in Revision 2 of the Funding Statement [REP6-021] and section 3.2 of the 'Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2' [REP6-063], please can the Applicant supply any information, redacted or not, to the ExA to demonstrate that there is a 'reasonable prospect' of funds being available for this project. If no further information can be provided, how should the ExA approach the matter of funding in its recommendation?"*

152. The Affected Party understands this question to be fairly asking for ANY financial information to evidence the Applicant's current funding position.

153. The Applicant's response to this question appears to be there is NO evidence, for the reasons as follows.

154. The Applicant states in its response to question CA2.3.2 in the Applicant's Responses at Deadline 7 to the ExA's Second Written Questions on page 1-13 of document reference **[REP7-038]**) that such information is not available due to commercial sensitivities.

155. The Affected Party therefore understands that the Applicant prefers not to provide further numeric information to the ExA and SoS. For example, the Applicant has redacted figures from table 4-5 on pages 16 and 17 of its Exemption Request (a copy is at **Appendix 1 to this Statement**).

156. The redactions and the choice to not provide relevant financial information results in the absence of such evidence being before the ExA and SoS during Examination. If the ExA and SoS do not have all the relevant figures and financial information before them, they will not be able to properly consider the matter of funding as is required by section 122 Planning Act 2008 and the Planning Act CPO Guidance.

157. The following are particular examples of those choices being made by the Applicant and absence of evidence before the ExA.

158. The Applicant's response on page 1-13 of the Applicant's Responses at Deadline 7 to the ExA's Second Written Questions (document reference **[REP7-038]**) states it (our emphasis added):

"…***is not in a position to provide the information requested***" due to further information being "*commercially sensitive*" and that "***it is not considered that it is necessary*** *to provide any further information to satisfactorily evidence that there is a reasonable prospect of funds becoming available for the Project within the statutory period*".

159. This does not satisfy the requirement in paragraph 17 of the Planning Act CPO Guidance, which requires Funding Statements to contain as much information as possible about how the scheme will actually be funded. The Applicant has ignored the requirements of the Planning Act CPO Guidance by dismissing the basis on which the ExA raised this question.

160. The availability of compulsory acquisition powers is premised on them being lawfully justified, which includes availability of required compensation. That is why paragraph 9 of the Planning Act CPO Guidance requires applicants to "*demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122* ". That is also why paragraph 10 of the Guidance states that "*the Secretary of State must ultimately be persuaded that*

the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected."

161. If the Applicant proposes to take someone else's land, it will need to show it has the money to compensate them. It is not enough for the Applicant to state to the ExA and the SoS that it "hope" to have the money. Hope cannot qualify as a reasonable prospect under the test in paragraph 9 of the Planning Act CPO Guidance. Actually having money or holding objective evidence that it has secured legally binding obligations that will make the money available can qualify as having a reasonable prospect.

162. The *Prest and Tameside* 1977] AC 1014 cases require a decision maker to take reasonable steps to acquaint itself with all relevant facts and to account of financial information when deciding upon matters relating to compulsory acquisition.

163. In *Tameside*:

> *… [D]id the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?*

164. In *Prest*: (Emphasis added)

> *In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority and if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.*
> *I have come to the conclusion that his decision should not be upheld. A vital consideration was not enquired into, in my view. It was, therefore, left out of account in the exercise of the Secretary of State's discretion. The hope value of parts of the Miskin lands should not have been disregarded as it was, especially seeing that there was evidence of its possible existence.*

165. The questions are those posed by paragraphs 9 and 19 of the PA 2008 Guidance on CPO. The AP refers the ExA and the Secretary of State to the evidence of Mr Stott and of Mr Brice.

166. We refer to the extensive funding statements in other DCO applications we provided examples of in Appendix 1 to our Deadline 7 Statement on Funding (document reference [REP7-116]). In those examples, applicants had secured actual letters of guarantees, letters of no impediment from regulators (where consents were outstanding), and development agreements with legally binding obligations that secured the funds required, coupled with actual funds being held by those

applicants at the time of the Examination of their DCO applications. This is not being provided here. All the Applicant has here is the mere hope of funding.

The irrationality of the Applicant's funding case

167. The paragraph 9 test ("reasonable prospect") excludes the "irrational" on the ordinary meaning of the term "reasonable". The Applicant's response on page 1-13 of the Applicant's Responses to the ExA's Second Written Questions (document reference **[REP7-038]**) also asserts that:

"*The information provided by the Applicant in this regard sets out the* ***clear and rational*** *basis on which it is* ***anticipated*** *funding will be secured for the Project,* ***subject to*** *the grant of the DCO and the* ***settlement of regulatory status***".

168. However, this is irrational because the information provided to date by the Applicant is based on subjective *hope* and expectations of speculative hoped for funding, rather than proving actual funding availability, and prejudging the outcome of statutory discretions and (now no longer available) Exemption consents that can no longer settle the regulatory status of the NSIP as exempt.

169. The word "reasonable" in the test of "reasonable prospect of funds" in paragraph 9 of the Planning Act CPO Guidance requires rationality.

170. We have set out above many examples of the prospective funding language used by the Applicant based on hope, as opposed to objective examples of what the Applicant has actually secured.

171. Statements of hope and prospective funding language do not equate to rational evidence that there is a reasonable prospect of the requisite funds becoming available. There is no reasonable prospect and therefore the requirements of paragraph 9 have not been satisfied.

172. It follows that if there is no reasonable prospect of funds becoming available, in the words of paragraph 9 of the Planning Act CPO Guidance:

" *it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 …*"

Funding is subject to the grant of the DCO

173. The Applicant refers to funding for the Project being subject to the grant of the DCO in its response on page 1-13 of the Applicant's Responses to the ExA's Second Written Question CA2.3.6 (document reference **[REP7-038]**) as follows:

"*… **anticipated** funding will be secured for the Project, **subject to the grant of the DCO** and the settlement of regulatory status*".

174. Regrettably this puts the funding cart has been put before the DCO consent horse. Paragraph 9 requires the horse before the cart.

175. Making funding subject to the grant of the DCO and the settlement of regulatory status is contrary to paragraph 9 of the Planning Act CPO Guidance (whereas in the Town and Country Planning 1990 CPO regime, such a position may be acceptable). That is because paragraph 9 requires a "reasonable prospect" of funding. It is surprising and also unlawful to argue there is a reasonable prospect and to try to justify the compulsory acquisition of land (and other land along route) based on wholly speculative funding which prejudges the exercise of discretion in relation to the DCO and the section 122 conditions as being satisfied in favour of the Applicant. It is unlawful because the ExA and SoS cannot prejudge the outcome of their exercise of discretion and recommendations. But, this is what the Applicant is inviting the ExA to do in relation to funding. The Applicant appears to be working on the basis that it is a given the SoS will confirm CPO powers at Examination stage.

176. The Affected Party respectfully disagrees that the information provided by the Applicant in this regard sets out the clear and rational basis. The Applicant cannot prejudge the exercise of discretion by the SoS or such recommendation by the ExA.

Settlement of Regulatory Status

177. The Applicant refers to funding for the Project being subject to the settlement of its regulatory status in its response on page 1-13 of the Applicant's Responses to the ExA's Second Written Question CA2.3.6 (document reference **[REP7-038]**) as follows:

"*… anticipated funding will be secured for the Project, subject to the grant of the DCO and the **settlement of regulatory status***".

178. We refer and repeat points above about the Exemption under Regulation 2019/943 and the uncertainties over whether the new exemption process under the Trade and Cooperation Agreement will actually deliver the same benefits to enable the Applicant to attract the funding it needs. In the Applicant's own words, it cannot secure any project finance that is to fund compulsory acquisition costs and the costs of the entire scheme without the Exemption.

179. The calculation of the required funds for compulsory acquisition land needs to be demonstrated before the consideration by the ExA and the SOS of whether or not compulsory acquisition powers can be justified.

180. At this time, there are two relevant Directions before the ExA. The first is the Section 35 Direction under Planning Act 2008 by the SoS for BEIS. The second is the section 106(3) Direction under Communications Act 2003 by Ofcom.

181. The clear terms of the s35 Direction encompass the project elements described In the request by the Applicant for that direction, which exclude any use of development for commercial telecoms but includes the use of fibre optic cables for purposes of monitoring electrical cables and intra-converter station communications. The clear terms of the Ofcom Direction can only be engaged in future in the event that "part" of development authorised by the DCO can qualify as part of a telecommunications network. At the current time, during the Examination hearing period, the Ofcom Direction cannot be satisfied. On its terms, the Applicant is not at this time a 'Network Provider' who can apply the Electronic Communications Code. Nor can the Applicant predetermine whether the authorised development will include commercial telecommunications as a part of the authorised development. Unless and until the SoS actually grants a DCO which includes express provision "*for commercial telecommunications*" of fibre optioc material, the actual situation remains that the Applicant cannot be known to be a 'Network Provider' nor can it be said rationally that the Electronic Communications Code applies. To consider otherwise would be to prejudge the outcome of the exercise of statutory discretions under the Planning Act 2008. Therefore, the Affected Party agrees with the Applicant that funding is "***subject to***" settlement of regulatory status of the Applicant as a Network Provider in relation to electronic telecommunications, it currently NOT having such status.

182. The Applicant's response at page 1-13 of the Applicant's Responses to the ExA's Second Written Question CA2.3.6 (document reference **[REP7-038]**) states that the question as to whether there is a reasonable prospect of the funds being available should be viewed through the lens of obtaining regulatory approvals before securing funding.

183. The Applicant states page 1-13 of the Applicant's Responses to the ExA's Second Written Question CA2.3.6 (document reference **[REP7-038]**):

" *With further regard to regulatory status, all future interconnector projects in the UK will need to obtain regulatory status before they can be operated, and as has already been submitted by the Applicant there is nothing unusual about the sequence of approach of the Applicant in seeking to obtain all consents and regulatory approvals in parallel with one another. To contrary, it is an entirely logical approach to take, which gives confidence to all decision makers that the Project is progressing appropriately for the approvals required from them to be provided. Furthermore, the statements of the Government in the Energy White Paper (December 2020) that they "will work with Ofgem, developers and our European Partners to realise at least 18GW of interconnector capacity by 2030", provide further support for the Applicant's position and provide the ExA further assurance should that be required that the regulatory framework to facilitate the delivery of increased interconnection by 2030 in accordance with and to meet the targets set will be put into place, so as*

to facilitate the Project and other planned projects as necessary which are to be funded on a Project Finance Model. Noting the above, the Applicant considers the ExA should approach the matter of funding, and particularly the question of whether it is considered there is a reasonable prospect of the Project being funded, by considering whether anything has been raised which seriously questions the Applicant's evidence that there is a reasonable prospect of funding becoming available. In considering this question, the ExA should give very significant weight to the evidence of the Applicant of the fundability of the Proposed Development, which is reinforced by the clear Government intent to deliver increased interconnection and to put in place the necessary regulatory framework to do so, and the largely unchallenged evidence of the need for this and the compelling benefits which increased interconnection will provide in the public interest. The needs and benefits of the Proposed Development, and moreover the Project, are clearly explained in the Needs and Benefits Report (APP-115), the Addendum to the Needs and Benefits Report (REP1- 136), and the second Addendum to the Needs and Benefits Report submitted at Deadline 7. The Applicant submits that when having regard to all relevant information, the only rational conclusion that can be reached on this question is that there is a reasonable prospect of the Project being funded."

184. The ExA will recall that whenever compulsory acquisition powers are sought to be authorised as part of nationally significant infrastructure projects, it has been clear that since September 2013, rather than TCPA 1990 Crichel down rules being engaged, the Planning Act CPO Guidance is engaged. We encourage the ExA and the SoS to apply those tests, which we have summarised in Section B of this Statement.

185. The Affected Party recognises the regulatory status risks the Applicant has evidenced in its response. However the correct way for the ExA and the SoS to assess those regulatory status risks is to apply them against the tests in paragraph 19 of the Planning Act CPO Guidance.

186. Paragraph 19 of the Planning Act CPO Guidance19 states (our emphasis added):

"*The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:*

• ***any potential risks or impediments to implementation of the scheme*** *have been properly managed;*

• *they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the*

need to obtain any operational and other consents which may apply to the type of development for which they seek development consent. "

187. With regard to the Applicant's reference to the Government White Paper, this is at most a document that contains political statements about Government's aspirations as to potential future frameworks. This is nothing more than yet another example of the Applicant's reliance on "hope" in relation to its anticipated project finance model.

188. Recognising the Applicant's reliance upon such an approach, we respectfully draw to the ExA and SoS's attention the absence of any evidence of an executed project finance model on terms (with any third party) in front of the ExA during the statutory Examination hearing period into whether or not the land of the Affected Party be taken from it against its will.

189. The Planning Act CPO Guidance is clear the ExA and the SoS must consider matters relating to funding based on the objective evidence that is before them during the Examination (paragraphs 7 and 9 of Planning Act CPO Guidance). Their decision cannot be based on what the Applicant thinks might be available in the future without presenting any objective conclusive evidence to support that during the Examination.

190. Therefore, irrespective of regulatory approvals/status being required, the Applicant (as with all other applicants) must still demonstrate now during the Examination that there is a reasonable prospect of the requisite funds becoming available. It cannot be viewed through particular lenses.

191. It is not correct for the Applicant to state that the ability to demonstrate 'reasonable prospect' of funds is completely subject to successfully obtaining all necessary regulatory consents and status. That is not what Paragraphs 7, 9 or 19 of the Planning Act CPO Guidance say.

192. The clear requirement in paragraph 7 of the Planning Act 2008 CPO Guidance (September 2003) is that evidence of there being a reasonable prospect of funding being available should be presented during examination.

193. Paragraph 7 states: "*Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application*" .

194. Whether there may or may not be 'largely unchallenged' evidence on the need for this type of project is irrelevant to satisfying the requirement for "reasonable prospect" of funding. The existence of a 'need' for a type of project does not mean that there is a reasonable prospect that there will be funding in place. The fact that there is Government intent "to deliver increased interconnection and to put in place the necessary regulatory framework to do so" is also irrelevant to proving now that

there is a reasonable prospect of funds becoming available. Political intentions are not enough to prove that funding will be in place. Objective evidence is required from the Applicant of a reasonable prospect of actual funding availability.

195. The ExA's Second Written Question CA2.3.6 asked the Applicant to explain why it was not able to provide certain categories of information the Applicant was asked about during Compulsory Acquisition Hearing 1. Question CA2.3.6 is set out on page 1-16 of the Applicant's Responses to the ExA's Second Written Questions (document reference **[REP7-038]**).

196. The Applicant's response to this question on pages 1-16, 1-17, and 1-18 of **[REP7-038]** in summary states that it cannot provide the KPMG Report or any of the reports produced in that work due to commercial sensitivities and non-disclosure agreements.

197. With regard to any funding information that may have been submitted as part of regulatory submissions to Ofgem and CRE, the Applicant refers to information submitted relating to monetised and non-monetised benefits and projected revenues. This is however irrelevant - benefits and revenues have nothing to do with *how land acquisition costs are to be funded*.

198. The Applicant's response refers to confidential financial models provided to NRAs (Ofgem and CRE) as part of its Exemption Request relating to Regulation 2019/943, but no further explanation is provided of how those models could prove the Applicant can fund land acquisition costs. The Applicant has not provided a copy of the redacted version of Section 4 of the Exemption Request, so we attach a copy at **Appendix 1** to this Statement to assist the ExA. Section 4.1 of the Exemption Request sets out the "AQUIND Indicative Financing Plan'. As we have explained in Section C of this Statement, the 'Financing Plan' in the Exemption Request is merely comprised of heavily redacted statements expressing indications, ongoing discussions, generic possible theoretical sources of funding, engagement, and general types of funding that *could be* available for this type of project.

199. This is not objective additional evidence there is a reasonable prospect of funding. Please see our full analysis of the financing information contained in the Exemption Request, at Section C of this Statement.

200. Section 4.5 of the Exemption therefore only strengthens our argument that this is an entirely speculative project by a shell company with no substantive resources that will rely on future project finance from currently uncommitted sources at an unknown point in time.

201. The absence of full objective evidence of the actual (not prospective) funding availability means that the Affected Party, the ExA and the SoS cannot fully assess whether the relevant tests relating to funding have been met.

202. It is a requirement under paragraph 7 of the Planning Act CPO Guidance, that the Applicant must ***"be ready to defend such proposals throughout the examination*** *of the application".* The Applicant must also "***conclusively***" show there is a reasonable prospect of funds as per the requirement under paragraph 9 of the Planning Act CPO Guidance. The Applicant must demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made.

203. The Applicant asserts throughout its responses to the ExA's Second Written Questions on funding (ta copy of these responses are attached at **Appendix 3 to this Statement**) that it cannot disclose further information on funding due to commercial sensitivities. However, applicants in previous DCOs did not suffer from the same 'commercial sensitivity' issues as AQUIND and thus were untroubled by meeting the requirement in paragraph 9 of the Planning Act CPO Guidance of proving a reasonable prospects of funds. For example, in the Manston Airport DCO application, the applicant was able to provide a copy of a Joint Venture Agreement and a capital costs report, without claiming that those documents were protected by 'commercial sensitivities'. A copy of the Manston Airport funding statement is attached to our Deadline 7 Statement on Funding (document reference **[REP7-116]**).

SECTION E - APPLICANT'S ESTIMATE OF CPO COMPENSATION

204. The Applicant estimates that the total value of all land acquisition costs will be £4.97m. This is set out and explained in paragraph 5.6 of the Applicant's revised Funding Statement submitted at Deadline 6 (document reference **[REP6-021]**).

205. The ExA's Second Written Question CA2.3.5 (as set out in the Applicant's Responses to the ExA's Second Written Questions on page 1-13 of document reference **[REP7-038]**) asks the Applicant to further explain why it thinks its estimate of land acquisition costs is accurate.

206. The ExA's Second Written Question CA2.3.5 asks:

"In the Deadline 6 submission by [ ] relating to whether the Applicant's compulsory acquisition estimate covers the right land, is the understanding of [ ] CAH2 position correct ([REP6-138]) Section D para 3)? If not why not?".

207. We previously made submissions in Paragraph 1 of Section D of the Affected Party's Statement on Funding submitted at Deadline 6 (document reference **[REP6-138]**) that reflected the provisions of para 9 of the Planning Act CPO Guidance.

208. Paragraph 9 of the Planning Act CPO Guidance states (our emphasis added):

"*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the* ***requisite funds for acquisition*** *becoming available.* ***Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122*** *(see paragraphs 11-13 below)*."

209. The scope of paragraph 9 requires two things to be determined in relation to what are the "requisite funds":

(a) what is the scope of the required funds – i.e how much money does the applicant need?;

and

(b) the amount of funds needed in (a) above in turn depends on ***what*** needs to be the subject of compulsory acquisition powers.

210. Under paragraph 9 of the Guidance, if requisite funds cannot be demonstrated by the applicant, the "it *will be difficult to show conclusively*" that CPO of land satisfies 2 conditions of s122.

211. The onus lies on the Applicant to demonstrate that the scope of its available funding matches the scope of its proposed powers of compulsory acquisition. In the *Prest* case.

What do the 'requisite funds' need to cover?

212. The draft DCO (document reference **[REP7-014]**) provides for different types of land to be the subject of compulsory acquisition powers.

213. The scope of article 30 of the draft DCO (document reference **[REP7-014]**) provides a two stage process whereby under article 30 (1) land can be temporarily possessed for specified purposes in schedule 10, and subsequently under article 30 (4), a further purpose for the acquisition or securing of rights is required to be executed (article 30(4) says "must").

214. The current draft article 30(1) of the draft DCO (document reference **[REP7-014]**) states:

"*30.—(1) Subject to paragraph (5), the undertaker may in connection with the construction of the authorised development—*
(a) enter on and take temporary possession of—
(i) the land specified in column (2) of Schedule 10 for the purpose specified in relation to that land in column (1) of that Schedule; and
(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;"

215. The current draft article 30(4) of the draft DCO (document reference **[REP7-014]**) states (our emphasis added):

"(*4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker* ***must either acquire the land or rights over the land subject to the temporary possession*** *or, unless otherwise agreed with the owners of the land, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—*
(a) replace a building removed under this article;
(b) remove any drainage works installed by the undertaker under this article;
(c) remove any new road surface or other improvements carried out under this article to any street specified un Schedule 8 (Streets subject to street works);
(d) restore the land to a condition better than the relevant land was in before temporary

possession;

(e) remove any ground strengthening works which have been placed on the land to facilitate construction and operation of the authorised development;

(f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works".

216. Properly interpreting article 30 of the draft DCO (document reference **[REP7-014]**), article 30(4) allows the permanent acquisition of all land that is temporarily possessed, after temporary possession where the undertaker remains in such possession.

217. Article 30(4) thus allows significantly more land to be subject to the power of permanent compulsory acquisition (and the compulsory acquisition of rights) than shown on the current draft Land Plans (document reference **[REP7-02]**).

218. All land that can be temporarily possessed under article 30(1) is subject to the power of permanent compulsory acquisition and the compulsory acquisition of rights, should the undertaker decide to remain in possession.

219. Section 120 Planning Act 2008 only allows for compulsory acquisition powers if they are justified. Therefore, the scope of the compulsory acquisition powers allowed by Article 30(4) needs to be justified – the Applicant needs to justify to the ExA why it needs the power to permanently compulsorily acquire all land it temporarily possesses or compulsorily acquire rights over all land it temporarily possesses. No such justification has been presented. Therefore the compulsory acquisition powers in Article 30(4) should not be granted as that would be irrational and also a breach of the requirement in section 120 Planning Act 2008.

220. In the context of criminal liability for breach of the DCO, the court in *Warrington BC v Garvey* case [1988] JPL 752 held that the DCO must be interpreted giving the benefit of the doubt to the party who has been accused of breaching its terms. This means that development that is clearly not covered by the interpretation of the DCO will be a criminal offence. In the Applicant's case, the Applicant will be allowed to stretch the interpretation of the terms of the DCO in the context of a criminal prosecution for breach of the DCO's terms and most careful scrutiny falls to be applied to ensure a match between the requisite funding that the CPO terms allow for land to be taken and the maximum extent of the land able to be so taken when properly interpreting those terms.

221. The common law protections against land acquisition require the scope of compulsory acquisition powers to match the justification for them – this was the decision in the case of *R (Sainsburys) v Secretary of State* [2011] 1 AC 437, citing *Prest*.

222. In simple terms, **there needs to be a justification for all the land that <u>could be</u> subject to compulsory acquisition powers under the terms of, for example, article 30(4) and not just what the Applicant today thinks might be.** No such justification has been provided by the Applicant. The same approach applies to subsoil and air rights.

223. The AP's understanding remains that the scope of compulsory acquisition powers sought under the draft DCO – described by the Applicant as being desirable flexibility – have a corresponding requirement to be justified commensurate with the degree of flexibility, else the law otherwise requires the scope of powers **<u>fall to be reduced</u>** in extent to match the lawful justification provided (such as there is any at all).

224. The AP recognises (in the context of compulsory acquisition of its land, and it being accepted by the Applicant that the draft DCO would be a law) that those common law protections bear upon:

- How the SoS exercises its discretions under the PA 2008 in relation to authorising the inclusion of compulsory acquisition powers within the DCO that affect the land of the AP; and

- the terms of the draft DCO that include provisions that affect the AP's land in any way.

225. For example, section 120 PA 2008 provides for a discretion to impose requirements and also provisions within a draft DCO. The legal protection referred to above imports a presumption in relation to that discretion to ensure that it is exercised in a way that results in the least intrusive interference of the relevant party's interests (as opposed to a presumption in favour of the applicant developer). That same legal protection also bears upon the terms (which include discretions) being formulated in a draft DCO for potential crystalisation into law. The outcome of the presumption is to require no wider terms of a DCO than are lawfully and rationally justified, i.e. the protections result to ensure that the DCO terms shrink to fit such rational justification as may be supplied by the Applicant.

226. In the context of compulsory acquisition powers, the onus remains exclusively on the Applicant to justify the extent of its land take and the AP need do nothing. This was a principle articulated forcefully in the *Prest* case: a private landowner facing acquisition need do nothing at all to defend his land from being taken. The justification for taking lies exclusively on the taker and the ExA and Secretary of State themselves are required to most carefully scrutinise the justification for the envisaged taking.

227. The Applicant needs to therefore show WHY it needs the wide compulsory acquisition powers in Article 30(4).

228. The ExA needs to be satisfied on evidence for what purposes Article 30(4) is desired to be used for over and above the identified use for temporary possession. On the terms of Article 30(4) it appears to be a means by which the Applicant can avoid restoring land it takes temporary possession of. This is one reason why the Affected Party has included protective provisions so as to ensure the proper restoration of its land following the use of its land as a construction site.

229. For example, the wording of Article 30(4) of the draft DCO (document reference **[REP7-014]**) is wide. That is because Article 30(4) relates to *what land* is affected by compulsory acquisition powers. The Affected Party has seen no evidence of what changed circumstances will result in the reliance by the Applicant upon Aritcle 30(4) as a result of its remaining in temporary possession.

230. The Affected Party has also not seen an estimate of the cost or justification expressed to be for the exercise of that increased extent of permanent land acquisition under Article 30(4).

231. The result of the draft Article 30(4) of the draft DCO (document reference **[REP7-014]**) is a mismatch of the scope of the power sought and the justification given.

232. It is evident from Article 30(1) (a)(i) that its purpose is tied to Schedule 10 land. However, Article 30(4) is more broadly expressed. Similarly Article 30(1)(a)(ii) is also broadly expressed and links also with Article 30(4). The proposed provisions give the Applicant the power to compulsorily acquire the land or rights within the Order Limits, over and above what is shown on the Land Plans (document reference **[REP7-002]**). There is therefore a mismatch between the scope of the powers under that provision and the rational evidence to justify them.

233. The ExA will recall that the Affected Party need do nothing to defend its land from being taken and instead the onus remains exclusively on the Applicant to satisfy the ExA and the SoS that each and every power in the draft DCO is rationally justified on evidence in front of the ExA and the SoS during the Examination period.

234. Further the ExA is required by the *Sainsburys* case to itself carefully police the unjustified wide scope of powers envisaged by the Applicant.

235. In practical terms this means that the ExA and SoS need to audit the scope of powers against the supporting rational evidence for each power and reduce their scope where not matched by rational evidence.

236. To assist the ExA, we focus on Article 30(4). But we are not going to usurp the onus on the Applicant and the ExA the exercise of ensuring such a match, and where it is absent (in relation to the Applicant) voluntarily refining the scope of its DCO and (in relation to the ExA) ensuring that the presumption of least interference with the Affected Party's land is lawfully discharged. In respect of

the last we direct the ExA to the *Tameside* (as above) where the House of Lords required the decision maker to take reasonable steps acquaint itself "*with all relevant facts*". Here, that obligation subsists during the statutory Examination period after which the PA 2008 closes the statutory door on new facts because the Examination period has thereafter ended and the AP's opportunity to examine the evidence of facts relating to his land being taken is removed by its statutory scheme.

237. As previously expressed, the result of Article 30(4) as currently drafted in **[REP7-014]**, gives the Applicant the power to compulsorily acquire land or rights over all land that can be temporarily possessed and other land under Article 30(1)(a)(ii). **This is more land than is shown shaded pink on the Land Plans** (document reference **[REP7-002]**).

238. The compulsory acquisition power in article 30(4) covers all land within the Order Limits and airspace, as the Applicant has the power to temporarily possess all land within the Order Limits by virtue of article 30(1).

239. At CAH2, in response to the question of the ExA, the Applicant clearly responded that it had only valued the pink land in relation to permanent land acquisition compensation. The ExA will have access to the recording of that evidence to it.

240. The figure of £1.277m allocated to "land acquisition" in paragraph 5.6 of the Funding Statement version 2 submitted at Deadline 6 for permanent land acquisition (document reference [**REP6-021**]) appears to therefore cover only the permanent acquisition of the pink land and does not cover further theoretical land permanently acquired under Article 30(4) following temporary possession under Article 30(1)(a).

241. The AP has seen no evidence from the Applicants of any estimate for the value of land acquisition costs in relation to that further exercise of permanent land acquisition powers in relation to temporarily possessed land under Article 30(4). If land is shown as coloured blue for example on the draft Land Plans (document reference **[REP7-02]**) then it remains to be valued as potentially coloured pink, and attributed a different a value. Because Article 30(4) attributes a requirement to acquire land (it states the undertaker "must" permanently acquire or compulsorily acquire rights over land it remains in possession), then land that has been temporarily possessed needs to be included as part of the Applicant's estimate of compulsory acquisition costs. The Applicant must also therefore provide objective evidence during examination that there is a reasonable prospect of funds for such land to be funded on rational evidence in front of the ExA during the Examination hearing period.

242. It is for this reason that paragraph 3 of Section D of the Affected Party's Statement on Funding submitted at Deadline 6 (document reference **[REP6-138]**) asked the question - does the Applicant's land acquisition costs estimate ***cover the full extent of land***?

243. The Affected Party notes that since giving the clear unambiguous recorded evidence to the ExA, and apparently recognising the mismatch between the scope of the powers it seeks in Article 30(4) and the lack of evidence it had presented to date to justify the compulsory acquisition powers in article 30(4), the Applicant has at Deadline 7 sought to obfuscate and change its position by asserting that it said something different to its recorded evidence. The ExA will however have that recorded evidence before it.

244. At Deadline 7, the Applicant responded on page 1-16 of its Responses to the ExA's Second Written Questions to assert (our emphasis added):

"*As confirmed at the hearing, **the land acquisition valuation considers all of the relevant land** and the Applicant **maintains that it has correctly estimated** **its maximum exposure** to potential compulsory acquisition costs*". …"*The Applicant confirms that **all types of compulsory acquisition powers and powers of temporary possession have been taken into account in the valuation and a full breakdown of the costs is contained in paragraph 5.6 of the updated Funding Statement submitted at Deadline 6** (REP6-021*)."

245. The Applicant now appears to state that the land acquisition costs of £1.277m does cover the full extent of the land within the Order Limits subject to permanent land acquisition powers under Article 30(4). That is to say, the Applicant has now confirmed that its maximum exposure is if all the land within the Order Limits is permanently compulsorily acquired under article 30(4), and based on that, it has calculated that the maximum amount of CPO compensation it would need to pay is £1.277 million.

246. £1.277 million appears to be a very low figure for compensation resulting from permanently acquiring all the land within the Order Limits.

247. The Applicant clearly recognises the force of the Affected Party's submissions as to the broad scope of Article 30(4).

248. However, it remains the situation that the Applicant has not *rationally justified* the basis for why it may change from first temporarily possessing land under Article 30(1)(a) and then permanently acquiring that same land under Article 30(4). This is an example of wide flexibility being sought without commensurate rational justification.

249. Further, the Applicant's recent change in the extent of its estimate of "land acquisition" valuation appears to result to significantly dilute its estimate by increasing the area of coverage from that expressed on its behalf at CAH2.

250. To reiterate, Article 30(4) is **one example only** identified by the AP of flexibility of power being sought without commensurate rational justification notwithstanding the protections provided for by the presumption against intrusion more than the least intrusive justified.

251. The Affected Party's position remains that the Applicant has incorrectly estimated its potential CPO compensation exposure and that the Applicant merely asserts that it has estimated " *the maximum"* exposure.

252. In essence, the Applicant's approach appears to be flawed and its resulting estimate grossly undervalued and cannot be said to be "maximum exposure".

253. The AP attaches at **Appendix 7 and Appendix 8 to this Statement** expert evidence on the correct approach to valuation of CPO compensation and a rational estimate of the maximum exposure in relation to the AP's land together with rational inferences in relation to wider land within the Order Limits.

254. Expert evidence from Henry Brice of Ian Judd & Partners is attached at **Appendix 7 to this Statement.**

255. Expert evidence from Jonathan Stott of Gatley Harmer is attached at **Appendix 8 to this Statement.**

256. This expert evidence shows:

a) The Applicant's estimate of compensation liability is unsound and significantly underestimated; and

b) The Applicant has not demonstrated that it has funds available to respond to blight notices (for which it could be liable from any point since the dDCO was submitted); and

c) The experts do not consider the use of CA powers to acquire land and rights for commercial telecoms use is legitimate because it is not permitted in any National Policy Statement and because that use does not qualify as ‘associated development’ to the Interconnector development for which the Secretary of State granted a direction under Section 35 of the Planning Act 2008 on 30 July 2018; and

d) The experts do not consider that the use of CA powers is necessary and proportionate, particularly noting that Aquind has confirmed that a) only a small percentage of the fibre-optic cables will be required for the safe operation of the project (i.e. for monitoring purposes) (see REP6-063) and b) that ‘the telecommunications buildings are required

solely in connection with the commercial use' (see REP1-127). This takes account of the fact that Government Guidance also states that the land in relation to which CA powers are sought must be no more than is needed for the development for which consent is sought; clearly that cannot be said to be the case here.

257. On the basis of the Affected Party's evidence and on the Applicant's own evidence, the Applicant has incorrectly valued the "requisite funds for acquisition" (see paragraph 9 of CPO Guidance PA 2008).

258. Further, the ExA (and in turn the SoS) is therefore not in a position to lawfully evaluate whether the Applicant is able to "demonstrate that there is a reasonable prospect" of requisite funds for acquisition becoming available, as is the requirement in paragraph 9 of the Planning Act CPO Guidance. This is because the ExA has no evidence before it of the scope (or amount) of "*requisite funds*" so as to be in a position to know whether such a reasonable prospect can be shown in relation to such funds "*becoming available*".

259. In simple terms, if the Applicant's estimate of land acquisition costs is significantly low and thus incorrect, it is not in any position to confirm to the ExA that there is a reasonable prospect of the "requisite funds" becoming available. The Applicant has evaluated the scope (or amount) of the "requisite funds" is on a fundamentally flawed and incorrect basis, and without regard to relevant considerations including hope value for the uplift in value of land within the Order limits for commercial telecommunications evaluated during the Examination Hearing period.

260. With regard to paragraph 9 of the CPO Guidance, it is therefore " *difficult*" for the Applicant to show *"conclusively*" (the term "decisively" is used in the case of *Prest*) that the compulsory acquisition of the Affected Party's land is justified so as to meet the two conditions in section 122 PA 2008. The same logic applies to the wider land within the Order Limits.

261. It is for these reasons that a**ll compulsory acquisition powers fall lawfully to be required to be removed from the draft DCO.** This will also be in line with the decision in the *Sainsburys* case which means that the ExA is required to itself carefully police the unjustified wide scope of powers envisaged by the Applicant.

262. For completeness, we note the Applicant's response at Deadline 7 in section 7 of page 3 of Appendix B to its Responses to Deadline 6 Submissions (document reference **[REP7-075]**). The Affected Party notes the change of position of the evidence of the Applicant to the ExA where the Applicant had clearly said in CAH2 that the pink land on the Land Plans (document reference [REP7-02]) was the land that had been valued for "land acquisition". Contrary to paragraph 7.2 of page 3 of Appendix B to its Responses to Deadline 6 Submissions (document reference **[REP7-075]**), the Applicant was clear during CAH2 that permanent acquisition of only the pink land on the

Land Plans had been valued, whereas other non-pink land remained not valued for permanent compulsory acquisition pursuant to Article 30(4) – see above.

263. The Affected Party (again) notes the mischaracterisation of its position by the Applicant. Contrary to paragraph 7.4 of the Applicant's response on page 3 of Appendix B to its Responses to Deadline 6 Submissions (document reference **[REP7-075]**) (in which the Applicant asserts that paragraph 5.6 of its Funding Statement is an "*accurate estimate of the costs*"), we refer the ExA to the expert evidence attached at **Appendix 7 and Appendix 8 to this Statement.** That expert evidence clearly demonstrates that the Applicant's estimates of compulsory land acquisition costs are incorrect.

264. Also contrary to paragraph 7.4 of the Applicant's response on page 3 of Appendix B to its Responses to Deadline 6 Submissions (document reference **[REP7-075]**) , the Affected Party's position remains that this is a paradigm paragraph 16 CPO guidance case. Paragraph 16 of the Planning Act CPO Guidance states:

"There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land…".

265. As the Applicant has not calculated its CPO compensation costs accurately, it is not in a position to demonstrate there is a reasonable prospect of funds becoming available. Therefore in accordance with paragraph 16 of the Planning Act CPO Guidance, the ExA and the SoS can reasonably justify removing all compulsory acquisition powers from the draft DCO.

SECTION F– "GENUINE" REASONABLE PROSPECT OF FUNDS BECOMING AVAILABLE

266. The ExA's Second Written Question CA2.3.8 (as set out in the Applicant's Responses to the ExA's Second Written Questions on page 1-18 of document reference **[REP7-038]**) asks the Applicant to further explain why it thinks there is a "genuine reasonable prospect" of the requisite funds becoming available to enable compulsory acquisition within the statutory period were the DCO to be made.

267. The Affected Party refers the ExA (and the Applicant) to the clear terms of paragraph 9 of the Planning Act CPO Guidance.

268. The wording of Paragraph 9 is as follows:

"*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to* ***demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.*** *Otherwise,* ***it will be difficult to show*** *conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below)."* (our emphasis added).

269. The terms paragraph 9 of the Planning Act CPO Guidance **do not** expressly include the term "genuine".

270. We respectfully disagree with the ExA that the "*reasonable prospect*" test imposed by the SoS in the Planning Act CPO Guidance can be subverted by the gloss of the term "genuine".

271. This is because the ordinary meaning of "reasonable" excludes the irrational and therefore leaves no room for subjective intention such as "genuine" "desire" or otherwise.

272. On its face, the test is an objective test falling to be satisfied rationally.

273. That is, objective evidence is required in front of the ExA.

274. The Affected Party has provided examples of other DCOs where applicants have provided objective evidence in front of the ExA of executed terms of agreements providing frameworks for financial obligations accepted by the SoS as showing a "reasonable prospect" of requisite funds becoming available. That situation remains not evidenced by the Applicant in this application and therefore the paragraph 9 of the Planning Act CPO Guidance test remains unsatisfied by the Applicant.

275. We note the Applicant's response to the ExA's Second Written Question CA2.3.8 (as set out in the Applicant's Responses to the ExA's Second Written Question CA2.3.8 on page 1-18 of

document reference **[REP7-038]**). In its response, the Applicant set out a number of reasons which we quote and address in turn as follows.

276. The Applicant asserts in the Applicant's Responses to the ExA's Second Written Question CA2.3.8 on page 1-18 of document reference **[REP7-038]**) that it:

"…*has been engaging with a number of potential investors since the start of the Project…. all of whom consider electricity interconnectors to be an attractive type of future investment*."

This is merely a statement of who the Applicant has been talking to and that this is only a **type of project** that could be attractive in the future. There is nothing specific or concrete about this statement. It is irrational to therefore conclude from this there is a genuine reasonable prospect. This response also confirms the postion that the Applicant has no funding currently available.

277. The Applicant asserts in the Applicant's Responses to the ExA's Second Written Question CA2.3.8 on page 1-18 of document reference **[REP7-038]**) that it has:

"…. *invested approximately £35m in the development of the Project as of 30 June 2020 and the residual cost of completing the pre-construction stage of the Project is forecasted at £15m. The Applicant has secured financing from its current investors sufficient to support the Project until the Completion of the development stage, which includes obtaining all necessary permissions and authorisations in the UK and France, including the DCO*. " (our emphasis added).

There is no evidence of a £35m 'investment' in the accounts of the Applicant (see the Applicant's revised Deadline 6 Funding Statement (document reference **[REP6-021**])) and the Applicant does not actually state that part of this investment will be used to cover land acquisition costs. We can only conclude therefore that the reference to a £35m investment is simply a statement on how much the Applicant has already spent to date promoting the project. The additional financing the Applicant as allegedly "secured" does not also appear in the latest accounts (see the Applicant's revised Deadline 6 Funding Statement (document reference **[REP6-021**])) and there is no detail relating to this 'secured finance' in any of the Applicant's submissions on funding to date.

278. The Applicant asserts in the Applicant's Responses to the ExA's Second Written Question CA2.3.8 on page 1-18 of document reference **[REP7-038]**) that:

"*Following publication of the Planning White Paper in December 2020, appetite for investment in interconnectors is only likely to further increase. The White Paper specifically recognises that "Interconnection increases the ability of the GB electricity market to trade with other markets, enhances the flexibility of our energy system and has been shown to have clear benefits*…"

This is irrelevant to the question posed by the ExA. A statement in a White Paper is not evidence of a reasonable prospect of the requisite funds becoming available. A White Paper is merely a policy document - a statement of political will. There is no guarantee that because this White Paper that funds will therefore become available to cover land acquisition costs within the requisite statutory period of time. Relying on an 'expected appetite' for future investment in interconnectors is not evidence of a reasonable prospect of availability of funds.

279. We also refer to paragraph 11 of the Applicant's response in Appendix B to its Responses to Deadline 6 Submissions (document reference **[REP7-075]**). In that paragraph 11, the Applicant refers to the updated Funding Statement submitted at Deadline 6 (document reference **[REP6-021]**) and to its response to the ExA's Second Written Question CA2.3.2 set out in document reference **[REP7-038].** As we state in Section C of this Statement, these documents do not present any objective evidence that there is a reasonable prospect of the requisite available. It would be irrational for the ExA and the SoS to conclude otherwise. In summary, this is because of:

- the statements in the Applicant's Exemption Request (a copy of which is attached at Appendix 1 to this Statement) that it does not have any money to fund compulsory land acquisition costs or the funds for the project itself;

- the statements in the Applicant's Exemption Request that that all funds required for compulsory acquisition costs and for the project as a whole will be exclusively funded by future project finance;

- such project finance can only be secured if the Applicant is first granted an Exemption under Regulation 2019/943;

- the removal of the Exemption process under EU Regulation 2019/943 from the Applicant, announced by Ofgem and CRE on 28 January 2021; and

- the significant uncertainty now surrounding how and whether the new exemption regime under the Trade and Cooperation Agreement will deliver the benefits of an exemption that the Applicant needs to secure the relevant finance. The ExA and SoS cannot pre-judge during this Examination how the relevant regulators will decide in relation to how the new exemption regime will apply to the Applicant.

280. As the Applicant cannot demonstrate there is a reasonable prospect of the requisite funds becoming available, the last sentence of paragraph 9 Planning Act CPO Guidance remains applicable - the two conditions in section 122 remain not conclusively demonstrated.

281. Therefore, the requirements of paragraph 16 of the Planning Act CPO Guidance applies, which requires that the SoS would be acting reasonably in therefore deciding against including in an Order the provisions authorising compulsory acquisition of land. The Affected Party submits that the ExA make such a recommendation to the SoS.

SECTION G - ENFORCEMENT OF COMPULSORY ACQUISITION COMPENSATION CLAIMS

282. The ExA's Second Written Question CA2.3.11 (as set out in the Applicant's Responses to the ExA's Second Written Questions on pages 1-19 and 1-20 of document reference **[REP7-038]**) asks the Applicant to explain against whom a claim for CPO compensation be made if Aquind Limited could not secure funds to cover land acquisition costs.

283. The Applicant's response on pages 1-19 and 1-20 of document reference **[REP7-038]** states that the claim would still be made against the "Undertaker" who is authorised to exercise CPO powers.

284. The "Undertaker" is defined in Article 2(1) of the draft DCO (document reference **[REP7-014])** as:

"*means AQUIND Limited… or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order*)".

285. It is clear from its response that the Applicant does not know against whom claims for compensation could be enforced against.

286. It is also clear that based on the evidence in front of the ExA during this Examination, AQUIND Limited has not currently secured actual available funding for the project or for compulsoroy acquisition costs.

287. The Applicant has openly admitted in section 4.5 of its Exemption Request (copy at **Appendix 1 to this Statement**) that:

"AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do."

288. The Applicant has also confirmed in Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference [REP7-075]) states (our emphasis added) that:

"*…the monies secured to date from its current investors do not include the costs associated with compulsory acquisition, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition*".

289. Paragraph 7 of the Planning Act CPO Guidance requires:

"*Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also* ***need to be ready to defend such proposals throughout the examination*** *of the application*…"

290. The Applicant cannot defend its compulsory proposals as it cannot confirm that claims for compensation can be enforced against it. This does not satisfy the requirements of paragraph 7 of the Guidance.

291. The requirement in paragraph 7 of the Guidance means that, for the purposes of the Examination, the analysis of against whom compensation claims can be enforced should be focused on the Applicant's capacity to meet those claims. Not the capacity of any future unknown party who may be have the benefit of the DCO or have the benefit transferred to them.

292. The Applicant does not have the requisite funds and we have further demonstrated through this Statement that there is no genuine prospect it will have the relevant funds.

293. Therefore, claimants for CPO compensation will only be able to go against a shell company that is Aquind Limited, who has no funds and has no reasonable prospect of securing the requisite funds.

294. We note the Applicant's response in paragraph 12.2 of its Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference **[REP7-075]**) that:

"*In this regard it is also relevant that, as is confirmed above at paragraph 8, a guarantee is now included in the dDCO submitted at Deadline 7 at Requirement 26 within Schedule 2, which it is considered should provide any assurance required for the SoS that the powers of compulsory acquisition will not be capable of exercise until it has been evidenced that the funds required for compensation are satisfactorily secured*."

295. For the reasons we set out in Section H of this Statement, the new requirement 26 is no longer appropriate in light of the Applicant's responses at Deadline 7.

SECTION H - NEW DCO REQUIREMENT 26 – FINANCIAL GUARANTEE IN RELATION TO LAND ACQUISITION COSTS

296. The Applicant has failed to satisfy all the relevant tests relating to funding in order to justify the inclusion of compulsory acquisition powers in the draft DCO.

297. We have demonstrated in this Statement that there are significant funding risks and impediments to the project, which mean that the requirements of Paragraph 19 of the Planning Act CPO Guidance are also not satisfied.

298. Paragraph 19 of the Planning Act CPO Guidance states:

" *In addition, applicants will need to be able to demonstrate that:*
• any potential risks or impediments to implementation of the scheme have been properly managed;
• they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent."

299. Our submissions in this Statement present strong reasons why, in light of this, the ExA and the SoS should act reasonably and remove all compulsory acquisition powers from the draft DCO.

300. The removal of compulsory acquisition powers is a recognised orthodox approach that is recommended by the SoS in paragraph 16 of the Planning Act CPO Guidance.

301. Paragraph 16 of the Planning Act CPO Guidance provides:

"*There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order*. "

302. The only rational action the ExA can now take would be to recommend that the SoS removes all compulsory acquisition powers from the DCO, and that the ExA also removes requirement 26 from the draft DCO (document reference **[REP7-014]**).

303. The new Requirement 26 that has been inserted by the Applicant into Schedule 2 of the draft DCO (document reference **[REP7-014]**) states:

"*Guarantees in respect of the payment of compensation etc.*
26.—(1) The authorised development landwards of MHWS must not be commenced and the undertaker must not exercise the powers in articles 20 to 36 until:
(a) subject to paragraph (3), security of £4.97 million has been provided in respect of the liabilities of the undertaker to pay compensation to landowners in connection with the acquisition of their land or of rights over their land by the undertaker exercising its powers under Part 5 of this Order; and
(b) the Secretary of State has approved the security in writing.

(2) The security referred to in paragraph (1) may include, without limitation, any one or more of the following:
(a) the deposit of a cash sum;
(b) a payment into court;
(c) an escrow account;
(d) a bond provided by a financial institution;
(e) an insurance policy;
(f) a guarantee by a parent company or companies of the undertaker;
(g) a guarantee by a person of sufficient financial standing (other than the undertaker).

(3) The Secretary of State is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order. "

304. The inclusion of requirement 26 in the draft DCO **[REP7-014]** however assumes that compulsory acquisition powers are included within the draft DCO. If there are no compulsory acquisition powers in the draft DCO **[REP7-014]** , there is no need for requirement 26.

305. Requirement 26 also only works where the Applicant has certainty over what the potential land acquisition costs could be. We have demonstrated at Section E to this Statement (which is backed by the expert evidence attached at Appendices 7 and 8 to this Statement), that there is no certainty over what the real land acquisition costs could be as it is not proved that the Applicant has fully taken the effect of Article 30(4) into account, and also if commercial telecoms is included within the authorised development. We have shown that it is actually nearly impossible to know at this stage of the Examination what the land acquisition costs could be. There no certainty. Therefore, a 'grampian style' requirement such as requirement 26 cannot work because it requires certainty over the acquisition cost. Neither we nor the Applicant know the correct figure for land acquisition costs, only that it is significantly higher than £4.97m.

306. At the time the Affected Party suggested to the ExA that a requirement along the lines of the new requirement 26 in the draft DCO **[REP7-014]**, it was suggested as a 'fall back' position. The Affected Party only promoted a requirement similar to requirement 26 because at that time, the Affected Party had thought the Applicant may have some funds currently it could apply towards compulsory acquisition costs.

307. However, as the Applicant has submitted at Deadline 7 that it in fact does not have any funds to cover compulsory acquisition costs and that its Exemption Request (referred to for the first time by the Applicant as containing relevant financing information) confirms that all compulsory acquisition and project costs will be secured by future project finance, there is no reason at this point in the Examination why any compulsory acquisition powers should be granted to the Applicant.

308. It was only at Deadline 7 (with only 5 weeks left for the Examination to run, as the Applicant made late submissions) that the true funding picture has emerged.

309. Important funding information contained in the Applicant's May 2020 Exemption Request (a copy of which attached at **Appendix 1 to this Statement**) was only referred to in detail by the Applicant for the first time at Deadline 7 in response to direct questions on funding. The Applicant only referred the ExA to section 4.5 of its Exemption Request in response to question CA2.3.6 on page 1-17 of the Applicant's Responses to the ExA's Second Written Questions (document reference **[REP7-038]**).

310. The Applicant's ability to fund the entire scheme, including compulsory acquisition costs, also changed on 28 January 2021 due to the joint announcement by Ofgem and CRE in relation to the non-availability to AQUIND Limited of the Exemption process under EU Regulation 2019/943.

311. The effect of the statements contained the Exemption Request and the joint announcement by Ofgem and the CRE on 28 January 2021, was to significantly change how the Applicant's Deadline 6 Funding Statement [REP6-021] should be interpreted.

312. The Applicant's funding case has now completely changed in the Affected Party's mind.

313. The Applicant's Deadline 6 Funding Statement [REP6-021] is not accurate and should not be relied upon as it does not take into proper account the important statements on funding in the Exemption Request and the ramifications of the non-application of the Exemption to the Applicant under Regulation 2019/943.

314. To assist the ExA and the SoS, the Affected Party has itself produced an updated version of the Applicant's Funding Statement, to reflect what the Applicant should have actually disclosed.

315. A copy of the updated funding statement is attached at Appendix 9 to this Statement.

316. The Affected Party invites the ExA to direct the Applicant to enter into a statement of common ground with the Affected Party in relation to the updated funding statement attached at Appendix 9 to this Statement.

317. The effect of the above (including the revised funding statement at Appendix 9 to this Statement) means that the only rational and reasonable course of action available to the ExA is to remove all compulsory acquisition powers from the draft DCO, and also remove requirement 26.

318. The Applicant:

a. Has significantly underestimated the calculation of CPO compensation;
b. Has not provided any evidence to show it currently holds funds to cover the correct amount of land acquisition costs;
c. Has through its own responses at Deadline 7 reinforced and strengthened our arguments that there is no genuine prospect of funds becoming available within the relevant statutory period to cover land acquisition costs;
d. Is merely relying on generic political statements relating to interconnectors, and generic market analysis and subjective expectations of theoretical sources of funding becoming available at some unknown point in the future for projects *of this type*, as opposed to in relation to this specific project.
e. Is promoting a purely speculative scheme.

319. The fact that there *may be* further evidence but that it is "commercially sensitive" does not mean that the ExA assumes there is a funding case. The ExA and SoS must decide on whether to grant compulsory acquisition powers based on the evidence before it during Examination. If information cannot be disclosed, then for the purposes of Examination, that information does not exist.

SECTION I – Response to Appendix B of the Applicant's Responses to Deadline 6 Submissions (document reference [REP7-075])

320. The Affected Party recognises the helpful albeit tardy engagement of the Applicant with its position in relation to funding, notwithstanding the absence of evidence from the Applicant about how it will fund the taking of the Affected Party's land, against the Affected Party's will.

321. The Affected Party also remains mindful that the onus remains exclusively on the Applicant to justify the taking of land belonging to the Affected Party against its will (as established by the *Prest* case).

322. With respect to the sections of Appendix B of the Applicant's Responses to Deadline 6 Submissions that the Affected Party has not already addressed elsewhere in this Statement, the AP responds summarily as follows.

323. The Affected Party recognises that much of the content of Appendix B [REP7-075] is rhetoric, arm waving, and the Applicant's mischaracterisation of the Affected Party's submissions and obfuscation, in order to avoid meeting the onus that remains on the Applicant to satisfy the ExA and SoS that the compulsory acquisition powers it seeks are rationally justified.

Section 2 of Appendix B [REP7-075] - the tests to be applied to the land to be acquired

324. It remains for the Applicant to demonstrate objectively to the ExA that the scope of each of its draft DCO terms is matched by objective evidence.

325. This is because the DCO supplies the purpose for which compulsory acquisition powers are sought.

326. An example of an extra statutory purpose is the promotion, outside of the express fields provided for by parliament, of " *for commercial telecommunications*" of development surprisingly included within the application before the ExA notwithstanding that the Applicant's own evidence demonstrates that such a purpose is unrelated to the electricity generating development of the application.

327. It remains for the Applicant to limit the wide terms of its DCO to match the evidence and purposes within the scope of the PA 2008.

328. The AP welcomes the acceptance by the Applicant in paragraph 2.2 of Appendix B **[REP7-075]** that the draft DCO in due course "would be law".

329. We refer above to our submissions relating to the proper interpretation of the scope of those terms, including in the criminal context of the PA 2008 regime for DCO terms, and there being drawn originally before the ExA so as to ensure least intrusive effect in relation to the land of the Affected Party (see our references in earlier parts of this note to the cases of *Garvey, Prest and Sainsburys*).

330. The Affected Party also notes in paragraph 2.4 of Appendix B **[REP7-075]** the reliance by the Applicant upon the widely drawn terms of Article 20 rather than the bespoke refinement of its terms to match this particular interconnector project in relation to the particular land of the AP. The reliance by the Applicant on general terms and upon other DCOs for such general terms cannot satisfy the presumption against least intrusive terms in relation to this particular application and the particular land of the Affected Party. It is difficult to see how the powers under other DCOs in relation to other geographical parts of the UK can have any relevance to the particular circumstances of the AP's land or that of other affected parties' land. The Affected Party's position is that the presumption referred to in the *Sainsburys* case remains unrebutted by the generality of the Applicant's position.

Section 3 of Appendix B [REP7-075] - powers of compulsory acquisition in relation to the yellow land

331. The Affected Party welcomes the removal of ambiguity by the envisaged refinement to the draft DCO.

Section 4 of Appendix B [REP7-075] – statutory period for the exercise of compulsory acquisition powers following the order being made

332. The Affected Party notes that the Applicant has misunderstood the points being made.

333. The absence of any long stop to the exercise of draconian powers under the DCO results to mean that the beginning of the authorised development coupled with a subsequent temporary possession of a small part of land within the Order Limits could result in perpetual availability of draconian compulsory acquisition powers in relation to the rest of the Order Limit land area (see the decision in the case of *Garvey*).

334. Such ambiguity needs to be curtailed by an express time limit on the use of ALL compulsory acquisition powers within the Order Limits within an express period of the first power being so exercised.

335. We recognise that the Applicant's rhetoric in paragraph 4.2 of Appendix B [REP7-075] seeks to preserve the availability of that ambiguity in the context of it being able to rely on that ambiguity in the event of a criminal prosecution for apparent breach of the Order terms by the Applicant.

336. If the Affected Party is wrong in its analysis, we would welcome the ExA identifying the express provision that limits reliance on any and all CPO powers after 5 years from the first taking of temporary possession by the Applicant of any piece of land inside the Order Limits.

Section 5 of Appendix B [REP7-075] – scrutiny of the compulsory acquisition order powers and the extent of the land to which they apply

337. The Affected Party welcomes the acceptance by the Applicant that the onus remains on it to exclusively justify its DCO and its compulsory acquisition powers, and that it is for the ExA and the SoS to be rationally satisfied that the section 122 Planning Act 2008 tests are satisfied.

338. The position of the Affected Party remains that these compulsory acquisition powers and the tests in section 122 Planning Act 2008 tests cannot be, and are not satisfied in relation to its land.

339. The Affected Party notes the subversion by the Applicant in paragraph 5.3 of Appendix B **[REP7-075]** of the section 122 Planning Act 2008 tests by introduction of a "*test of necessity*" in place of the express tests in section122 and which are preceded by the phrase "only if". The Applicant cannot dilute the section 122 tests into a test relating to need.

340. Section 122 Planning Act states:

"(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the [Secretary of State] is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

(a) is required for the development to which the development consent relates,

(b) is required to facilitate or is incidental to that development, …

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily."

341. Paragraph 9 of the Planning Act CPO Guidance recognises that the absence of demonstration "*that there is a reasonable prospect*…." informs whether or not sections 122(2) and (3) can be "conclusively" satisfied. That is, the absence of a reasonable prospect… can preclude satisfaction of those statutory conditions. The Affected Party's position is that that is the case here.

342. It further follows that this application is an application that falls within the requirement in paragraph 16 of the Planning Act CPO Guidance which relates to removing compulsory acquisition powers from the draft DCO.

343. Paragraph 16 of Planning Act CPO Guidance states:

"*There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land*. "

344. On this basis, the SoS can reasonably justify granting development consent for this project, but decide against including the provisions authorising the compulsory acquisition of the land in the draft DCO [**REP7-014**].

Section 6 of Appendix B [REP7-075] – test to be applied in relation to funding

345. The Affected Party notes that the Applicant has mischaracterised the Affected Party's position.

346. The Affected Party draws the ExA's attention to paragrpahs 9, 19 and 16 and 17 of the Planning Act CPO Guidance (a copy of the Guidance is attached at **Appendix 6 to this Statement).**

347. Contrary to paragraph 6.3 of Appendix B **[REP7-075]** where the Applicant asserts that "*it is not necessary*" to "*have secured all funds*", the terms of paragraph 9 and paragraph 17 of the Planning Act CPO Guidance require demonstration by the Applicant as to "*how it will be funded*" the "*it*" being " *compulsory acquisition*" (see paragraph 17).

348. Further, unlike the Town and Country Planning Act 1990 guidance on CPO, paragraph 9 of Planning Act CPO Guidance requires the Applicant to demonstrate "*there is*" a reasonable prospect rather than that *there will be* a reasonable prospect (i.e prospectively).

349. The Affected Party refers the ExA to satisfaction of that test by other successful DCO applications where funding statements and related executed documentation has been before the Exa and Sos during the examination period, so as to rationally entitle the decision makers to be satisfied that "*there is*" such a reasonable prospect as opposed to there is a desire that there is a reasonable prospect.

350. The Affected Party notes the rhetorical arm waving in paragraph 6.3 of Appendix B **[REP7-075]** by the Applicant.

Section 8 of Appendix B [REP7-075] - availability of funds to meet the estimated compulsory acquisition costs

351. The Affected Party welcomes the concession by the Applicant (albeit tardily), that requirement 26 is necessary so as to safeguard the land of the Affected Party from being compulsorily acquired in the absence of currently available funds to the Applicant.

352. The Affected Party regrets that it has had to make its objection to as to secure that requirement as a minimum and that the original inclusion of such a type of requirement may have avoided the need for it object.

353. Consequently, the Affected Party anticipates applying for the costs of its objection for the taking of its land against its will in the absence of available funds as this time.

354. However, since the helpful inclusion of Requirement 26 into the draft DCO [**REP7-014**], two further factors have come to light.

355. Firstly, the figure of £4.97m stated in paragraphs 5.5 and 5.6 of the Applicant's Deadline 6 Funding Statement [REP6-021] (a copy of which attached at **Appendix 2 to this Statement**) is irrational and there is a gap in the evidence of how much higher the figure should be because it has incorrectly estimated by the Applicant – please see **Appendices 7 and 8 to this Statement**.

356. Secondly, following the widely publicised establishment of the transition period at the end of 2019, and its foreseeably expected conclusion at the end of 2020 with the logical outcome that the United Kingdom would no longer qualify as a member state thereafter, the prerequisite to a viable interconnector project has since been removed.

357. Pages 15 and 16 of the Applicant's Exemption Request (a copy of which is attached at Appendix 1 to this Statement) state in section 4.5 that:

"*Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector* ***will not be able to attract non-recourse debt finance or equity****. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.*"

"*As AQUIND is unable to operate an interconnector in France without an exemption, the exemption length will be linked to the expected debt repayment period, incorporating at least 5 years additional* **headroom. The exemption is therefore required for a period of time that exceeds the term of the non-recourse debt by a safe margin. It would ensure that the project is able to address the following risks:**

- **Actual terms and conditions of financing – given uncertainties affecting exchange and interest rates, which stem from Brexit and other political and macro-economic factors, AQUIND will be able to finalise its financing package at the point of Final Investment Decision. At this stage, AQUIND requires an appropriate amount of flexibility to make prospective investors comfortable.**
- **Market conditions as discussed in this Request for Exemption.**
- **Programme and cost risks of the project as discussed in this Request for Exemption.**

As an exempt investor with no financial support, any project delay will increase the project cost and delay revenue recovery. AQUIND, and its shareholder, are therefore strongly incentivised to minimise project delays. Rather than setting the start of the exemption period at this stage, AQUIND requests that the exemption start date is aligned with the actual full commissioning date of the project.

358. We respectfully refer the ExA to the joint decision of Ofgem and CRE made on 28 January 2021 confirming the inapplicability of the current exemption regime because the UK could not in fact satisfy that the related criteria for engagement of that regime. Please see **Appendix 10 to this Statement** which attaches a copy of a note we have produced on the effect of this announcement.

359. The current position is there is no applicable equivalent 'live' exemption regime in the UK that AQUIND Limited has applied to. The note at **Appendix 10 to this Statement** explains why this is the case, in detail.

360. Given this position was foreseeable for some time by the Applicant, the Affected Party anticipates making an application for costs for its objection because on its own evidence on page 15 of section 4.5 of its Exemption Request, the Applicant "*will not be able to attract non-recourse debt finance and equity*" and "*…AQUIND is unable to operate an interconnector in France without an exemption*".

361. The Affected Party's position aligns with its consistent representation to the ExA. This is firstly because this is a case to which paragraph 16 of the Planning Act CPO Guidance applies where the SoS could and here *must* decide against including compulsory acquisition powers because the risks referrred to in paragraph 19 of of the Planning Act CPO Guidance (legal impediments to the implementation of the project) now result in impediments to implementation. This is secondly because the evidence shows that regrettably, although not the original intention of the Affected Party, the circumstances have resulted in the project itself being rendered unviable and therefore the purpose of the compulsory acquisition appears now have gone.

362. Contrary to paragraph 8.4 of Appendix B **[REP7-075]**, the relevant test terms are set out in section 122 Planning Act 2008. We note that the gloss by which the Applicant seeks to subvert that statutory test. For example, the Applicant states " *the guidance advises that there should be a reasonable prospect…. becoming available*". The Affected Party notes that this may be the misconceived route of the Applicant's approach to seeking to satisfy the ExA and SoS that compulsory acquisition powers are justified.

363. As the SoS makes clear in paragraph 9 of Planning Act CPO Guidance, the reasonable prospect test must be proved in terms of actual availability of the requisite funds, not prospective availability. This is evidenced by the use of the words "there is". Paragraph 9 states:

"*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that* ***there is*** *a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below*). "

364. The Applicant is not entitled to re-write the Planning Act CPO Guidance to suit its approach, and neither is the ExA entitled to do so.

365. It is difficult to see how reliance on the vagaries of the market place subsequently considering a project can have any rational bearing on consideration beforehand on whether "*there is*" such a reasonable prospect.

Section 9 of Appendix B [REP7-075] - whether funding for compulsory acquisition costs is already secured

366. The Affected Party welcomes the concession in paragraph 9.2 that "*the monies secured to date [28 Jan 2021] from its current investors do not include the costs associated with compulsory acquisition*".

367. The Affected Party expresses its incredulity that the Applicant has affirmed (and only as recently as 28 Jan 2021) that it embarked on proposals for CPO – the taking of another party's land against its will – without, currently, "*the costs associated with compulsory acquisition*".

368. The Applicant's accounts attached to the Deadline 6 Funding Statement **[REP6-021]** showed that the Applicant had approximately £1m in the bank/ cash to hand. It was only at Deadline 7 that the Applicant has affirmed it does not have any money to cover land acquisition costs. In addition to this, the Applicant is no longer able to secure the exemption it states it needs in order to attract project finance funding to cover compulsory acquisition costs and the costs of the entire scheme.

369. In light of that affirmation, and reinforced by the removal of the availability of the exemption, the SoS can only rationally decide against including compulsory acquisition powers in the draft DCO **[REP7-014]**.

370. The Affected Party notes that Portsmouth City Council concurred with its analysis in relation to para 9 at the CAH2 and its subsequent representations to the ExA.

371. The Affected Party would like to expressly record its considerable surprise that the Applicant from the outset has been in fact promoting a wholly speculative DCO and a wholly speculative compulsory acquisition powers, which is a wholly unorthodox approach.

372. In essence the application appears to have been made prematurely to available funding or an executed framework guaranteeing funding.

CONCLUSIONS

373. The Applicant is clearly grasping at straws and cannot provide any evidence that there is a reasonable prospect of funds, and certainly not to any of the comparable standards of information provided by previous DCO applicants – please see Appendix 1 to our Statement on Funding submitted at Deadline 7 which provides examples of previous DCO applicants who had far more concrete evidence that they actually held more funds than this Applicant does, but yet even that was not enough to satisfy the Secretary of State.

374. In this particular situation, as the Applicant has absolutely no substantive evidence of there being a reasonable prospect of funds becoming available.

375. This is a completely speculative project being promoted by a shell company that is relying on statements of Government intent in White Papers rather than supplying concrete evidence. It would therefore be irrational should ExA recommend to the Secretary of State that compulsory acquisition powers should be granted in relation to the Affected Party's' land.

376. It would also be irrational for the Secretary of State to consent to the authorisation of compulsory acquisition powers under Section 122 of the PA 2008 of any draft CPO provisions in the current draft DCO.

APPENDIX 1

Redacted version of Section 4 of the Exemption Request

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

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4 Project description

4.1 Introduction

This section of the Request for Exemption:

- Introduces the AQUIND project promoters.
- Provides a technical description of the Project.
- Summarises the project ownership and commercial arrangements, including the proposed financing structure and the supply chain strategy.
- Sets out the project plan and timelines.

4.2 AQUIND Interconnector project developers

AQUIND Interconnector is being promoted by AQUIND SAS (France) and AQUIND Limited (UK) and their 100% holding company AQUIND Energy Sarl in Luxembourg – referred to throughout this document as "AQUIND". AQUIND has been actively working with a range of parties to develop the Project since 2014 and is supported throughout by a delivery focussed and committed project team. AQUIND is not affiliated with any other business involved in production, transmission, distribution or sales of either electricity or gas in any of the Member States or states – members of the European Economic Area ("EEA"). The development of AQUIND Interconnector is the sole business of AQUIND.

The project team has previous experience in the energy sector, including oil and gas and offshore engineering, construction and procurement. AQUIND has selected a group of experienced specialist advisors to assist its core management team including consultant engineers (WSP), economic and policy advisors (Baringa, FTI), legal advisors (Herbert Smith Freehills), network/system modelling advisors (Consentec and Tractebel), and planning and land experts both in England (WSP, Natural Power) and France (Arcadis, Natural Power).

4.3 Technical description

This section sets out a summary of the technical specification and planned connection locations of AQUIND Interconnector in both GB and France, along with the rationale behind the choice of technology, the map of the planned route, as well as information on the technical losses and project lifetime.

AQUIND has undertaken detailed technical analysis to ensure the project is technically feasible. This has included extensive engagement with the national TSOs, NGET and RTE, to ensure appropriate sizing and location of the connections to the national transmission systems. Throughout the project, AQUIND has been advised by leading technical advisors. A full technical overview of the project and key technical decisions has been provided in *Exhibit 8*, and is summarised in this section of the Request for Exemption.

Figure 4-1 Overview and key components of AQUIND Interconnector

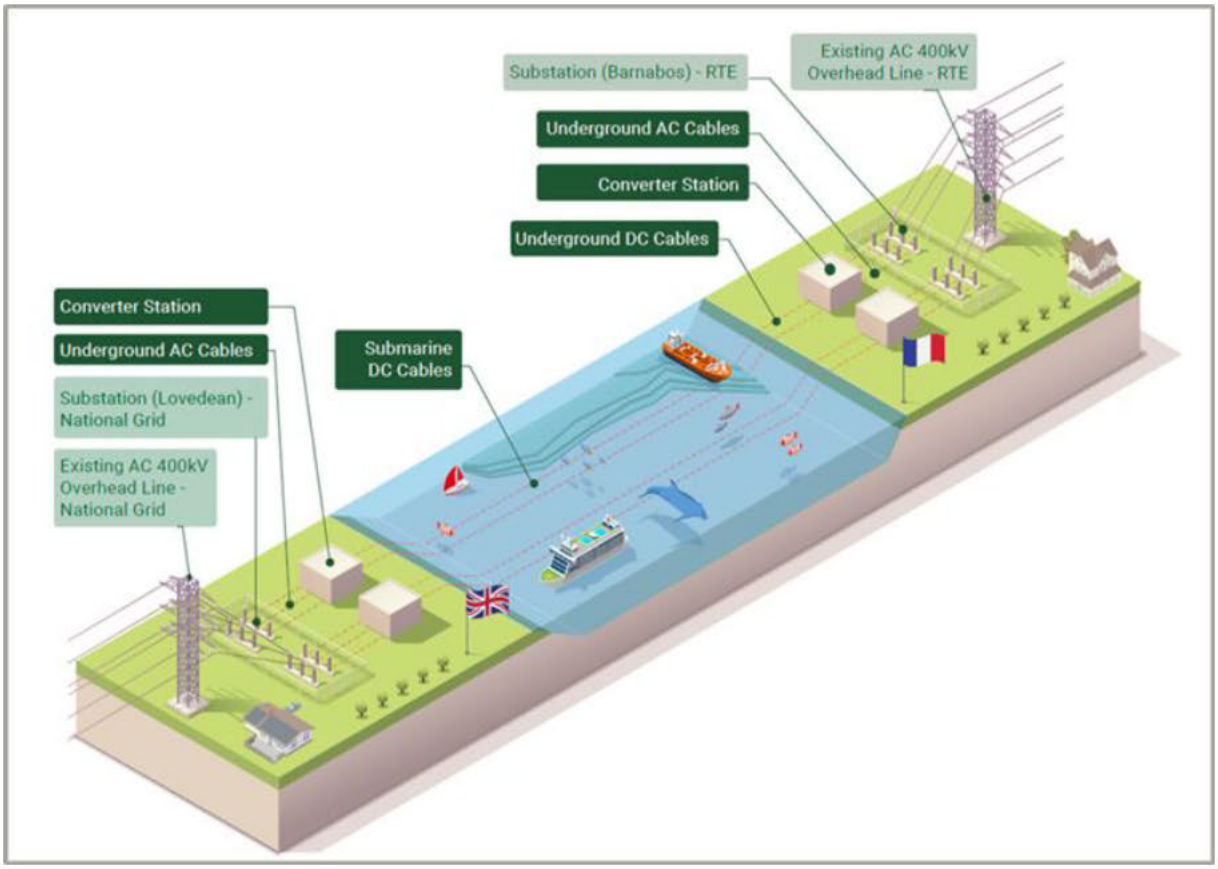


Table 4-1 summarises the key technical characteristics (both onshore and offshore) of AQUIND Interconnector.

Table 4-1 Summary of AQUIND project characteristics

Project characteristic	
Transmission cables	▸ Capacity: 2,000 MW (net of losses) ▸ Configuration: two independent symmetrical monopole HVDC links ▸ DC voltage: 320kV ▸ AC voltage: 400kV in both France and GB ▸ Technology: XLPE
Routing	▸ Approximate submarine HVDC cable route: 182km (landfalls at Eastney and Pourville) ▸ Approximate HVDC cable route in France: 36km (landfall to converter stations) ▸ Approximate HVDC cable route in the UK: 20km (landfall to converter stations) ▸ Approximate HVAC cable route: <3km (converter stations to TSO substations at Lovedean and Barnabos).[1]

[1] The HVAC cable from AQUIND Converter Station (G.RUE) to the RTE switching station Barnabos (≤ 2 km) will be installed and maintained by RTE. This is because the French Energy Code, Articles L. 121-4 and L. 321-6, entrust the development, construction and operation of interconnectors solely with RTE.

Converter stations	▸ Two converter stations (GB and France), access road to each, and ancillary infrastructure ▸ Rating: 2,075 MW ▸ Technology: VSC (Voltage Source Converter)
System availability	▸ Based on the dual monopole topology of the scheme and associated length of DC and AC cables the system availability is expected to be 98%. Further information can be found in Exhibit 8 – AQUIND Feasibility Opinion.
Additional features	▸ Telecommunications: Fibre optic data transmission cables (one per circuit) and ancillary infrastructure at the converter stations and the landfall (GB and France) ▸ Lifetime: assumed lifetime of 25 years (technical lifetime >40 years)

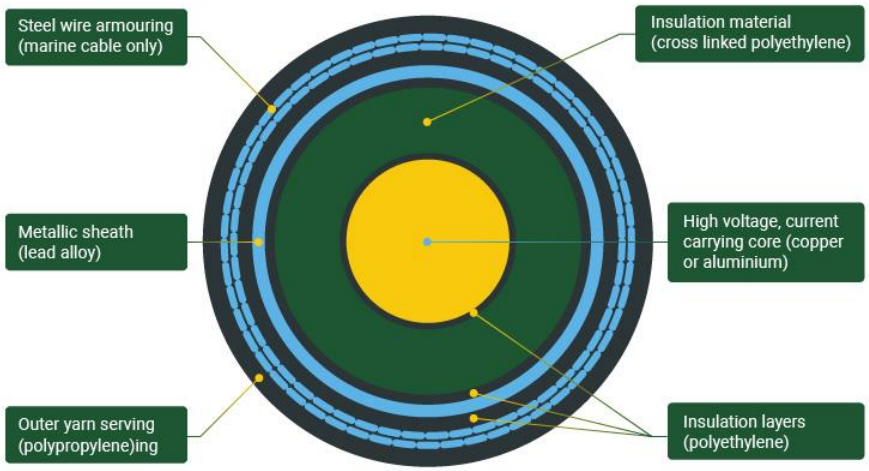
4.3.1 Cables

4.3.1.1 Cable description

Both the AC and DC cables will be polymerically insulated using cross linked polyethylene (XLPE) with either copper or aluminium.

XLPE cables are the leading high voltage cable technology. They are solid-type cables that do not contain gases like gas insulated cables or liquids like mass impregnated cables. This means that there is no risk of leaking such gases or liquids into the environment. It is generally recognised that XLPE cables are inert to the environment and this technology has the least environmental impact among commercially available high voltage cable technologies.

Figure 4-2 AQUIND Interconnector XLPE cable

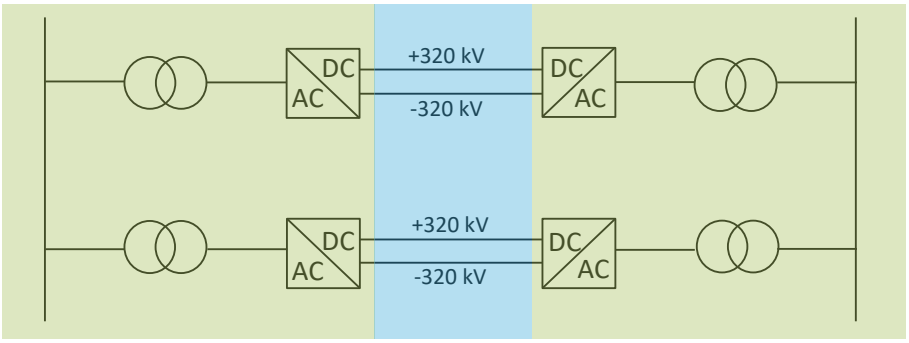


4.3.1.2 Choice of cable capacity and configuration

AQUIND Interconnector will comprise two independent symmetrical monopole HVDC links (“poles”), as shown in Figure 4-3 below. This is to ensure that no single fault results in a complete loss of the capacity. The two symmetrical monopoles will be fully self-sufficient in terms of control systems, protection systems, auxiliary power supplies and cooling systems providing redundancy to the system.

Each pole will have the export capacity of 1037.5MW and the import capacity of around 1000MW, net of transmission and conversions losses, which are described in more detail in Section 4.3.4. Such an arrangement provides at least 50% power availability under all credible scenarios, as the two poles are designed to be completely electrically independent, with no overlapping equipment or services. Throughout this document, the Project's capacity is referred to as 2000MW.

Figure 4-3 AQUIND symmetrical monopole design



RTE 400kV bus
(Barnabos)

National Grid 400kV bus
(Lovedean)

The selection of the project capacity was made based on the market assessment together with technological and grid constraints appraisal in France and the UK. There are limitations imposed by the national TSOs based on the size of any individual block of power that the AC network can accommodate should there be a sudden loss of that power. These are defined as infeed-loss limits. For AQUIND the limiting factor is the island GB transmission system, which can withstand a 1320MW power loss on a routine basis (up to several time per year), and up to 1800MW loss on a less frequent basis.[2] The limitations on the larger continental synchronous grid are much higher.

During the feasibility phase in 2015 AQUIND considered the option to build a 1320MW monopole, or two 1320MW monopoles or an 1800MW bi-pole. Early discussions with manufacturers indicated challenges with this cable size, suggesting that each of these solutions would require cutting edge and untested designs to achieve the required transmitted power and DC voltage. The only currently operational interconnector between GB and France (IFA) also has a capacity of 2,000MW, which includes 2 sets of 2 cables (bi-poles) of 500 MW each.

AQUIND Interconnector ultimately selected a twin symmetrical monopole configuration over a bi-pole due to better supply chain readiness and the present technology level. A detailed assessment of the technology choice is provided in Exhibit 8 of this Request for Exemption (AQUIND Feasibility Opinion).

4.3.1.3 Choice of cable voltage

AQUIND has selected a DC voltage of 320kV, which, at the time of the decision, represents 'state of the art' VSC technology. It also represents the highest commercially available voltage for XLPE cables. All major manufacturers of HVDC equipment had projects in construction or operation of this power/voltage class and were therefore comfortable to support the AQUIND scheme at this level.

[2] These limits are defined in National Grid Electricity Transmission Security and Quality of Supply Standard, (SQSS), Issue 2.2, dated 5th March 2012. This defines normal infeed loss risk as 1320MW and infrequent infeed loss risk as 1800MW. Both limits became active in April 2014.

4.3.1.4 Cable route

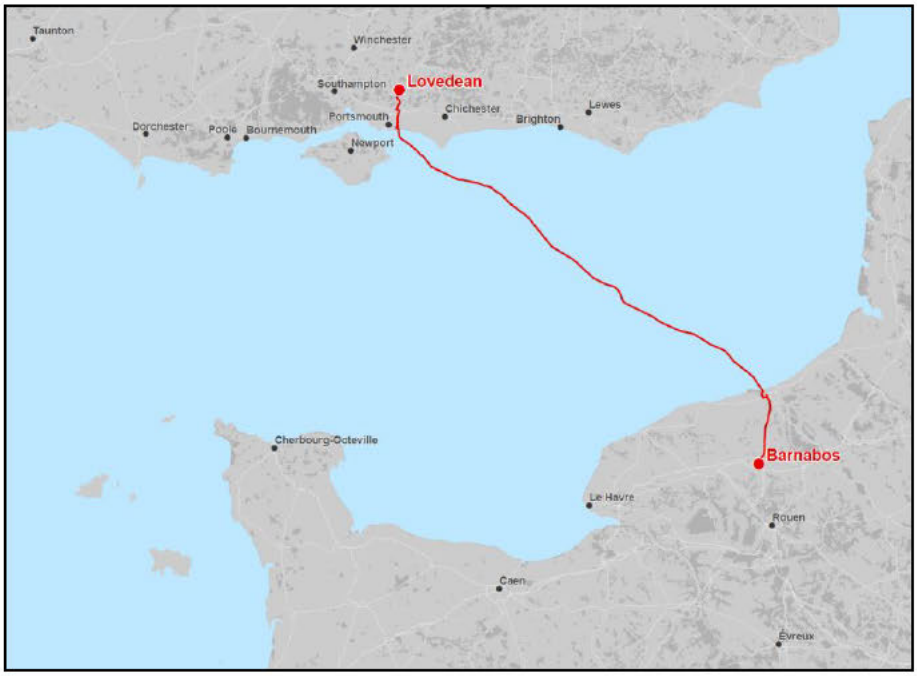
Underground HVDC cables will connect each converter station to the coast, between which a submarine HVDC cable will run from Eastney in Portsmouth, Southern England, to Pourville in Normandie. The converter stations will be connected to their respective substations by HVAC cables. The breakdown of the cable route is set out in Table 4-2.

Table 4-2 Breakdown of cable route

Route	Approximate Cable Route Length	Cable type
Barnabos 400kV switching station to French converter station	<2 km	AC
French Converter station to Pourville	36 km	DC
Submarine cable	182 km	DC
Eastney to UK converter station	20 km	DC
Converter station to NG 400 kV sub-station	<1 km	AC
Total	**240km**	

The planned route for AQUIND Interconnector is shown in Figure 4

Figure 4-4 Indicative cable route



AQUIND carried out detailed environmental impact assessments of all elements of the cable route, which are now under consideration by the National Planning Inspectorate in the UK and relevant authorities in Normandy. The following subsections set out the approach to installing the subsea and terrestrial cables.

4.3.1.5 Marine Cable installation

The design and installation of marine cables is not only focussed on delivering the required power but also on reducing the risk of damage from the sea environment and anchors. To reduce environmental risks, XLPE technology has been selected. To reduce the risk of physical damage the marine cables are designed with steel wire armour surrounding the internal parts of the cable.

Further risk mitigation measures include burying the cable within trenches excavated into the sea floor. Where the cable cannot be buried due to trenches not being able to be excavated, the cable will require protection with the installation of concrete mattresses or rock placement over the cables.

Cable installation will be undertaken by purpose-built vessels which carry many kilometres of cable. The cable is stored on the vessel within a carousel which unreels the cables for laying onto the sea floor. Remotely operated underwater vehicles (ROV) then install the cable into excavated trenches, or if trenching is not possible, cover the cables with protective concrete mattresses or rock.[3]

In 2017-2018, a specialist marine survey company MMT undertook, on behalf of AQUIND, an offshore geophysical and geotechnical survey campaign that confirmed feasibility of the proposed marine cable route. The conclusions of the report have been previously made available to CRE and Ofgem.

4.3.1.6 Terrestrial cable installation

A cable supplier selected by AQUIND via a competitive tendering process will be responsible for the installation of terrestrial DC cables which will run between the converter stations and the landing point. AQUIND will aim, where possible, to install terrestrial DC cables within roads or on road verge in order to avoid and/or minimise environmental impact. At the landing points and other locations where required, the Horizontal Direct Drilling technique will be utilised.

In GB, for the AC connection between the converter and Lovedean substation, there will be two AC cables circuits, each comprising three cables. Consequently, these cables will require a wider corridor than the DC cable and will mostly be installed through private lands. The AC cable route length will be minimised as far as practicable. In GB, design, installation and maintenance of the AC cables will be performed by the National Grid at the cost to the Project Promoter.

In France, design, installation and maintenance of the AC cables will be performed by RTE at the cost of the Project Promoter.

4.3.2 Converter stations

4.3.2.1 Choice of HVDC technology and converter stations

AQUIND Interconnector will use Voltage Sourced Converter HVDC technology to connect the French and GB transmission systems.

HVDC technology provides a number of advantages compared to AC technology. It has much lower cable losses over a long distance and requires fewer cables for an equivalent power.

[3] Cable damage during installation might call for expensive and time-consuming repair operations, during which the damaged pole(s) will be unavailable to the market. Once installed typical hazards to cables may be man-made (such as damage from fishing gear, ships anchors, dredging and dumping activity, impact of existing or new cables and pipelines, military activity or oil and gas exploration or production activities, etc) or natural such as erosion and sedimentation, hard substrates, sediment mobility and high current regimes.

However, as both transmission networks use conventional Alternating Current (AC) technology, the Project will require the construction of two HVDC converter stations in order to convert AC to DC and vice-versa at the remote ends. One converter station will be in England, within 1km of National Grid's Lovedean substation, and the second will be in France, less than 2km from RTE's Barnabos switching station.

4.3.2.2 Choice of VSC technology

There are two commonly used variants of HVDC technology: Line Commutate Converter (LCC) and Voltage Source Converter (VSC) technology. AQUIND Interconnector has chosen the VSC technology, due to a number of technical advantages over LCC, including lower harmonic emissions, black start capability and a reduction in the site footprint requirement. The VSC technology typically allows very rapid change of flow and direction as well as reactive power, which is valuable to system operators when managing grid stability. VSC is also currently the preferred HVDC technology for applications in Europe.

VSC technology will enable AQUIND Interconnector to provide voltage control, frequency control and black start capability services to both National Grid and RTE. Provision of these ancillary services can help strengthen the quality and security of supply of both networks.

AQUIND does not anticipate that revenues arising from the provision of ancillary services will be material in the context of its overall revenues from AQUIND Interconnector. AQUIND is in discussions with National Grid and RTE in relation to mandatory and commercial ancillary services the TSOs might require, and the future commercial arrangements for providing such services.

AQUIND previously sought views from National Grid and RTE on the most recent valuation of the benefits that AQUIND is expected to provide from an ancillary services perspective, but neither of the two TSOs were able to provide any quantitative estimates of the potential value of ancillary services.

A detailed assessment of the technology choice is provided in Exhibit 8 of this exemption Request (AQUIND Feasibility Opinion).

4.3.3 Sub-station connections

4.3.3.1 Grid connection

Due to the large connection size of 2075MW, AQUIND Interconnector will connect at the highest available voltage level, which is 400kV in both countries.

In France, AQUIND signed a technical and financial connection proposal (*Proposition Technique et financière* or "PTF") with RTE on 06 March 2017 for a connection to the Public Transmission Network with a maximum import capacity of 2000MW and a maximum export capacity of 2075MW. The PTF is conditional on the grant of an exemption (as requested in this document) and no alternative grid connection route for independent non-RTE interconnectors currently exists in France.

In GB, AQUIND accepted National Grid Electricity Transmission's "non-firm" 2000MW connection offer for either import or export scenarios in June 2016. In March 2018 AQUIND signed a Modification Offer with National Grid to adjust the total UK export capacity to 2075MW to ensure that the transmission loss adjusted import capacity of the interconnector is the same in both directions.

National Grid will undertake connection works at their Lovedean substation, including building two new bays for AQUIND and reinforcement works within the Transmission system. National Grid will also

build two AC cable circuits between Lovedean substation and AQUIND converter station and will carry out operation and maintenance support of the GB AC connection throughout the project life. The cost of these works as well as the operational and maintenance costs in respect of the GB AC connection will be paid by AQUIND.

AQUIND is in the process of discussing a further modification to its connection agreement to take into the proposal of the National Grid to carry out the construction works in respect of the GB AC connection.

During the non-firm offer period National Grid may curtail AQUIND Interconnector due to planned and unplanned outages in certain parts of the grid without financial compensation. The curtailment of AQUIND in GB due to the planned outages can only occur between April and September and the level of curtailment will be known once such outages are scheduled by the National Grid. Based on historical average circuit date and the estimated time circuits may be out of service due to non-scheduled outages (faults) National Grid has calculated the probability of forced outages of AQUIND Interconnector due to unplanned faults to be [redacted] **hours per year which is around 0 [redacted]% per year**. National Grid may perform further assessments of the probability of forced outages as part of their routine procedures.

4.3.3.2 Barnabos Substation

Following feasibility studies conducted by RTE in 2016 and initial landfall/cable route desktop studies, Barnabos 400 kV switching station was identified as the preferred point of connection to the French transmission network. Other connection locations (Penly substation, Le Havre substation, new substation on Havre – Rougemontier) were discounted because of constraints on the surrounding electrical network, technical and environmental constraints, and considerably longer DC cable route options.

As a result, AQUIND will connect into the Barnabos 400 kV substation in Haute Normandie. RTE will construct two new 400 kV bays to accommodate connections from the French AQUIND converter station.

- In March 2017, AQUIND signed a Technical and Financial Proposal (PTF) with RTE for the connection to Barnabos switching station.
- In July 2018, WSP completed initial converter station optioneering report which identified land opposite Barnabos switching station as a preferred location for the converter station.

The connections will be made using relatively short lengths of AC underground cables. RTE will construct these cables (which will terminate inside the AQUIND converter station), as well as connection bus bars at AQUIND's substation, and carry out all necessary works and improvements at Barnabos substation. The costs of this work will be paid by AQUIND. No wider reinforcements of the French grid are envisaged by RTE to accommodate the connection.

4.3.3.3 Lovedean Substation

The choice of the connection point in GB has been informed by a bespoke feasibility study produced in 2015 by the GB TSO, National Grid Electricity Transmission ("NGET"). This study identified potential connection locations to the GB electricity transmission grid as well as the associated constraints and cost. NGET identified only two practically possible connection locations out of the assessed existing 400 kV substations on the South Coast of England – Lovedean and Bramley. Following a further assessment, National Grid's cost-benefit analysis showed that the most optimal scenario was for an interconnector with a capacity of 2,000MW connecting to Lovedean substation. It demonstrated that

from a cost perspective and to utilise efficiently available connection points on the South Coast of England, a connection at a higher capacity is preferred. This formed the basis for the formal Connection and Infrastructure Options Note, that identified Lovedean as the preferred connection option.

In April 2016, AQUIND conducted a preliminary Converter Station site identification exercise. Potential Converter Station site locations were identified by placing the existing Lovedean substation at the centre of an optioneering exercise. In 2017 AQUIND conducted further detailed assessments to ensure the technical viability of siting the Converter Station in or around the proposed Converter Station Area. Based on this analysis, two suitable locations were identified: South-west of Lovedean substation (Option A) and West of Lovedean substation and between the existing 400 kV overhead line circuits (Option B). In H2 2017, AQUIND conducted a desktop study to inform the environmental constraints for both options and consulted with the Local Planning Authorities. In 2018, based on the analysis and assessment undertaken for both Converter Station options and following the input from the LPAs, Option B was identified as the preferred option.

To accommodate the full capacity of the Interconnector under all conditions mandated by the Security and Quality of Supply Standards (SQSS), National Grid must undertake reinforcement works within the 400 kV AC network. Until these reinforcement works are completed in Q4 2029, the connection offer is considered “non-firm”, meaning the System Operator can constrain AQUIND Interconnector with no compensatory payments. The frequency, duration and severity of constraints will be subject to a number of variables over which AQUIND has no control, such as the level of generation on the system and outages on transmission circuits.

4.3.4 Technical Losses

The transmission losses in the underground cables and submarine cables will depend on the route length, the conductor material used and the cross-sectional area of the conductor. We have, however, prepared estimates of the transmission losses that we anticipate will occur in full power scenarios on AQUIND Interconnector. These are shown in Table 4-3 and are based on: (i) the fact that VSC converter station losses are typically 1.0% of their rating; and (ii) the current AQUIND Interconnector specifications.

The overall scheme loss is expected to be 75.3 MW, rounded to 75MW. This represents total losses of approximately 3.6%.

Table 4-3 Technical line losses

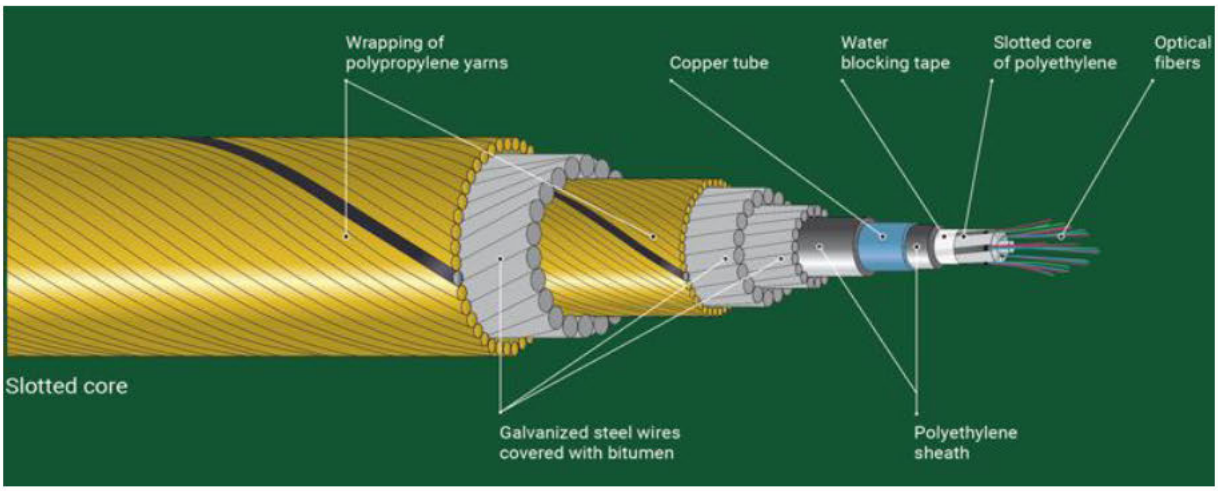
Component	Loss (MW)
Converter Station	20.75
DC Marine Cables	13.2
French DC Cables	1.9
GB DC Cables	1.4
French AC Cables	0.2
GB AC Cables	0.2
Total losses scheme	**75.3 MW**
Loss per pole	**37.65 MW**

4.3.5 Inclusion of data cable

As part of the Project, AQUIND will be deploying fibre optic infrastructure for protection and monitoring purposes. A fibre optic data transmission cable will be installed in a trench alongside and at the same time with each of the two power cable pairs both offshore and onshore. The spare data transmission capacity of such cables may be used to transfer data of third parties, providing further connectivity between France and England.

Up to [redacted] "dark" fibres in each of the two data transmission cables may be available for third-party access enabling the high data transfer rates of up to [redacted] Gbps per fibre pair. The AQUIND fibre optic transmission link offers a shorter route than some of the existing systems, ensuring the low latency time of approximately [redacted] ms. The system will be capable of connecting the French and English shores without the need for amplification by subsea repeaters.

Figure 4-5 AQUIND Interconnector data cable



Installation in the same trench as the power cables and alongside them, together with separation of the two cable systems, ensures consistent protection against fishing and anchor damage as well as natural hazards.

4.4 Ownership and commercial arrangements

This section of the Request for Exemption explains the ownership structure of the Project and the proposed operating arrangements. We note that the future operating arrangements will be further developed as the project progresses. AQUIND will keep the NRAs informed of any developments.

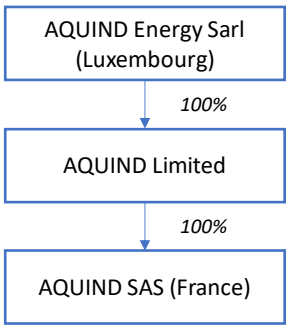
4.4.1 Ownership and shareholding

4.4.1.1 Project promoters

AQUIND Interconnector is promoted by:

- AQUIND SAS, société par actions simplifiée, created in accordance with the laws of France with registration R.C.S. number 808 503 940 and registered address at 72 rue de Lessard 76100 Rouen and;
- AQUIND Limited, a limited liability company under the laws of England and Wales with company number 06681477 and the registered address at OGN House, Hadrian Way, Wallsend, NE28 6HL; and
- AQUIND Energy Sarl, Société à responsabilité limitée, created in accordance with the laws of Luxembourg with registration number B229924 and registered address at 26 boulevard de Kockelscheuer, 1821 Luxembourg.

Figure 4-6 AQUIND Interconnector ownership structure



No entities or people involved in the AQUIND company group structure have control over any energy generator, producer or supplier.

4.4.1.2 Future equity holdings

AQUIND shareholders may consider investing in other assets in the electricity industry in the UK or France in the future (for example, electricity storage, renewable power generation or marginal balancing plant).

AQUIND anticipates seeking further equity investment as part of its financing strategy in the future. AQUIND is currently discussing an equity investment potentially including an entity that holds some generation assets interest in the UK, French or other European markets. If these investments go ahead, AQUIND would seek to be compliant with the relevant unbundling regulations and in particular with

the provisions regarding the "*control over an undertaking performing any of the functions of generation or supply*".[4]

Further information on AQUIND's proposed approach is identified in Section 4.5.

4.5 AQUIND Financing structure

This section sets out AQUIND's indicative financing plan (Section 4.5.1), followed by a description of the planned commissioning date (Section 4.5.2).

4.5.1 AQUIND Indicative financing plan

AQUIND Interconnector is the sole business of AQUIND. For these purposes, AQUIND can be considered a project entity.

AQUIND's financing strategy is to attract funds to invest in AQUIND Interconnector on a project-finance basis. Our analysis shows that AQUIND Interconnector can be an attractive business proposition for project-finance providers, subject to AQUIND being granted appropriate regulatory regimes, including an Exemption as requested in this Request for Exemption.

AQUIND is being financed at the development stage by private investments. This is the riskiest part of financing and it is very hard to attract outside investors. Up to the present moment, nearly [redacted] have been invested by AQUIND and its shareholders in the development stage of the Project.

AQUIND will seek further equity funding and non-recourse project financing from wider pools of potential investors for the construction stage of the Project. The target combination of debt and equity will be determined through the ongoing discussions around the most efficient investment approach with potential investors while the Exemption is assessed, but in any case project debt is unlikely to be less than 50%.

A summary of the indicative financing plan is set out in Table 4-4.

Table 4-4 Indicative financing plan

Source of financing	Financial contribution
AQUIND's own resources	▸ [redacted]m to date; plus ▸ [redacted] until FID
Project finance	▸ [redacted] ▸ Expected [redacted]% of capex
Other sources (equity investors)	▸ Expected [redacted]% of capex

The final approach to the financing strategy depends on the details of the regulatory arrangement with the NRAs, including the form and duration of the Exemption.

The combination of investors may include:

- Equity providers:
  - [redacted]
  - [redacted]
  - [redacted]

[4] Directive 2009/72/EC, Article 9.

- Non-recourse finance providers:

AQUIND is engaging with various types of the potential investors, at this stage primarily equity providers, including specialised investment funds, corporate investors, EPCI contractors and high net worth individuals. These discussions are covered by mutual confidentiality requirements.

Taking into account that a typical ticket size for banks in such project finance deals is around € million, AQUIND expects there would be a syndicate of lenders. While there are not many examples of fully private interconnectors, recent offshore wind transactions suggest that AQUIND should expect that term loans would be for at least years.[5] AQUIND may opt for a share of shorter- or longer-term loans subject to future refinancing after a certain period of time. A precise loan strategy will be determined through further engagement with debt providers and equity investors, based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption.

Recent transactions involving offshore wind farms also show that if it is possible to confirm a business case for a project, then it is also possible to attract investors such as infrastructure funds, pension funds and sovereign funds who have a longer investment horizon than private investors. In offshore wind it has been achieved through a direct tariff support by Government.

Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.

AQUIND, with its advisors, has prepared a financial model to simulate the expected cash-flows based on a set of economic assumptions outlined in Exhibit 1. The financial model is provided in Exhibit 3.

As AQUIND is unable to operate an interconnector in France without an exemption, the exemption length will be linked to the expected debt repayment period, incorporating at least 5 years additional

[5] Page 30 of "Where's the money coming from? Financing offshore wind farms" European Wind Energy Association, November 2013.

headroom. The exemption is therefore required for a period of time that exceeds the term of the non-recourse debt by a safe margin. It would ensure that the project is able to address the following risks:

- Actual terms and conditions of financing – given uncertainties affecting exchange and interest rates, which stem from Brexit and other political and macro-economic factors, AQUIND will be able to finalise its financing package at the point of Final Investment Decision. At this stage, AQUIND requires an appropriate amount of flexibility to make prospective investors comfortable.
- Market conditions as discussed in this Request for Exemption.
- Programme and cost risks of the project as discussed in this Request for Exemption.

4.5.2 AQUIND commissioning date and project cost breakdown

AQUIND is working with technical advisors, WSP, to plan all project milestones through the planning, construction and commissioning phases of the project. This complex planning exercise takes into account a range of contingencies that may arise during the programme. Based on this analysis, AQUIND will be ready to commission in Q2 2024.

For a project of this size and cost, it is not unusual for unexpected events to delay the projected commissioning date. A number of the possible reasons for such a delay are outside of AQUIND's control – for example, unforeseen planning challenges or weather conditions delaying offshore works. At this early stage of the project, it is not possible to identify an accurate specific commissioning date for the project.

As an exempt investor with no financial support, any project delay will increase the project cost and delay revenue recovery. AQUIND, and its shareholder, are therefore strongly incentivised to minimise project delays. Rather than setting the start of the exemption period at this stage, AQUIND requests that the exemption start date is aligned with the actual full commissioning date of the project.

In order to give the NRAs clear sight of project progress, AQUIND will provide NRAs with appropriate updates.

Table 4-5 provides a detailed breakdown of costs based on the latest procurement and technical information.

Table 4-5 AQUIND indicative project cost breakdown

Capex	Assumptions	Cost (Real €m 2018)					
		2015-19	2020	2021	2022	2023	2024
Cables	Cost for equipment and installation. *Excludes type tests/prequalification tests, tax, customs charges.*	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	...of which [redacted]% Marine (DC): 4 cables with total length of 728km.						
	...of which [redacted]% Underground (DC): 4 HVDC cables with total length of 224km.						
	...of which: [redacted]% Fibre optic cables and other costs						

Capex	Assumptions	Cost (Real €m 2018)
France connection works	Cost for RTE construction works, including AC cables, and studies required to connect asset at Barnabos. Excludes VAT.	[redacted]
GB connection works	Construction works, including AC cables, and studies required to connect asset at Lovedean. Excludes VAT.	[redacted]
Converter stations	2 x VSC HVDC converter stations for each monopole (4 in total).	[redacted]
Owner's costs	Owner's project management, engineering and supervision costs	[redacted]
	CAR insurance	[redacted]
Total CAPEX (2021-2024)		[redacted]
Total DEVEX (2015-2021)		[redacted]
Total CAPEX and DEVEX costs (used in the CBA), 2015-2024		**1,426**

4.6 Supply chain strategy

This section sets out the supply chain strategy that AQUIND will implement to deliver the Interconnector. The main contract lots that AQUIND is planning to procure are set out in Section 4.6.1. Section 4.6.2 describes the competitive tender process for the construction contracts and Section 4.6.3 summarises AQUIND's approach to managing the interfaces among relevant contractors.

4.6.1 Contract lots

AQUIND will use a single open procurement process for the Project and is currently planning to award up to three Engineering, Procurement, Construction and Installation ("EPCI") contracts as outlined below:

- **EPCI Lot 1 (converter stations)**: the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos
- [redacted]
- **EPCI Lot 2 (HVDC Cables (Marine and Land) and Fibre Optic Cables and Equipment):** the design, manufacturing, installation, commissioning and maintenance of the HVDC Sub Marine and Land Cable and the Fibre Optic Cable – Poles No 1 and 2. An invitation to the prequalified suppliers to put in place necessary arrangements for consortiums or subcontracting has been made.
- **EPCI Lot 3 (Optional – Lots 1 and 2 combined):** the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos and Poles 1 and 2.

The current conditions of the HVDC industry and the nature of interconnector projects are such that it is unlikely that there will be a single contractor, who would undertake delivering Lot 3. An agreement with National Grid to perform the design, manufacture, maintenance and commissioning of the HVAC cable connection from the converter station to Lovedean substation has recently been achieved. A separate design and engineering contract may be signed with each supplier to be triggered prior to the main contract taking effect.

4.6.2 Tender process and next steps

As set out in detail in Exhibit 11, development of AQUIND Interconnector creates a range of market and commercial risks, including cost increases and overrun, implementation/programme delays and design changes. As part of our strategy to mitigate these risks, AQUIND will be putting in place a competitive tender process to deliver a comprehensive set of contracts that will allocate risks to the most appropriate parties. The context and the detailed plan for the tender process are set out in the following paragraphs.

The costs for the construction stage are based on the quotes elicited from prospective suppliers. To date, AQUIND has formally engaged with suppliers as follows:

- [redacted]
- [redacted]

The responses from the supply chain have been discussed at meetings with respective suppliers and also reviewed by AQUIND's advisors. The content of such responses is confidential, but the information provided by the suppliers has been used to calculate the expected capital costs of the Project. As a result of this engagement the procurement and lot structure strategy have been confirmed. AQUIND published the contract notice that started the procurement process on 3 June 2019 in OJEU.[6]

Following the pre-qualification stage, commenced in July 2019, AQUIND pre-qualified 5 potential converter station suppliers and 6 potential cable suppliers in October 2019. The prequalified suppliers were updated on the project's progress in January – February 2020 in a series of meetings.

The next steps of this tender process will include:

- preparation of the terms and conditions of the contract - ongoing,
- preparation of attachments to ITT with all technical information - ongoing;
- invitation to tender;
- review and assessment of tender submissions; and
- negotiations with potential suppliers of the Best and Final Offer.

The EPCI Terms and Conditions are planned to be structured to facilitate project finance and will be based upon fixed cost and schedule parameters with liquidated damages to guard against non-

[6] Link available here.

delivery. Where cost certainty cannot be achieved in the EPCI market for specific items, such as commodity price changes, labour costs changes, legislation changes, adverse unforeseen offshore weather and subsoil conditions, a limited number of instances of engineering changes and other construction risks, as appropriate, AQUIND will aim for these additional costs to be incorporated into the eligible project costs for both the GB and French regulatory settlements for the Project. The contracts are proposed to be in line with the FIDIC Silver/Yellow book.[7]

Construction will begin promptly after Financial Close with total construction cost estimated at approx. €1,426 million. The construction programme will be informed by the EPC engagement and is expected to be c.3 years with a target commissioning date in Q2 2024.

In all activities above, AQUIND's team will be supported by the relevant external advisors, including on procurement, engineering, legal and commercial aspects of the tender process.

We consider that the process described above will enable AQUIND to select the contractors that would be responsible for delivering the project in a competitive and transparent manner and thus secure the best value for the GB and French network users, as well as the investors of the project.

4.6.3 Approach to interface management

It will be the contractor's responsibility to ensure the design, construction and commissioning of the converter stations and cables meets the AQUIND technical specification outlined as well as the parameters established under the EPCI contract. They will also be responsible for appointing and managing Tier 2 civil contractors.

AQUIND and the Owner's Engineer will monitor compliance with the EPC contract(s). They will review deliverables, programme and cost as well as identify associated risk and reporting on agreed Key Performance Indicators.

However, based on the analysis in the previous sections, we anticipate that there will be two or more suppliers delivering different parts of the Project, and the interfaces between them will need to be managed. For each interface, we will consider the party best placed to manage it – whether this is one of the suppliers or AQUIND. In general, we consider that contractors delivering two or more packages would seek to internalise the interface risks and this would be reflected in a higher cost. Conversely, if AQUIND were to manage the interface risks themselves, this could reduce the cost of individual supply lots.

AQUIND will put in place suitable arrangements to manage the interface risks appropriately. At this stage, we anticipate that this would require:

- a project management team to sequence and align a timely delivery of different elements of the project;
- an engineering team, to address technical interface issues such as physical dimensioning and electro-engineering issues;
- a technical and legal team to manage issues arising if competitors were required to collaborate (and potentially share commercially sensitive information); and
- an external engagement team to support AQUIND's public relations throughout the construction of the project.

[7] EPC/Turnkey Contract 2nd Ed (2017 Silver Book) and Plant and Design-Build Contract 2nd Ed (2017 Yellow Book).

4.7 Project plan and timeline to operation

AQUIND have been working with a range of parties to develop the Interconnector proposition presented in this Request for Exemption. Along with the national TSOs and NRAs, this has also included technical, economic and legal consultants to advise on all aspects of the project.

4.7.1 Key milestones reached by AQUIND

AQUIND Interconnector has been in development since April 2014. Key progress to date includes:

- A range of **feasibility studies** have been completed and AQUIND **consulted widely** on the project in accordance with the TEN-E Regulation.
- A **connection offer** from National Grid was signed in June 2016.
- A *Proposition Technique et Financière* (**PTF**) was signed by AQUIND in March 2017.
- AQUIND reached a major project milestone in September 2016 with Ofgem granting AQUIND a **GB Electricity Interconnector licence.**
- AQUIND is also recognised in Europe having been listed in **ENTSO-E's Ten Year Network Development Plan** (TYNDP) 2016 and 2018, and has also been identified as a **Project of Common Interest** (PCI) on the Third PCI List. AQUIND has been included in TYNDP 2020 (Project number 247).
- AQUIND has been designated as a **Nationally Significant Infrastructure Project** in the UK in July 2018, and submitted an application for the **Development Consent Order** in November 2019, which was accepted for examination in December 2019.
- AQUIND has ensured continued engagement with the NRAs and the TSOs in GB and France, and maintained regular contact with the **supply chain.** As part of this, AQUIND engaged with prospective suppliers and initiated an **OJEU tender process** for the Engineering, Procurement, Construction and Installation of the interconnector.
- Converter station locations, landfalls and cable routes have been identified. This has included detailed marine geophysical and geotechnical surveys of the total length of the marine cable route and ground investigation surveys in France and the UK.
- AQUIND continues investor engagement.

The key milestones for the project, including those agreed in the GB with the National Grid as part of the connection agreement, are set out in the AQUIND delivery programme, which is included in detail in Exhibit 11 – "Programme plan and programme risks". The connection procedures in both GB and France provide for modification procedures, including the timing of the connection that might be subject to changes due to various circumstances.

4.7.2 Consents and licences

A project of AQUIND's size, spanning two jurisdictions, requires an extensive planning schedule with a number of necessary consents and licence. Exhibit 9 provides a summary of the required consents and licences.

4.8 Operating arrangements

This section sets out initial arrangement with respect to capacity allocation and market reporting and transparency.

4.8.1 Transparency and reporting obligations

AQUIND recognises the importance of timely and transparent reporting requirements. For all capacity, AQUIND will ensure reporting of all auction timetables and auction results to ensure compliance with European and national transparency requirements. The detailed provisions for reporting will be set out in the AQUIND Access Rules. These will be subject to NRA approval and align with equivalent product rules on the GB-France border.

AQUIND will publish all results for the allocation of all capacity auctions as soon as practicable after the auction has taken place. The information will comply fully with the requirements the relevant legislation and, as a minimum, will include:

- Names of registered winning bidders
- The marginal auction clearing price
- Total capacity demanded
- Total capacity awarded

This public information will be in addition to information regarding auction results provided directly to winning bidders in the relevant auction. AQUIND anticipates that this information will be made available through the procured auction trading system. The specific details of the trading system will be developed and shared with NRAs in due course.

*4.8.1.1 **Secondary trading***

Secondary trading offers market participants a route to re-sell capacity awarded through the multi-year auctions. AQUIND proposes to facilitate secondary trading to ensure that unused capacity is re-allocated. This principle will be supported by the UIOSI rules that will force capacity holders to recycle capacity if it is not nominated for delivery by the Day-ahead stage. These functions and processes will be formalised through the procurement and design of the AQUIND auction platform.

*4.8.1.2 **European Network Code compliance***

AQUIND will ensure full compliance with the market related European Network Codes and subsequent Regulations (Forward Capacity Allocation and Capacity Allocation and Congestion Management) for all capacity. In this respect, AQUIND will not be any different to other regulated GB-France interconnectors.

4.8.2 Transparency

AQUIND will put in place data and transparency processes to provide relevant information to NRAs, TSOs, market participants and the market, as required under relevant legislation. The requirements for this data provision will come from a number of sources, not limited to the Transparency Regulation 543/2013, European Network Codes, and any additional requirements proposed by the NRAs through the exemption decision or otherwise.

AQUIND will put in place communication procedures that take into account the format, frequency and recipients of each data items. These procedures will include:

- Information sent directly to the NRAs
- Information sent directly to other relevant organisations
- Information sent directly to AQUIND capacity holders
- Information made available on the AQUIND public website (public).

The precise mechanisms will be developed through the construction phase of the project as the project developers prepare for operation. For information required during the construction phase of the project, AQUIND will engage bilaterally with the national TSOs and NRAs as required to provide regular updates on the construction progress, to be agreed with the NRAs as part of this Request for Exemption.

APPENDIX 2

COPIES OF THE APPLICANT'S FUNDING STATEMENTS

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(h)

Document Ref: 4.2

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

PINS REF.: EN020022

DOCUMENT: 4.2

DATE: 14 NOVEMBER 2019

Herbert Smith Freehills LLP

Exchange House

Primrose Street

London

EC2A 2EG

DOCUMENT

Document	4.2 Funding Statement
Revision	001
Document Owner	Herbert Smith Freehills LLP

AQUIND Interconnector Order 202[X]

Funding Statement

Planning Act 2008

Document Ref: 4.2

PINS Reference: EN020022

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264) (Regulation 5(2)(h))

Author: Herbert Smith Freehills LLP

TABLE OF CONTENTS

1. INTRODUCTION

1.1 This funding statement (Statement) relates to an application by AQUIND Limited (the 'Applicant') to the Secretary of State ('SoS') under the Planning Act 2008 (as amended) (the 'Act') for the AQUIND Interconnector Order (the 'Order') (the 'Application').

1.2 The Application is submitted to the Secretary of State pursuant to section 37 of the Act. This statement has been prepared in accordance with the requirements provided for by section 37(3)(d) of the Act and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the '2009 Regulations'), and with relevant guidance issued by the Department for Communities and Local Government.

1.3 The Application seeks development consent for those elements of the AQUIND Interconnector (the 'Project') located in the UK and the UK Marine Area (the 'Proposed Development').

2. PURPOSE OF THIS STATEMENT

2.1 This Statement has been submitted as it will be necessary to acquire land and rights over land in order to carry out the Proposed Development and therefore powers of compulsory acquisition have been sought in the Order. This Statement explains how the shareholders of the Applicant and their parent companies expect that the construction of the Proposed Development and, as necessary, the acquisition compulsorily of land and rights over land as are required in connection with the Proposed Development and authorised by the Order will be funded.

2.2 This Statement forms part of a suite of documents accompanying the Application, submitted in accordance with section 37 of the Act and regulation 5(2)(h) of the 2009 Regulations, and should be read together with those documents, in particular the Statement of Reasons (Application Document Reference 4.1) which justifies the powers of compulsory acquisition that are sought.

3. THE PROPOSED DEVELOPMENT

3.1 The Project is a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France. By linking the British and French electric power grids it will make energy markets more efficient, improve security of supply and enable greater flexibility as power grids evolve to adapt to different sources of renewable energy and changes in demand trends such as the development of electric vehicles. The Project will have the capacity to transmit up to 16,000,000 MWh of electricity per annum, which equates to approximately 5% and 3% of the total consumption of the UK and France respectively.

3.2 The Application seeks development consent for those elements of the Project located in the UK and the UK Marine Area (the 'Proposed Development'). The Proposed Development includes:

3.2.1 HVDC marine cables from the boundary of the UK exclusive economic zone to the UK at Eastney in Portsmouth;

3.2.2 Jointing of the HVDC marine cables and HVDC onshore cables;

3.2.3 HVDC onshore cables;

3.2.4 A Converter Station and associated electrical and telecommunications infrastructure;

3.2.5 High Voltage Alternating Current ('HVAC') onshore cables and associated infrastructure connecting the Converter Station to the Great Britain electrical transmission network, the National Grid, at Lovedean Substation; and

3.2.6 Smaller diameter fibre optic cables to be installed together with the HVDC and HVAC cables and associated infrastructure.

3.3 Chapter 3 (Description of the Proposed Development) of the Environmental Statement ('ES') (Application Document Reference 6.1.3) contains a detailed description of the Proposed Development for which development consent is sought by the Applicant.

3.4 On 19 June 2018 the Applicant submitted a request to the SoS for a direction pursuant to section 35 of the PA 2008 that the Proposed Development is to be treated as development for which development consent is required.

3.5 The SoS, being satisfied that the relevant legal requirements were met and of the view that the Proposed Development is by itself nationally significant, issued a direction on 30 July 2018 directing that the Proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.

4. CORPORATE STRUCTURE AND ASSETS

4.1 AQUIND Limited, the Applicant, is a company registered in England and created in accordance with the laws of England and Wales, with company number 06681477 and registered at OGN House, Hadrian Way, Wallsend, NE28 6HL.

4.2 The Applicant was incorporated with the sole purpose of promoting and developing AQUIND Interconnector, the Project, and will be the undertaker for the purposes of the Order.

4.3 The sole shareholder (100%) of AQUIND Limited is AQUIND Energy Sarl, a company registered in Luxembourg with company number B 229924 and registered at 26, boulevard de Kockelscheuer, L-1821 Luxembourg.

4.4 As at 30 June 2018 the total company assets of the Applicant were £13.3m according to the annual audited account, mainly consisting of the capitalised development costs £12.2m.

4.5 A copy of the audited accounts for the year ended 30 June 2018 are contained at **Appendix 1** to this Statement.

4.6 As at 30 June 2019, it is estimated that the total assets of the Applicant were approximately £24.5m, mainly consisting of the capitalised development costs of approximately £23m. To that date the company has received £24.4m in debt and equity funding.

4.7 The audited accounts for the year ended 30 June 2019 are currently being prepared for filing before the end of March 2020 and therefore are not provided with this Statement.

5. ESTIMATED PROJECT COST

5.1 The Applicant continues to work with its delivery partners to understand the costs of implementing the Order, which includes costs associated with obtaining development consent, construction and land acquisition.

5.2 The current cost estimate for the Project is approximately €1.4bn (£1.24bn). This cost estimate has been informed by two rounds of third party contractor quotations, estimates and benchmarking.

5.3 The current capital cost estimate for the Proposed Development, based on an equal split of the estimated cost of the Project between the elements in France and in the UK, is approximately £622m.

5.4 A broad breakdown of the estimated costs is included in the table below.

Works/Costs	**Estimate**
Development costs (including professional and other fees)	£19m
Construction costs	£599m
Land acquisition costs	£4m
Estimated Total Capital Cost	**£622m**

5.5 The cost of interest and other debt servicing will be met from revenues generated by the Project.

6. PROJECT FINANCING

6.1 The Proposed Development, and more broadly the Project, is to be funded through project finance funded and secured against the operational profits (revenues) of the Project.

6.2 The Applicant intends to raise equity capital and project debt financing to meet the estimated costs of the Proposed Development. It is anticipated that the proportions of funding will be 20% equity and 80% debt.

6.3 It is anticipated that equity capital will be derived from leading international infrastructure funds, and that project debt financing will be secured from various banking sources and/or institutional investors. Market engagement has been undertaken on behalf of the Applicant by a leading accountancy firm which has confirmed that, subject to the consenting and regulatory matters discussed below being resolved, the Project is bankable and that there is a strong interest in the provision of finance for the Project.

6.4 Funding for the Project is expected to be subject to grant of the development consent order and the settlement of regulatory status of the Project in accordance with Regulation (EC) No. 714/2009 and Regulation (EU) No. 347/2013.

7. FUNDING CLAIMS FOR COMPENSATION

7.1 Compulsory acquisition

7.1.1 The Order contains powers to enable the acquisition of land, new rights over land and the imposition of restrictions that are necessary in connection with the construction, operation and maintenance of the Proposed Development. Such powers will be necessary to be used where the necessary land or rights over land cannot be acquired by voluntary agreement.

7.1.2 In summary, the following land and rights over land are sought for the purposes of the Proposed Development:

(A) Acquisition of all freehold and leasehold interests over land required for the construction of a Converter Station at Lovedean;

(B) Rights to plant and maintain landscaping, including maintaining existing hedgerows, on parcels of land necessary to mitigate the visual and ecological impact of the Proposed Development;

(C) Easements authorising the laying, operation and maintenance of the HVAC onshore cables between the converter station and the existing National Grid substation at Lovedean;

(D) Easements authorising the laying, operation and maintenance of the HVDC onshore cables between the Converter Station at Lovedean and the landfall site at Eastney;

(E) Temporary use of land in connection with the construction and maintenance of the Proposed Development;

(F) Easements of access necessary to construct and maintain the Proposed Development;

(G) Acquisition of all freehold and leasehold interests over land required for construction of two optical regeneration stations near to the landfall at Eastney.

7.1.3 Further details of the rights and interests over land sought for the purpose of the Proposed Development are set out in section 6 of the Statement of Reasons (Application Document Reference 4.2).

7.2 Professional advice and landowner negotiations

7.2.1 The total estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £4m. It should be noted that this is an estimated freehold valuation of the worst case land and rights required for the Project, and excludes the valuation of the Crown Estate's seabed interest (discussed below at paragraph 7.4.3) and professional fees and stamp duty land tax. The Applicant considers that the actual cost of acquiring land and rights required will be less than the above sum.

7.2.2 The current position regarding negotiations with landowners and those with interest in land affected by the Proposed Development is summarised in the Statement or reasons (Application Document Reference 4.1).

7.2.3 The Applicant has signed an option agreement with the Crown Estate for the licencing of a corridor of the seabed being 1,000 metres in width and lying inside the territorial limit. Within this seabed area, the Applicant may carry out site investigations and / or install temporary works during the option period. The Applicant may elect to exercise the option to draw down the licence within the option period (being six years) and once granted, the licence grants the Applicant rights to lay, bury, protect and use the section of the cable system for the Proposed Development within a certain designated area for a period of 49 years. The Applicant is negotiating a further option agreement with the Crown Estate for the leasing of a corridor of the foreshore and bed of the river at Eastney, Portsmouth. This lease contains similar rights to the aforementioned seabed licence.

7.3 Blight

7.3.1 The current cost estimate (see section 5 of this Statement) includes an amount to cover the total costs of the payment of compensation for the compulsory acquisition of land and rights included in the Order and required in connection with the Proposed Development.

7.3.2 It is not anticipated that any claims for blight will arise. Should any claims for blight arise as a consequence of the Application the cost of meeting such claims will be met from the sources of funding described above at section 6 to this Statement.

8. CONCLUSION

8.1 Whist the Project does not have the benefit of full funding at this stage, this is not unusual for a project where the securing of funding is dependent on the securing of a development consent order. It is not anticipated that there will be any funding shortfalls for the Project in terms its principal project cost financing or land acquisition at the time of when such finance is required.

8.2 The explanation set out in this Statement provides a basis for concluding that the compensation arising from the potential exercise of compulsory acquisition powers under the Order will be met, and that the necessary funding for the development of the Project will be secured.

APPENDIX 1

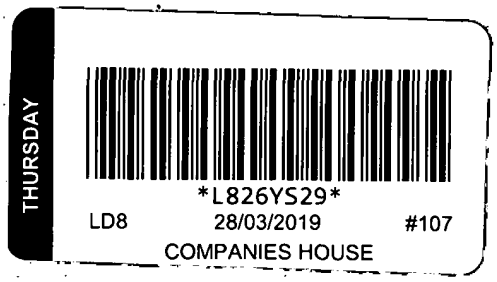
AUDITED ACCOUNTS FOR AQUIND LIMITED FOR THE YEAR ENDED 30 JUNE 2018

COMPANY REGISTRATION NUMBER: 06681477

Aquind Limited

Financial Statements

For the year ended
30 June 2018



Aquind Limited

Directors' Report

For the year ended 30 June 2018

The directors present their report and the audited financial statements of the company for the year ended 30 June 2018.

Principal activities

The principal activity of the company during the year was the development of the Aquind Interconnector - a 2000MW high voltage direct current power transmission line between the UK and France.

On June 23, 2016, the United Kingdom (UK) held a referendum in which voters approved an exit from the European Union (EU) referred to as "Brexit"). As a result of the referendum, it was expected that the UK would leave the EU by 29 March 2019 although at the time of this report the terms and timing of any final Brexit negotiations remain unknown. The Directors anticipate that Brexit could cause disruption and uncertainties around AQUIND's business and relationships with both future users of the interconnector and create a short term uncertainty in respect of the regulatory treatment of AQUIND Interconnector by the UK, French and EU electricity market regulators. Brexit is unlikely to have a direct impact on environmental, planning and consenting activities, which are being currently undertaken by the company. Nevertheless, since construction of the interconnector is not planned earlier than 2020 and its commissioning planned for after 2022, we consider that the interconnector's business model will remain viable. Any short-term immediate disruptions arising from Brexit are unlikely to undermine the fundamental, long-term conditions of energy markets in the UK and France, which suggest significant economic benefits of the transmission of electricity between the two markets.

Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a company registered in Luxemburg and the transaction has been registered with the UK tax authorities.

Directors

The directors who served the company during the year, and up to the date of signing were as follows:
Mr R D Glasspool
Mr K Glukhovskoy
Mr A Temerko

The Company has granted an indemnity to its directors against liability in respect of proceedings brought by third parties, subject to the conditions set out in the Companies Act 2006. Such qualifying third party indemnity provision remains in force as at the date of approving the directors' report.

Donations

£34,000 was paid to the Conservative party for attendance at various events and conferences during the year. A proportion of the cost of these events are treated as donations by the recipient. It has not been possible to split this out. Further purchases of £8,000 were also made from the Conservative party during the year.

Auditor

Each of the persons who is a director at the date of approval of this report confirms that:

- so far as they are aware, there is no relevant audit information of which the company's auditor is unaware; and
- they have taken all steps that they ought to have taken as a director to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on 27 March 2019 and signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

[redacted]

Directors' Responsibilities Statement

For the year ended 30 June 2018

The directors are responsible for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law), including FRS 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland". Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The directors are responsible for the maintenance and integrity of the corporate and financial information included on the company's website. Legislation in the United Kingdom governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

Report on the audit of the financial statements

Opinion

In our opinion the financial statements of Aquind Limited (the 'company'):

- give a true and fair view of the state of the company's affairs as at 30 June 2018 and of its loss for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

We have audited the financial statements which comprise:

- the profit and loss account;
- the statement of comprehensive income;
- the balance sheet;
- the statement of changes in equity;
- the statement of accounting policies; and
- the related notes 1 to 12.

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report.

We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the 'FRC's') Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We are required by ISAs (UK) to report in respect of the following matters where:

- the directors' use of the going concern basis of accounting in preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

We have nothing to report in respect of these matters.

Other information

The directors are responsible for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in respect of these matters.

Responsibilities of directors

As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the FRC's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements

Opinions on other matters prescribed by the Companies Act 2006
In our opinion, based on the work undertaken in the course of the audit:

- the information given in the directors' report for the financial year for which the financial statements are prepared is consistent with the financial statements; and
- the directors' report has been prepared in accordance with applicable legal requirements.

In the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the directors' report.

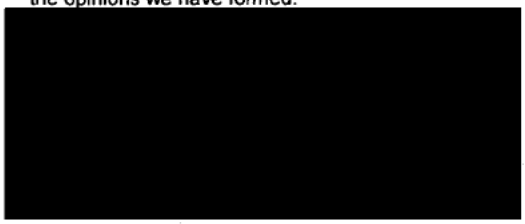
Matters on which we are required to report by exception

Under the Companies Act 2006 we are required to report in respect of the following matters if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the directors' report and from the requirement to prepare a strategic report.

We have nothing to report in respect of these matters.

Use of our report
This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.



27 March 2019

Aquind Limited

Statement of Comprehensive Income

For the year ended 30 June 2018

	Note	2018 £	2017 £
Administrative expenses		(1,023,130)	(579,725)
Operating loss		(1,023,130)	(579,725)
Interest payable and similar expenses		(363,565)	(87,060)
Loss before taxation		(1,386,695)	(666,785)
Tax on loss		–	–
Loss for the financial year and total comprehensive income		(1,386,695)	(666,785)

All the activities of the company are from continuing operations.

The notes on pages 8 to 10 form part of these financial statements.

Aquind Limited

Statement of Financial Position

As at 30 June 2018

	Note	2018 £	2017 £
Fixed assets			
Intangible assets	6	12,169,613	3,225,247
Tangible assets	7	8,109	–
		12,177,722	3,225,247
Current assets			
Debtors	8	1,014,452	254,383
Cash at bank and in hand		50,666	420,064
		1,065,118	674,447
Creditors: amounts falling due within one year	9	(15,092,991)	(4,363,150)
Net current liabilities		(15,092,991)	(3,688,703)
Total assets less current liabilities		(1,850,151)	(463,456)
Net liabilities		(1,850,151)	(463,456)
Capital and reserves			
Called up share capital		330,001	330,001
Profit and loss account		(2,180,152)	(793,457)
Shareholders deficit		(1,850,151)	(463,456)

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

These financial statements were approved by the board of directors and authorised for issue on 27 March 2019 and are signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

Company registration number: 06681477

The notes on pages 8 to 10 form part of these financial statements.

Aquind Limited

Statement of Changes in Equity

For the year ended 30 June 2018

	Called up share capital £	Profit and loss account £	*Total* £
At 1 July 2016	330,001	(126,672)	203,329
Loss for the year		(666,785)	(666,785)
Total comprehensive loss for the year	–	(666,785)	(666,785)
At 30 June 2017	330,001	(793,457)	(463,456)
Loss for the year		(1,386,695)	(1,386,695)
Total comprehensive loss for the year	–	(1,386,695)	(1,386,695)
At 30 June 2018	330,001	(2,180,152)	(1,850,151)

The notes on pages 8 to 10 form part of these financial statements.

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is OGN House, Hadrian Way, Wallsend, NE28 6HL.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of preparation
The financial statements have been prepared on the historical cost basis and in sterling, which is the functional currency of the entity.

Going concern
The company has been and is dependent upon the shareholder in providing funding to cover the initial project development costs. A number of shareholder loans have been provided to the company which are for a fixed term of one year. The shareholder has agreed to roll-over each loan and to extend for one further year. A budget has been prepared covering one years required project development and overhead costs to 31 March 2020. The shareholder has provided a letter of comfort to the company that the budget will be funded by additional shareholder loans and that all individual loans made to date to the company will be extended for one further year. The shareholder is therefore committed to provide continued funding to the company for the current project development phase. The directors are also investigating alternative sources of finance, including commercial banks, other financial institutions and strategic partners to fund subsequent project stages.

Taking into account the above and the ongoing financial support demonstrated by the shareholder, the directors continue to adopt the going concern basis in preparing the financial statements.

Development costs
Expenditure to establish the Project is recognised in the Profit and Loss Account on an accruals basis. Expenditure on the development of the Project is capitalised when its future recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction.

Foreign currencies
Foreign currency transactions are initially recorded in the functional currency, by applying the spot exchange rate as at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are translated at the exchange rate ruling at the reporting date, with any gains or losses being taken to the profit and loss account.

Intangible assets
Intangible assets are initially recorded at cost, and are subsequently stated at cost less any accumulated amortisation and impairment losses. Amortisation will be charged once the related asset is available for use.

Tangible assets
Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

4. Auditor's remuneration

	2018	2017
	£	£
Fees payable for the audit of the financial statements	7,550	7,550

5. Employee numbers

The average number of persons (based on the monthly average number in line with Companies Act requirements) employed by the company during the year amounted to 7 (2017: 7).

6. Intangible assets

	Development costs £	Intellectual property rights £	Other intangibles £	Total £
Cost				
At 1 July 2017	3,195,998	5,850	23,399	3,225,247
Additions	8,944,366	–	–	8,944,366
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
Amortisation				
At 1 July 2017 and 30 June 2018	–	–	–	–
Carrying amount				
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
At 30 June 2017	3,195,998	5,850	23,399	3,225,247

7. Tangible assets

	Fixtures and fittings £	Total £
Cost		
At 1 July 2017	–	–
Additions	9,018	9,018
At 30 June 2018	9,018	9,018
Depreciation		
At 1 July 2017 and 30 June 2018	909	909
Carrying amount		
At 30 June 2018	8,109	8,109
At 30 June 2017	–	–

8. Debtors

	2018 £	2017 £
Prepayments and accrued income	16,028	20,480
Other debtors	795,184	114,814
VAT	203,240	119,089
	1,014,452	254,383

9. Creditors: amounts falling due within one year

	2018	2017
	£	£
Trade creditors	1,542,026	530,401
Amounts owed to group undertakings	12,596,004	3,517,404
Accruals and deferred income	921,426	307,532
Social security and other taxes	32,063	–
Other creditors	1,472	7,813
	15,092,991	4,363,150

Amounts owed to group undertakings have been advanced at an interest rate of 4.5% above the Barclays bank base rate.

10. Related party transactions

During the year, the Company received marketing services from a relative of the company director in the amount of £6,300 (2017: £Nil). The services were provided under the normal market conditions. During the year the costs of these services were included in administrative expenses.
The outstanding amount at the reporting date was £Nil (2017: £Nil).

11. Controlling party

The company's immediate parent undertaking was OGN Enterprises Limited, a company registered in the British Virgin Islands. The directors regarded the ultimate controlling party to be TMF (BVI) Limited, a company registered in the British Virgin Islands.

12. Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a company registered in Luxemburg and the transaction has been registered with the UK tax authorities.

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

The Planning Act 2008

Document Ref: 4.2

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

PINS REF.: EN020022

DOCUMENT: 4.2

DATE: DECEMBER 2020

WSP

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DOCUMENT

Document	4.2 Funding Statement
Revision	002
Document Owner	WSP UK Limited
Prepared By	HSF
Date	22 December 2020
Approved By	HSF
Date	22 December 2020

AQUIND Interconnector Order 202[X]

Funding Statement

Planning Act 2008

Document Ref: 4.2, Rev 002

PINS Reference: EN20022

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264) (Regulation 5(2)(h))

Author: Herbert Smith Freehills LLP

TABLE OF CONTENTS

1. INTRODUCTION

1.1 This funding statement (Statement) relates to an application by AQUIND Limited (the 'Applicant') to the Secretary of State ('SoS') under the Planning Act 2008 (as amended) (the 'Act') for the AQUIND Interconnector Order (the 'Order') (the 'Application').

1.2 The Application is submitted to the Secretary of State pursuant to section 37 of the Act. This statement has been prepared in accordance with the requirements provided for by section 37(3)(d) of the Act and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the '2009 Regulations'), and with relevant guidance issued by the Department for Communities and Local Government.

1.3 The Application seeks development consent for those elements of AQUIND Interconnector (the 'Project') located in the UK and the UK Marine Area (the 'Proposed Development').

2. PURPOSE OF THIS STATEMENT

2.1 This Statement has been submitted as it will be necessary to acquire land and rights over land in order to construct, operate and maintain the Proposed Development and therefore powers of compulsory acquisition have been sought in the Order. This Statement explains how the shareholders of the Applicant and their parent companies expect that the construction of the Proposed Development and, as necessary, the acquisition compulsorily of land and rights over land as are required in connection with the Proposed Development and authorised by the Order will be funded.

2.2 This Statement forms part of a suite of documents accompanying the Application, submitted in accordance with section 37 of the Act and regulation 5 of the 2009 Regulations, and should be read together with those documents, in particular the Statement of Reasons (Application Document Reference 4.1) which justifies the powers of compulsory acquisition that are sought.

3. THE PROPOSED DEVELOPMENT

3.1 The Project is a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France. By linking the British and French electric power grids it will make energy markets more efficient, improve security of supply and enable greater flexibility as power grids evolve to adapt to different sources of renewable energy and changes in demand trends such as the development of electric vehicles. The Project will have the capacity to transmit up to 16,000,000 MWh of electricity per annum, which equates to approximately 5% and 3% of the total consumption of the UK and France respectively.

3.2 The Application seeks development consent for those elements of the Project located in the UK and the UK Marine Area (the 'Proposed Development'). The Proposed Development includes:

3.2.1 HVDC marine cables from the boundary of the UK exclusive economic zone to the UK at Eastney in Portsmouth;

3.2.2 Jointing of the HVDC marine cables and HVDC onshore cables;

3.2.3 HVDC onshore cables;

3.2.4 A Converter Station and associated electrical and telecommunications infrastructure;

3.2.5 High Voltage Alternating Current ('HVAC') onshore cables and associated infrastructure connecting the Converter Station to the Great Britain electrical transmission network, the National Grid, at Lovedean Substation; and

3.2.6 Smaller diameter fibre optic cables ('FOC') to be installed together with the HVDC and HVAC cables and associated infrastructure.

3.3 Chapter 3 (Description of the Proposed Development) of the Environmental Statement ('ES') (Application Document Reference 6.1.3) contains a detailed description of the Proposed Development for which development consent is sought by the Applicant.

3.4 On 19 June 2018 the Applicant submitted a request to the SoS for a direction pursuant to section 35 of the PA 2008 that the Proposed Development is to be treated as development for which development consent is required.

3.5 The SoS, being satisfied that the relevant legal requirements were met and of the view that the Proposed Development is by itself nationally significant, issued a direction on 30 July 2018 directing that the Proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.

4. CORPORATE STRUCTURE AND ASSETS

4.1 AQUIND Limited, the Applicant, is a company registered in England and created in accordance with the laws of England and Wales, with company number 06681477 and registered at OGN House, Hadrian Way, Wallsend, NE28 6HL.

4.2 The Applicant was incorporated with the sole purpose of promoting and developing AQUIND Interconnector, the Project, and will be the undertaker for the purposes of the Order.

4.3 The sole shareholder (100%) of AQUIND Limited is AQUIND Energy Sarl, a company registered in Luxembourg with company number B 229924 and registered at 26, boulevard de Kockelscheuer, L-1821 Luxembourg.

4.4 As at 30 June 2018 the total company assets of the Applicant were £13.3m according to the annual audited account, mainly consisting of the capitalised development costs £12.2m.

4.5 A copy of the audited accounts for the year ended 30 June 2018 are contained at **Appendix 1** to this Statement.

4.6 The updated audited accounts for the year ended 30 June 2019 were submitted into the Examination at Deadline 1 (REP1-095).

4.7 As at 30 June 2019 the total company assets of the Applicant were £25m according to the annual audited account, mainly consisting of the capitalised development costs £23.3m.

4.8 A copy of the audited accounts for the year ended 30 June 2019 are contained at **Appendix 2** to this Statement.

5. ESTIMATED PROJECT COST

5.1 The Applicant continues to work with its delivery partners to understand the costs of implementing the Order, which includes costs associated with obtaining development consent, construction and land acquisition.

5.2 The current cost estimate for the Project is approximately €1.4bn (£1.24bn), with this estimate being undertaken at beginning of 2019 following two rounds of market engagement with potential contractors in respect of the design, engineering, supply and installation of converters and cables.

5.3 The cost estimate has been forecasted in both real and nominal terms, with the inflation for the future period taken at a rate of 2%, which is broadly considered a target inflation rate by the modern monetary policy[1]. Whilst this rate of inflation has been applied, the Applicant is confident that inflation rates will not significantly affect the feasibility of the Project, either in the case of lower inflation or higher inflation than the target inflation rate of 2%.

5.4 The current capital cost estimate for the Proposed Development, based on an equal split of the estimated cost of the Project between the elements in France and in the UK, is approximately £623m. For the purposes of the Application an equal split of capital costs between the French and UK parts of the Project is assumed. Whilst there may be some variance in practice, the elements of the Project and the costs associated with delivery of the Project in both countries are broadly similar.

5.5 A broad breakdown of the estimated costs is included in the table below.

Works/Costs	**Estimate**
Development costs (including professional and other fees)	£19m
Construction costs	£599m
Land acquisition costs	£4.97m
Estimated Total Capital Cost	**£623m**

5.6 With regard to estimated land acquisition costs, a breakdown of how these have been calculated is as follows:

Land Acquisition	£1,277,000.00
Acquisition of Rights and Restrictions	£1,973,775.21
Disturbance Compensation	£664,980.33
Injurious Affection	£645,000.00
Professional Fees	£410,000.00
Estimated Total	**£4,970,755.54**

[1] https://www.bankofengland.co.uk/monetary-policy

5.7 The cost of interest and other debt servicing will be met from revenues generated by the Project. The Applicant's financial forecasts shows that the Project will generate sufficient operating profits to ensure that Debt Service Cover Ratio and Interest Cover Ratio are at an acceptable level. In addition, generally low interest rates have been a feature of the economic situation over the past decade[2], which creates favourable conditions for securing infrastructure financing. Other debt servicing costs, in addition to interest, typically include a commitment fee of around 2% of the respective debt facility and a reserve fee between 0.5% and 1%.

[2] The history of Bank of England official rates is available here: https://www.bankofengland.co.uk/boeapps/database/Bank-Rate.asp

6. PROJECT FINANCING

6.1 The Applicant has secured from its current investors financing sufficient to support the Project until the completion of the development stage, which includes obtaining all necessary permissions and authorisations, including the DCO. The Applicant has invested approximately £35m in the development of the Project as of 30 June 2020. The residual cost of completing the pre-construction stage of the Project is forecasted at £15m. This amount has been revised taking into account delays as a consequence of the Covid-19 pandemic extending the pre-consent stage, and the resultant changes in the processes to obtain the required consents.

6.2 Post the development stage the Proposed Development, and more broadly the Project, is to be funded through project finance secured against the operational profits (revenues) of the Project.

6.3 Typically interconnectors have the following streams of revenues:

6.3.1 Congestion charges - up to 75% of total revenues: Congestion charges are charges collected by the interconnector operator for access to the interconnector's capacity from parties wishing to transmit electricity from one country to another[3].

6.3.2 Capacity market payments – up to 20% of total revenues: GB interconnectors have been able to participate in the GB capacity market since 2018. These are the payments for interconnectors providing a security of supply services at the time of high demand and/or low supply as a stand-by capacity[4].

6.3.3 Ancillary services – up to 5% of total revenues: These revenues arise from provision of various services to National Grid and RTE, which they require in order to ensure the stability of national transmission systems[5].

6.4 In addition, the revenues from the commercial use of the FOC within the Project may contribute an additional 5% of total revenues.

6.5 The cost of regular operation and maintenance of the Project are very low comparing to most of other types of energy infrastructure and are expected to be at the level of around 1% of the capital costs, or nearly 2% of capital costs if business rates in England and local land-related taxes in France are included.

6.6 Accordingly, it is expected the revenues to be generated will leave sufficient cash flows available to repay project finance debt and provide adequate returns to investors.

6.7 The Applicant expects that the financing will be arranged on the basis of project finance debt with the tenure of 15 to 25 years constituting circa 70% of the total capital costs of the Project, with the remainder to be financed with equity.

6.8 It is anticipated that equity capital will be derived from leading international infrastructure funds, and that project debt financing will be secured from various

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[3] Baringa, February 2014, New electricity interconnection to GB – operation and revenues, for Department of Energy and Climate Change, available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/322005/new_electricity_interconnection_to_gb_operation_and_revenues_baringa.pdf

[4] Ibid, also BEIS, Capacity Market, Five-year Review (2014-2019), available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819760/cm-five-year-review-report.pdf

[5] National Grid SO Submission to Cap and Floor, June 2017, available here https://www.ofgem.gov.uk/system/files/docs/2018/01/nget_report_to_ofgem_-_quantified_interconnector_impacts.pdf

banking sources and/or institutional investors. Possibilities of export financing by export agencies of the countries of origin of key components of the Project are also being considered as part of the public tender process.

6.9 The Applicant has been engaging with a number of potential investors since the start of the Project directly, including British and international investment funds and international energy companies. The engagement with a group of debt providers and equity investors completed for the Applicant by KPMG in 2019 showed that subject to obtaining necessary and appropriate consents, permissions and approvals, investors consider interconnectors to be an attractive type of future investment and therefore the Project is considered to be bankable.

6.10 Financing for the Project is therefore expected to be subject to grant of the development consent order and the settlement of regulatory status of the Project (see section 8 of this statement for further information in this regard).

7. FUNDING CLAIMS FOR COMPENSATION

7.1 Compulsory acquisition

7.2 The Order contains powers to enable the acquisition of land, new rights over land and the imposition of restrictions that are necessary in connection with the construction, operation and maintenance of the Proposed Development. Such powers will be necessary to be used where the necessary land or rights over land cannot be acquired by voluntary agreement.

7.3 In summary, the following land and rights over land are sought for the purposes of the Proposed Development:

- 7.3.1 Acquisition of all freehold and leasehold interests over land required for the construction of a Converter Station at Lovedean;
- 7.3.2 Rights to plant and maintain landscaping, including maintaining existing hedgerows, on parcels of land necessary to mitigate the visual and ecological impact of the Proposed Development;
- 7.3.3 Easements authorising the laying, operation and maintenance of the HVAC onshore cables between the converter station and the existing National Grid substation at Lovedean;
- 7.3.4 Easements authorising the laying, operation and maintenance of the HVDC onshore cables between the Converter Station at Lovedean and the landfall site at Eastney;
- 7.3.5 Temporary use of land in connection with the construction and maintenance of the Proposed Development;
- 7.3.6 Easements of access necessary to construct and maintain the Proposed Development;
- 7.3.7 Acquisition of all freehold and leasehold interests over land required for construction of two optical regeneration stations near to the landfall at Eastney.

7.4 Further details of the rights and interests over land sought for the purpose of the Proposed Development are set out in section 6 of the Statement of Reasons (Application Document Reference 4.2).

7.5 Professional advice and landowner negotiations

7.6 The total estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £5m. It should be noted that this is an estimated valuation of the worst case land and rights required for the Project, and excludes the valuation of the Crown Estate's seabed interest (discussed below at paragraph 7.8) and professional fees and stamp duty land tax. The Applicant considers that the actual cost of acquiring land and rights required will be less than the above sum.

7.7 The current position regarding negotiations with landowners and those with interest in land affected by the Proposed Development is summarised in the Statement or reasons (Application Document Reference 4.1).

7.8 The Applicant has signed an option agreement with the Crown Estate for the licencing of a corridor of the seabed being 1,000 metres in width and lying inside the territorial limit. Within this seabed area, the Applicant may carry out site investigations and / or install temporary works during the option period. The

Applicant may elect to exercise the option to draw down the licence within the option period (being six years) and once granted, the licence grants the Applicant rights to lay, bury, protect and use the section of the cable system for the Proposed Development within a certain designated area for a period of 49 years. The Applicant is negotiating a further option agreement with the Crown Estate for the leasing of a corridor of the foreshore and bed of the river at Eastney, Portsmouth. This lease contains similar rights to the aforementioned seabed licence.

7.9 **Blight**

7.10 The current cost estimate (see section 5 of this Statement) includes an amount to cover the total costs of the payment of compensation for the compulsory acquisition of land and rights included in the Order and required in connection with the Proposed Development.

7.11 It is not anticipated that any claims for blight will arise. Should any claims for blight arise as a consequence of the Application the cost of meeting such claims will be met from the sources of funding described above at section 6 to this Statement.

8. REGULATORY STATUS

8.1 The Applicant continues to work to secure regulatory arrangements for the Project which would enable it to operate in the UK and France. In this regard, the Applicant presently has two separate ongoing applications for an "exemption" from certain regulations which are being considered by the relevant authorities.

8.2 An application for an exemption under the Electricity Regulation needs to meet six criteria set out in the Electricity Regulation. In its decision of 2018, the Agency for the Cooperation of Energy Regulators ('ACER') assessed the Applicant's exemption request against all six criteria and confirmed that the Applicant passed five of the six tests set out in the Electricity Regulation. In relation to the element that ACER deemed the Applicant not to have passed, the General Court of the European Union has ruled that ACER acted unlawfully as it wrongly created a hierarchy between two EU regulations and wrongly sought to create a further conditionality for the exemption for which the Applicant had applied. On the basis that this approach by ACER was held to be unlawful and given that the Applicant had met all other criteria for the exemption, the Applicant has a pathway to an exemption in 2021.

8.3 In respect of the ongoing exemption applications:

8.3.1 the first application relates to an exemption for the entire Project. This application was submitted in December 2017 and was rejected by the Agency for the Cooperation of Energy Regulators ('ACER'). Following an unsuccessful appeal to the Board of Appeal of ACER, the Applicant brought an appeal before the General Court of the European Court of Justice. On 18 November 2020, the General Court annulled the decision of the Board of Appeal and this exemption application has therefore been remitted to the Board of Appeal to reconsider in light of the judgment; and

8.3.2 the second application relates to a partial exemption, which was submitted to the national regulatory authorities for the UK and France (Ofgem and CRE) in June 2020. This application only seeks an exemption for the portion of the project in French territory. The application is progressing and a public consultation on the application was launched by the regulators on 18 December 2020[6] and which will continue until 29 January 2021.

8.4 The grant of either of these exemption applications would allow the Project to operate in France. If the second 'partial' exemption is granted, further regulatory arrangements would be required for the UK portion of the Project. In this regard, the Applicant intends to apply for a cap and floor regime, or its equivalent/replacement, as soon as applications are invited following the conclusion of Ofgem's present interconnector policy review and the Applicant has advised Ofgem of this intention.

8.5 In this regard the Energy White Paper: Powering our net zero future published by the Department for Business, Energy and Industrial Strategy on 14 December 2020[7] identifies that Ofgem will work with developers and the UK's European partners to realise at least 18GW of interconnector capacity by 2030[8], and it is

[6] https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf

[8] ibid, page 80.

anticipated an appropriate policy mechanism will be introduced to ensure the realisation of this increase at least cost to consumers.

9. CONCLUSION

9.1 Whist the Project does not have the benefit of full funding at this stage, this is not unusual for a project where the securing of funding is dependent on the securing of a development consent order. It is not anticipated that there will be any funding shortfalls for the Project in terms of its principal project cost, financing or land acquisition at the time of when such finance is required.

9.2 The explanation set out in this Statement provides a basis for concluding that the compensation arising from the potential exercise of compulsory acquisition powers under the Order will be met, and that the necessary funding for the development of the Project will be secured.

APPENDIX 1

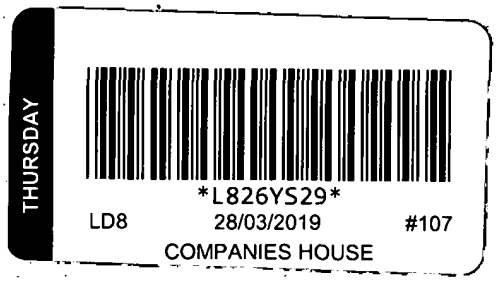
AUDITED ACCOUNTS FOR AQUIND LIMITED FOR THE YEAR ENDED 30 JUNE 2018

COMPANY REGISTRATION NUMBER: 06681477

Aquind Limited

Financial Statements

For the year ended
30 June 2018



Aquind Limited

Directors' Report

For the year ended 30 June 2018

The directors present their report and the audited financial statements of the company for the year ended 30 June 2018.

Principal activities

The principal activity of the company during the year was the development of the Aquind Interconnector - a 2000MW high voltage direct current power transmission line between the UK and France.

On June 23, 2016, the United Kingdom (UK) held a referendum in which voters approved an exit from the European Union (EU) referred to as "Brexit"). As a result of the referendum, it was expected that the UK would leave the EU by 29 March 2019 although at the time of this report the terms and timing of any final Brexit negotiations remain unknown. The Directors anticipate that Brexit could cause disruption and uncertainties around AQUIND's business and relationships with both future users of the interconnector and create a short term uncertainty in respect of the regulatory treatment of AQUIND Interconnector by the UK, French and EU electricity market regulators. Brexit is unlikely to have a direct impact on environmental, planning and consenting activities, which are being currently undertaken by the company. Nevertheless, since construction of the interconnector is not planned earlier than 2020 and its commissioning planned for after 2022, we consider that the interconnector's business model will remain viable. Any short-term immediate disruptions arising from Brexit are unlikely to undermine the fundamental, long-term conditions of energy markets in the UK and France, which suggest significant economic benefits of the transmission of electricity between the two markets.

Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a company registered in Luxemburg and the transaction has been registered with the UK tax authorities.

Directors

The directors who served the company during the year, and up to the date of signing were as follows:
Mr R D Glasspool
Mr K Glukhovskoy
Mr A Temerko

The Company has granted an indemnity to its directors against liability in respect of proceedings brought by third parties, subject to the conditions set out in the Companies Act 2006. Such qualifying third party indemnity provision remains in force as at the date of approving the directors' report.

Donations

£34,000 was paid to the Conservative party for attendance at various events and conferences during the year. A proportion of the cost of these events are treated as donations by the recipient. It has not been possible to split this out. Further purchases of £8,000 were also made from the Conservative party during the year.

Auditor

Each of the persons who is a director at the date of approval of this report confirms that:

- so far as they are aware, there is no relevant audit information of which the company's auditor is unaware; and
- they have taken all steps that they ought to have taken as a director to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on 27 March 2019 and signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

[redacted]

Directors' Responsibilities Statement

For the year ended 30 June 2018

The directors are responsible for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law), including FRS 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland". Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The directors are responsible for the maintenance and integrity of the corporate and financial information included on the company's website. Legislation in the United Kingdom governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

Report on the audit of the financial statements

Opinion

In our opinion the financial statements of Aquind Limited (the 'company'):

- give a true and fair view of the state of the company's affairs as at 30 June 2018 and of its loss for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

We have audited the financial statements which comprise:

- the profit and loss account;
- the statement of comprehensive income;
- the balance sheet;
- the statement of changes in equity;
- the statement of accounting policies; and
- the related notes 1 to 12.

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report.

We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the 'FRC's') Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We are required by ISAs (UK) to report in respect of the following matters where:

- the directors' use of the going concern basis of accounting in preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

We have nothing to report in respect of these matters.

Other information

The directors are responsible for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in respect of these matters.

Responsibilities of directors

As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the FRC's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements

Opinions on other matters prescribed by the Companies Act 2006
In our opinion, based on the work undertaken in the course of the audit:

- the information given in the directors' report for the financial year for which the financial statements are prepared is consistent with the financial statements; and
- the directors' report has been prepared in accordance with applicable legal requirements.

In the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the directors' report.

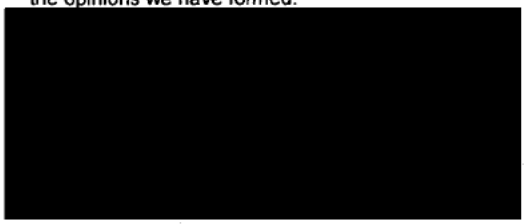
Matters on which we are required to report by exception

Under the Companies Act 2006 we are required to report in respect of the following matters if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the directors' report and from the requirement to prepare a strategic report.

We have nothing to report in respect of these matters.

Use of our report
This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.



27 March 2019

Aquind Limited

Statement of Comprehensive Income

For the year ended 30 June 2018

	Note	2018 £	2017 £
Administrative expenses		(1,023,130)	(579,725)
Operating loss		(1,023,130)	(579,725)
Interest payable and similar expenses		(363,565)	(87,060)
Loss before taxation		(1,386,695)	(666,785)
Tax on loss		–	–
Loss for the financial year and total comprehensive income		(1,386,695)	(666,785)

All the activities of the company are from continuing operations.

The notes on pages 8 to 10 form part of these financial statements.

Aquind Limited

Statement of Financial Position

As at 30 June 2018

	Note	2018 £	2017 £
Fixed assets			
Intangible assets	6	12,169,613	3,225,247
Tangible assets	7	8,109	–
		12,177,722	3,225,247
Current assets			
Debtors	8	1,014,452	254,383
Cash at bank and in hand		50,666	420,064
		1,065,118	674,447
Creditors: amounts falling due within one year	9	(15,092,991)	(4,363,150)
Net current liabilities		(15,092,991)	(3,688,703)
Total assets less current liabilities		(1,850,151)	(463,456)
Net liabilities		(1,850,151)	(463,456)
Capital and reserves			
Called up share capital		330,001	330,001
Profit and loss account		(2,180,152)	(793,457)
Shareholders deficit		(1,850,151)	(463,456)

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

These financial statements were approved by the board of directors and authorised for issue on 27 March 2019 and are signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

Company registration number: 06681477

The notes on pages 8 to 10 form part of these financial statements.

Aquind Limited

Statement of Changes in Equity

For the year ended 30 June 2018

	Called up share capital £	Profit and loss account £	*Total* £
At 1 July 2016	330,001	(126,672)	203,329
Loss for the year		(666,785)	(666,785)
Total comprehensive loss for the year	–	(666,785)	(666,785)
At 30 June 2017	330,001	(793,457)	(463,456)
Loss for the year		(1,386,695)	(1,386,695)
Total comprehensive loss for the year	–	(1,386,695)	(1,386,695)
At 30 June 2018	330,001	(2,180,152)	(1,850,151)

The notes on pages 8 to 10 form part of these financial statements.

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is OGN House, Hadrian Way, Wallsend, NE28 6HL.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of preparation
The financial statements have been prepared on the historical cost basis and in sterling, which is the functional currency of the entity.

Going concern
The company has been and is dependent upon the shareholder in providing funding to cover the initial project development costs. A number of shareholder loans have been provided to the company which are for a fixed term of one year. The shareholder has agreed to roll-over each loan and to extend for one further year. A budget has been prepared covering one years required project development and overhead costs to 31 March 2020. The shareholder has provided a letter of comfort to the company that the budget will be funded by additional shareholder loans and that all individual loans made to date to the company will be extended for one further year. The shareholder is therefore committed to provide continued funding to the company for the current project development phase. The directors are also investigating alternative sources of finance, including commercial banks, other financial institutions and strategic partners to fund subsequent project stages.

Taking into account the above and the ongoing financial support demonstrated by the shareholder, the directors continue to adopt the going concern basis in preparing the financial statements.

Development costs
Expenditure to establish the Project is recognised in the Profit and Loss Account on an accruals basis. Expenditure on the development of the Project is capitalised when its future recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction.

Foreign currencies
Foreign currency transactions are initially recorded in the functional currency, by applying the spot exchange rate as at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are translated at the exchange rate ruling at the reporting date, with any gains or losses being taken to the profit and loss account.

Intangible assets
Intangible assets are initially recorded at cost, and are subsequently stated at cost less any accumulated amortisation and impairment losses. Amortisation will be charged once the related asset is available for use.

Tangible assets
Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

4. Auditor's remuneration

	2018	2017
	£	£
Fees payable for the audit of the financial statements	7,550	7,550

5. Employee numbers

The average number of persons (based on the monthly average number in line with Companies Act requirements) employed by the company during the year amounted to 7 (2017: 7).

6. Intangible assets

	Development costs £	Intellectual property rights £	Other intangibles £	Total £
Cost				
At 1 July 2017	3,195,998	5,850	23,399	3,225,247
Additions	8,944,366	–	–	8,944,366
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
Amortisation				
At 1 July 2017 and 30 June 2018	–	–	–	–
Carrying amount				
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
At 30 June 2017	3,195,998	5,850	23,399	3,225,247

7. Tangible assets

	Fixtures and fittings £	Total £
Cost		
At 1 July 2017	–	–
Additions	9,018	9,018
At 30 June 2018	9,018	9,018
Depreciation		
At 1 July 2017 and 30 June 2018	909	909
Carrying amount		
At 30 June 2018	8,109	8,109
At 30 June 2017	–	–

8. Debtors

	2018 £	2017 £
Prepayments and accrued income	16,028	20,480
Other debtors	795,184	114,814
VAT	203,240	119,089
	1,014,452	254,383

9. Creditors: amounts falling due within one year

	2018	2017
	£	£
Trade creditors	1,542,026	530,401
Amounts owed to group undertakings	12,596,004	3,517,404
Accruals and deferred income	921,426	307,532
Social security and other taxes	32,063	–
Other creditors	1,472	7,813
	15,092,991	4,363,150

Amounts owed to group undertakings have been advanced at an interest rate of 4.5% above the Barclays bank base rate.

10. Related party transactions

During the year, the Company received marketing services from a relative of the company director in the amount of £6,300 (2017: £Nil). The services were provided under the normal market conditions. During the year the costs of these services were included in administrative expenses.
The outstanding amount at the reporting date was £Nil (2017: £Nil).

11. Controlling party

The company's immediate parent undertaking was OGN Enterprises Limited, a company registered in the British Virgin Islands. The directors regarded the ultimate controlling party to be TMF (BVI) Limited, a company registered in the British Virgin Islands.

12. Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a company registered in Luxemburg and the transaction has been registered with the UK tax authorities.

APPENDIX 2

AUDITED ACCOUNTS FOR AQUIND LIMITED FOR THE YEAR ENDED 30 JUNE 2019

COMPANY REGISTRATION NUMBER: 06681477

Aquind Limited

Financial Statements

For the year ended 30 June 2019

The directors present their report and the financial statements of the company for the year ended 30 June 2019.

Principal activities

The principal activity of the company during the year was the development of the Aquind Interconnector - a 2000MW high voltage direct current power transmission line between the UK and France.

On 23 June, 2016, the United Kingdom (UK) held a referendum in which voters approved an exit from the European Union (EU) (referred to as "Brexit"). Following a general election held on 12 December 2019, the elected government moved forward with seeking Parliamentary approval of a new Withdrawal Agreement which was considered and agreed by the European Council on 17 October 2019. The Withdrawal Agreement was approved in January 2020. The new Withdrawal Agreement sets out the terms of the UK's exit from the EU. In addition, the UK and EU also agreed upon a new Political Declaration which sets out the framework for the future relationship between the EU and the UK, and reflects the Government's ambition to conclude an ambitious, broad, deep and flexible partnership across trade and economic co-operation across a number of sectors, including energy, with a free trade agreement with the EU at its core. As the outcome, the UK left the EU on 31 January 2020. There is currently a transition period during which the UK and the EU should agree on post-Brexit trading arrangements. The transition period is currently due to expire on 31 December 2020, but might be extended in order to complete negotiations.

Accordingly, uncertainty still remains over the future nature and timing over agreement on the future economic and trading relationship between the UK and EU. This may lead to ongoing disruptions and uncertainties around AQUIND's business and relationships with both future users of the interconnector and in respect of the regulatory treatment of AQUIND Interconnector by the UK, French and EU electricity market regulators.

However, Brexit is unlikely to have a direct impact on environmental, planning and consenting activities, which are being currently undertaken by the company. Nevertheless, since construction of the interconnector is not planned earlier than 2021 and its commissioning planned for after 2023, we consider that the interconnector's business model will remain viable. Any short-term immediate disruptions arising from Brexit are unlikely to undermine the fundamental, long-term conditions of energy markets in the UK and France, which suggest significant economic benefits of the transmission of electricity between the two markets.

The Directors have considered the current economic uncertainty reflecting the Covid 19 outbreak and the associated economic uncertainties and implications for delays to ongoing political dialogue associated with Brexit and the operation of the power markets for the future. Whilst short term delays are expected the underlying economic requirements supporting the need for greater interconnector capacity and the value of this project specifically are considered to remain strong.

Directors

The directors who served the company during the year were as follows:

Mr R D Glasspool
Mr K Glukhovskoy
Mr A Temerko

The company has granted an indemnity to its directors against liability in respect of proceedings brought by third parties, subject to the conditions set out in the Companies Act 2006. Such qualifying third party indemnity provision remains in force as at the date of approving the directors' report.

£13,000 (2018: £34,000) was paid to the Conservative party for attendance at various events and conferences during the year. A proportion of the cost of these events are treated as donations by the recipient. It has not been possible to split this out. Further political donations of £70,600 (2019: £8,000) were also made to the Conservative party during the year.

Auditor

Each of the persons who is a director at the date of approval of this report confirms that:

- so far as they are aware, there is no relevant audit information of which the company's auditor is unaware; and
- they have taken all steps that they ought to have taken as a director to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on 20 May 2020 and signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

Registered office:
OGN House
Hadrian Way
Wallsend
NE28 6HL

Directors' Responsibilities Statement

Year ended 30 June 2019

The directors are responsible for preparing the directors' report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The directors are responsible for the maintenance and integrity of the corporate and financial information included on the company's website. Legislation in the United Kingdom governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

Report on the audit of the financial statements

Opinion
In our opinion the financial statements of Aquind Limited (the 'company'):

- give a true and fair view of the state of the company's affairs as at 30 June 2019 and of its loss for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and the Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

We have audited the financial statements which comprise:

- the profit and loss account;
- the statement of comprehensive income;
- the balance sheet;
- the statement of changes in equity;
- the statement of accounting policies; and
- the related notes 1 to 14.

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

Basis for opinion
We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our *responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements* section of our report.

We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the FRC's) Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern
We are required by ISAs (UK) to report in respect of the following matters where:

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

We have nothing to report in respect of these matters.

Other information
The directors are responsible for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in respect of these matters.

Responsibilities of directors
As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements

Opinions on other matters prescribed by the Companies Act 2006
In our opinion, based on the work undertaken in the course of the audit:

- the information given in the directors' report for the financial year, for which the financial statements are prepared is consistent with the financial statements; and
- the directors' report has been prepared in accordance with applicable legal requirements.

In the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the directors' report.

Matters on which we are required to report by exception

Under the Companies Act 2006 we are required to report in respect of the following matters if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the directors' report and from the requirement to prepare a strategic report.

We have nothing to report in respect of these matters.

Use of our report
This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our work, for this report, or for the opinions we have formed.

[redacted]

Anthony Matthews (Senior Statutory Auditor)

For and on behalf of
Deloitte LLP
Statutory Auditor

20 May 2020

Aquind Limited

Statement of Comprehensive Income

Year ended 30 June 2019

	Note	2019 £	2018 £
Administrative expenses		(1,390,077)	(1,023,130)
Operating loss		(1,390,077)	(1,023,130)
Interest receivable and similar income		753	–
Interest payable and similar expenses		(929,732)	(363,565)
Loss before taxation	6	(2,319,056)	(1,386,695)
Tax on loss		–	–
Loss for the financial year and total comprehensive income		(2,319,056)	(1,386,695)

All the activities of the company are from continuing operations.

The notes on pages 9 to 11 form part of these financial statements.

Aquind Limited

Statement of Financial Position

30 June 2019

	Note	2019 £	2018 £
Fixed assets			
Investments	7	894	-
Intangible assets	8	23,355,679	12,169,613
Tangible assets	9	5,591	8,109
		23,362,164	12,177,722
Current assets			
Debtors	10	651,710	1,014,452
Cash at bank and in hand		1,049,684	50,666
		1,701,394	1,065,118
Creditors: amounts falling due within one year	11	(3,796,950)	(15,092,991)
Net current liabilities		(2,095,556)	(14,027,873)
Total assets less current liabilities		21,266,608	(1,850,151)
Creditors: amounts falling due after more than one year	11	(25,435,815)	-
Net liabilities		(4,169,207)	(1,850,151)
Capital and reserves			
Called up share capital		330,001	330,001
Profit and loss account		(4,499,208)	(2,180,152)
Shareholders deficit		(4,169,207)	(1,850,151)

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

These financial statements were approved by the board of directors and authorised for issue on 20 May 2020, and are signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

Company registration number: 06681477

The notes on pages 9 to 11 form part of these financial statements.

Aquind Limited

Statement of Changes in Equity

Year ended 30 June 2019

	Called up share capital £	Profit and loss account £	Total £
At 1 July 2018	330,001	(2,180,152)	(1,850,151)
Loss for the year		(2,319,056)	(2,319,056)
Total comprehensive income for the year	–	(2,319,056)	(2,319,056)
At 30 June 2019	330,001	(4,499,208)	(4,169,207)
Profit for the year		–	–
At 30 June 2019	330,001	(4,499,208)	(4,169,207)

The notes on pages 9 to 11 form part of these financial statements.

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is OGN House, Hadrian Way, Wallsend, NE28 6HL.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of preparation
The financial statements have been prepared on the historical cost basis and in sterling, which is the functional currency of the entity.

Going concern
OGN Enterprises Limited has provided a number of shareholder loans to the company over the years. OGN Enterprises Limited has confirmed its commitment to provide funding to cover the initial project development costs irrespectively of the sale of 100% of shares of the company to Aquind Energy S.a.r.l.. OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021. OGN Enterprises Limited has provided a letter of comfort to the company that the budget will be funded by additional loans and that all individual loans made to date to the company is extended to 1 June 2021. OGN Enterprises Limited is therefore committed to provide continued funding to the company for the current project development phase. The directors are also investigating alternative sources of finance, including commercial banks, other financial institutions and strategic partners to fund subsequent project stages.

In addition to the above the Directors have also considered the current economic uncertainty reflecting the Covid 19 outbreak as set out in the Directors' Report. Reflecting that the company is not currently reliant on revenues, and has secured funding to manage its spending plans for the next 12 months which has been reconfirmed as available in the light of the Covid 19 developments. Whilst there could be some delays to the progress of the plans for the project this is not considered to have a significant impact on the going concern assumption.

Taking into account the above and the ongoing financial support demonstrated by OGN Enterprises Limited, the directors continue to adopt the going concern basis in preparing the financial statements.

Investments
Fixed assets investments are shown at cost less provision for impairment in value.

Development costs
Expenditure to establish the Project is recognised in the Profit & Loss Account on an accruals basis. Expenditure on the development of the Project is capitalised when its future recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction.

Foreign currencies
Foreign currency transactions are initially recorded in the functional currency, by applying the spot exchange rate as at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are translated at the exchange rate ruling at the reporting date, with any gains or losses being taken to the profit and loss account.

Intangible assets
Intangible assets are initially recorded at cost, and are subsequently stated at cost less any accumulated amortisation and impairment losses. Amortisation will be charged once the related asset is available for use.

Tangible assets
Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

4. Auditor's remuneration

	2019	2018
	£	£
Fees payable for the audit of the financial statements	11,750	7,550

5. Employee numbers

The average number of persons employed by the company during the year amounted to 7 (2018: 7).

6. Profit before taxation

Profit before taxation is stated after charging:

	2019 £	2018 £
Depreciation of tangible assets	3,145	909

7. Investments

	Subsidiary undertakings £	Total £
Cost		
Additions	894	894
At 30 June 2019	894	894

Aquind SAS (France) is a 100% subsidiary of the company and was registered on 31 May 2019 for the purposes of developing the Aquind interconnector in France. It is currently operating under the control of the company and was dormant as at 30 June 2019. The investment in the subsidiary company is carried at cost of £894 (2018: £nil).

8. Intangible assets

	Development costs £	Intellectual property rights £	Other intangibles £	Total £
Cost				
At 1 July 2018	12,140,364	5,850	23,399	12,169,613
Additions	11,176,066	10,000	-	11,186,066
At 30 June 2019	23,316,430	15,850	23,399	23,355,679
Amortisation				
At 1 July 2018 and 30 June 2019	–	–	–	–
Carrying amount				
At 30 June 2019	23,316,430	15,850	23,399	23,355,679
At 30 June 2018	12,140,364	5,850	23,399	12,169,613

9. Tangible assets

	Fixtures and fittings £	Total £
Cost		
At 1 July 2018	9,018	9,018
Additions	627	627
At 30 June 2019	9,645	9,645
Depreciation		
At 1 July 2018	909	909
Charge for the year	3,145	3,145
At 30 June 2019	4,054	4,054
Carrying amount		
At 30 June 2019	5,591	5,591
At 30 June 2018	8,109	8,109

10. Debtors

	2019	2018
	£	£
Prepayments and accrued income	13,205	16,028
VAT	228,055	203,240
Other debtors	410,450	795,184
	651,710	1,014,452

11. Creditors

	2019	2018
	£	£
Amounts falling due within one year:		
Trade creditors	2,463,860	1,542,026
Amounts owed to group undertakings	-	12,596,004
Accruals and deferred income	1,200,962	921,426
Social security and other taxes	79,219	32,063
Other creditors	52,909	1,472
	3,796,950	15,092,991

	2019	2018
	£	£
Amounts falling due more than one year:		
Amounts owed to group undertakings	25,435,815	-

Amounts owed to group undertakings represent loans made by OGN Enterprises Limited and have been advanced at an interest rate of 4.5% above the Barclays bank base rate. OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021.

12. Related party transactions

During the year, the company received loans from OGN Enterprises Limited £11,910,079 (2018: £8,678,425). The outstanding amount at the reporting date was £24,105,908 (2018: £12,195,829). Interest was charged on the loans from OGN Enterprises Limited at 4.5% above the Barclays bank base rate and amounted to £929,732 (2018: £563,007). Interest of £1,329,907 was outstanding at 30 June 2019 (2018: £400,175). OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021.

During the year, the company received marketing services from a relative of the company director in the amount of £38,850 (2018: £6,300). The services were provided under the normal market conditions. During the year the costs of these services were included in administrative expenses. The outstanding amount at the reporting date was £Nil (2018: £Nil).

13. Controlling party

The parent of the company is Aquind Energy S.a.r.l., whose registered office is at 26, boulevard de Kockelscheuer, L-1821, Luxembourg. The Directors have the power to govern the financial and operating policies of the company.

14. Subsequent events

The Directors have considered the current economic uncertainty reflecting the Covid 19 outbreak and the associated economic uncertainties and implications for delays to ongoing political dialogue associated with Brexit and the operation of the power markets for the future. Whilst short term delays are expected the underlying economic requirements supporting the need for greater interconnector capacity and the value of this project specifically are considered to remain strong.

APPENDIX 3

APPLICANT'S RESPONSES TO EXA's SECOND WRITTEN QUESTIONS ON FUNDING

Reference	Respondent(s)	Question	Response
			13 to the Order, provide adequate protections for Virgin Media's apparatus within the Order limits. **14. Vodafone Ltd** The Applicant's solicitor is now engaged in discussions with Osbourne Clark in relation to entering into a protective provisions agreement for the protection of Vodafone assets, following engagement from Osbourne Clark on 21 December 2020. Heads of terms have been provided and the Applicant has agreed to Osbourne Clark producing the first draft. The Applicant confirms it is not aware of any reason why this agreement will not be capable of being completed before the close of the examination. Should that agreement not be completed for any reasons, the Applicant confirms it is content the protective provisions in included at Part 2 of Schedule 13 to the Order (REP6-015), provide adequate protections for Vodafone's apparatus within the Order limits. **15. Highways England** The Applicant has provided comments on the protective provisions for Highways England on Thursday 14 January 2021, further to comments provided by Highways England on the form issued to them by the Applicant. There are few points remaining to be agreed and it is anticipated a form will be agreed which is acceptable to both parties, appropriate to the works to be undertaken beneath HE assets, shortly. An update in this regard will be communicated in updates to the SoCG between the Applicant and Highways England in due course. **16. National Roads Telecommunications Services ('NRTS')** Protections, as necessary, are to be included within the protective provisions for the benefit of Highways England.
CA2.3.2	Applicant	Beyond what is written in Revision 2 of the Funding Statement [REP6-021] and section 3.2 of the '*Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2*' [REP6-063], please can the Applicant supply any information, redacted or not, to the ExA to demonstrate that there is a 'reasonable prospect' of funds being available for this project. If no further information can be provided, how should the ExA approach the matter of funding in its recommendation?	The Applicant does not hold any further information which is not of a commercially sensitive nature and which its provision into the public domain would not potentially prejudice the Applicant's future commercial position. Whilst the Applicant fully appreciates the basis on the request made by the ExA, the Applicant is not in a position to provide the information requested. It has been considered whether information could be provided on a redacted basis, however the nature of the redactions that would be required to be made would mean any such submissions would be of little value. However, it is not considered that it is necessary to provide any further information to satisfactorily evidence that there is a reasonable prospect of funds becoming available for the Project within the statutory period. The updates made to the Funding Statement at Deadline 6 (REP6-021) set out the basis on which it is anticipated regulatory status will be obtained and project financing secured. The information provided by the Applicant in this regard sets out the clear and rational

Reference	Respondent(s)	Question	Response
			basis on which it is anticipated funding will be secured for the Project, subject to the grant of the DCO and the settlement of regulatory status. With further regard to regulatory status, all future interconnector projects in the UK will need to obtain regulatory status before they can be operated, and as has already been submitted by the Applicant there is nothing unusual about the sequence of approach of the Applicant in seeking to obtain all consents and regulatory approvals in parallel with one another. To contrary, it is an entirely logical approach to take, which gives confidence to all decision makers that the Project is progressing appropriately for the approvals required from them to be provided. Furthermore, the statements of the Government in the Energy White Paper (December 2020) that they "*will work with Ofgem, developers and our European Partners to realise at least 18GW of interconnector capacity by 2030*", provide further support for the Applicant's position and provide the ExA further assurance should that be required that the regulatory framework to facilitate the delivery of increased interconnection by 2030 in accordance with and to meet the targets set will be put into place, so as to facilitate the Project and other planned projects as necessary which are to be funded on a Project Finance Model. Noting the above, the Applicant considers the ExA should approach the matter of funding, and particularly the question of whether it is considered there is a reasonable prospect of the Project being funded, by considering whether anything has been raised which seriously questions the Applicant's evidence that there is a reasonable prospect of funding becoming available. In considering this question, the ExA should give very significant weight to the evidence of the Applicant of the fundability of the Proposed Development, which is reinforced by the clear Government intent to deliver increased interconnection and to put in place the necessary regulatory framework to do so, and the largely unchallenged evidence of the need for this and the compelling benefits which increased interconnection will provide in the public interest. The needs and benefits of the Proposed Development, and moreover the Project, are clearly explained in the Needs and Benefits Report (APP-115), the Addendum to the Needs and Benefits Report (REP1-136), and the second Addendum to the Needs and Benefits Report submitted at Deadline 7. The Applicant submits that when having regard to all relevant information, the only rational conclusion that can be reached on this question is that there is a reasonable prospect of the Project being funded.
CA2.3.3	Applicant	Could the Applicant, in comparing its prospective situation against that of the current landowners, explain what extra controls and powers of deterrence it would have at its disposal over the land proposed to be acquired for a security and surveillance buffer around the Converter Station, and why these controls amount to a compelling case for Compulsory Acquisition?	As set out in the Design and Access Statement (paragraph 6.2.1(8) REP6-025) the Converter Station has been designed in accordance with National Grid Guidelines and the operational requirements include dual perimeter security fencing with sterile zone to allow appropriate entry and exit provisions for workers and deter access by others. The perimeter security (fencing and gates) has been designed to National Grid Technical Specifications which state that the overall height of the perimeter fence (external fence) should be 3 m above base level with an electric pulse fence installed within the security fence (internal fence) (paragraph 5.2.7.3 of the Design and Access Statement, REP6-025). In order to comply with security and health and safety requirements, the Converter Station and telecommunications

Reference	Respondent(s)	Question	Response
		What specific threats are these designed to deter, and how do these compare to existing threats and security buffers in relation to the existing Lovedean substation?	buildings will have their own strict access requirements, hence the separate location of the Telecommunications Buildings. Whilst these measures provide a robust level of security, it is not the case that persons may not still seek to breach the perimeter of the Converter Station and the Telecommunications Buildings. Should the Applicant not own land surrounding the Converter Station and the Telecommunications Buildings, it would have no legal right to remove people from the land in close proximity to them. As such, it would not be able to deter persons from approaching the perimeters of either or remove them from the land where they present a threat to security. By having control over the surrounding land, it is the case that the Undertaker will be able to prevent persons from trespassing on land in their ownership where such persons are doing so for the purpose of seeking to breach the security perimeter fences. As such, by having control over the land the Undertaker is afforded additional, and necessary, powers of control over the land for the purpose of deterrence. It is important to note that in relation to the land in question there are a number of reasons why it is necessary for the land to be acquired, including so that landscaping can be provided, retained and maintained without interference for the purpose of adequately visually screening the Converter Station and Telecommunications Buildings and ensuring the biodiversity enhancements are maintained without disturbance and the benefits they provide are realised and protected, to provide the necessary drainage measures in accordance with the drainage strategy required, including the location of attenuation ponds on the land for runoff from the Converter Station and the Access Road. These reasons are over and above the security deterrence benefit as outlined above. For these reasons, there is a compelling case in the public interest of the compulsory acquisition of the land identified for permanent acquisition at the Converter Station Area. As a comparison, the Lovedean Substation, owned by National Grid, is registered under Her Majesty's Land Registry title reference SH28279 and comprises an area of 49.96 acres. Inspection of the title plan shows that, at the closest point, the perimeter fence for the Lovedean Substation is approximately 25m away from the boundary of National Grid's ownership boundary and for the majority of the perimeter this distance is approximately 40-50m and in many case extends much further, up to 190m in some cases. This area includes land which Messrs Geoffrey and Peter Carpenter sold to National Grid in November 2013 which, for the avoidance of doubt, includes part of the landscaping and visual impact mitigation measures at the western side of National Grid's ownership. This is referred to the in the Title Register for the property. Whilst the Applicant does not wish to speculate on the reasons for National Grid's land ownership extending some distance beyond the immediate perimeter of the Lovedean Substation, it is evident that National Grid do own and therefore control the areas of land surrounding the Lovedean substation which would allow them to deter intrusion to the Lovedean Substation on the same basis as has been set out by the Applicant in relation to the Converter Station. .

Reference	Respondent(s)	Question	Response
CA2.3.4	Applicant	In terms of land identified for Compulsory Acquisition in the Book of Reference [REP6-062] please provide the total areas in each of the following categories: • subsoil below the highway; • land owned by statutory authorities; • land owned by others. This list of categories is not exhaustive, and the Applicant may add to it, or sub-divide further, if thought to be useful to the ExA. The total area should, however, equate to that identified in the Book of Reference.	The land identified for Compulsory Acquisition of land or in respect of which rights may be acquired in the Book of Reference (REP6-062) includes: - subsoil below the highway – 334,644m^2 (33.5 ha) - land owned (freehold) by local authorities – 446,441m^2 (44.6ha), of which 559m^2 (0.5ha) is required for the permanent acquisition of land rights; - land owned (freehold) by other statutory bodies – 163,822m^2 (16.4ha), of which 14,470m^2 (1.4ha) is required for the permanent acquisition of land rights; and - land owned (freehold) by other parties – 687,195m^2 (68.7ha) of which 194,010m² (19.4ha) is required for the permanent acquisition of land rights. The above figures equate to the total area identified in the book of reference for plots subject to compulsory acquisition of all freehold and leasehold interests in land or the grant of rights and imposition of restrictions pursuant to Articles 20 and 23 of the dDCO. The figures provided do not include land which is subject to powers of temporary possession only.
CA2.3.5	Applicant	In the Deadline 6 submission by [redacted] relating to whether the Applicant's Compulsory Acquisition estimate covers the right land, is the understanding of [redacted]' CAH2 position correct ([REP6-138], Section D paragraph 3)? If not, how is it not?	The Deadline 6 submission of [redacted] incorrectly states the position put forward by [redacted] at the CAH2. As confirmed at the hearing, the land acquisition valuation considers all of the relevant land and the Applicant maintains that it has correctly estimated its maximum exposure to potential compulsory acquisition costs. In response to questions at the CAH2 hearing, [redacted] confirmed that the land acquisition valuation did consider "all" of area shaded pink on the plan held up by Counsel on behalf of [redacted], however he did not say that it "only" considered this area. It is therefore not correct to state there is a "gap" in the estimate. The Applicant confirms that all types of compulsory acquisition powers and powers of temporary possession have been taken into account in the valuation and a full breakdown of the costs is contained in paragraph 5.6 of the updated Funding Statement submitted at Deadline 6 (REP6-021).
CA2.3.6	Applicant	During CAH1, the ExA asked the Applicant '*what more can you give me on this*' when referring to funding availability and security for its estimated Compulsory Acquisition costs. The Applicant is now requested to list the additional information provided during the Examination and explain, against each item, why further information on this item cannot be provided to the Examination.	During discussions on agenda item 5.2 at CAH1, [redacted] on behalf of the Applicant agreed to look into whether any reports (or extracts) could be provided which would give the ExA confidence in the Applicant's ability to fund the proposed development. Following the hearings, in the post hearing notes (REP6-063), the Applicant confirmed that it is not in a position to disclose extracts from the confidential reports referred to at the hearings. The Applicant has continued to consider this request and its position in respect of the documents referred to at the hearings is set out below: The documents referred to in CAH1 session 3 transcript are listed below: • 2019 KPMG Report – this report, produced for the purpose of and including information which is as a result of confidential commercial discussions, cannot be submitted into the

Reference	Respondent(s)	Question	Response
			Examination because of the commercially sensitive nature of the material contained in it and the agreed conditions of the engagement with finance providers, being the basis on which they agreed to provide feedback. It is not considered the provision of this on a redacted basis would be of any genuine assistance, as it would be necessary to remove most of the information and therefore not provide evidence which genuinely benefits the decision-making process for the Application. • Any reports produced in that work – all information produced by KPMG is subject to non-disclosure requirements in favour of KPMG. It is therefore not the sole decision of the Applicant as to whether such information can be released into a public forum. The non-disclosure requirements are legitimately provided for so as to protect the commercial position of KPMG and the finance providers engaged with. In any event, for the reasons set out above it is not considered the submission of the reports would be of any genuine assistance to the decision making process in light of the redactions that would need to be made to the information so as to protect the commercial confidentiality of all relevant persons. • Regulatory submissions to both CRE and ofgem – CRE and Ofgem started on 18 December 2020 a Joint Consultation on AQUIND's Exemption Request[1]. Exhibit 1 to the Exemption Request was published as part of the consultation materials. In Exhibit 1 AQUIND provided the national regulatory authorities with the detailed analysis of the Project's benefits, including monetised and non-monetised benefits, also summarised in the Need and Benefits Report (APP-115), Needs and Benefits Addendum (REP1-136) and the second Needs and Benefits Addendum submitted for Deadline 7. Section 1.4.2 also explains the assumptions behind AQUIND's revenues from the use of its capacity by third parties to transmit power between two connected markets (congestion revenues) as well as GB capacity market. The NRAs had also been provided with relevant financial models. It is a recognised practice among regulatory authorities that details of such calculations are not made available publicly as it is commercially sensitive information and may prejudice the interests of a project. Section 4 of the Exemption Request, also published by the NRAs, provides an explanation of AQUIND's financing strategy (section 4.5), that is linked to AQUIND's forecast revenues, with appropriate redactions in the version made available publicly. In particular, AQUIND explained its expectations for the proportion of debt and equity in its total financing package and expected sources of finance, which were also explained in the Funding Statement (APP-023), the updated Funding Statement (REP6-020) and the Applicant's responses to the Examining Authority first Written Questions CA1.3.1 (REP1-091). A number of organisations within each group – debt and equity

[1] Available in English here - https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request

Reference	Respondent(s)	Question	Response
			providers – were included in the investor engagement exercise carried out by KPMG 2019 on the basis of revenue forecasts submitted with the Exemption Request. The Trade and Cooperation agreements (TCA) agreed on December 24, 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the ongoing Exemption Request. Following discussions with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND expects that the NRAs will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request.
CA2.3.7	Applicant	Has any evidence to support the Applicant's financial standing been provided to any relevant regulatory authorities? If so, what? What was the response, if any, from those authorities?	Please see the information in the above responses regarding the Joint Consultation on AQUIND's Exemption Request and information relevant to the financing of the Project contained therein. The information provided to the regulatory authorities, which where appropriate in maintaining confidence is not disclosed into the public domain, is the information sufficient for the purposes of those regulatory authorities performing their regulatory function in accordance with their assigned responsibilities. The financial standing of AQUIND Limited is not a parameter in the assessment under the exemption regime.
CA2.3.8	Applicant	In view of the Deadline 6 submission by [redacted] ([REP6-138], Section E paragraph 29), please clarify the rational basis upon which the Applicant thinks there is a genuine reasonable prospect of the requisite funds becoming available to enable Compulsory Acquisition within the statutory period following the DCO being made.	The Applicant has been engaging with a number of potential investors since the start of the Project, including British and international investment funds and international energy companies, all of whom consider electricity interconnectors to be an attractive type of future investment. The Applicant has invested approximately £35m in the development of the Project as of 30 June 2020 and the residual cost of completing the pre-construction stage of the Project is forecasted at £15m. The Applicant has secured financing from its current investors sufficient to support the Project until the Completion of the development stage, which includes obtaining all necessary permissions and authorisations in the UK and France, including the DCO. As is standard practice for many major infrastructure Projects, post the development stage, the Project is intended to be funded through project finance secured against the operational profits (revenues) of the Project. Following publication of the Planning White Paper in December 2020, appetite for investment in interconnectors is only likely to further increase. The White Paper specifically recognises that "*Interconnection increases the ability of the GB electricity market to trade with other markets, enhances the flexibility of our energy system and has been shown to have clear benefits for*

Reference	Respondent(s)	Question	Response
			decarbonisation". This White Paper provides a clear indication of future policy and approach to meeting the UK energy demands, and that Interconnectors will form a key part of this this. It is therefore anticipated a regulatory environment will be created in the UK to ensure investment in this energy infrastructure is able to be forthcoming, for instance through a further cap and floor regime. In this regard it is noted the Energy White Paper includes a commitment by the Government to "*work with Ofgem, developers and our European partners to realise at least 18GW of interconnector capacity by 2030*". Further information in respect of the Energy White Paper in relation to the Proposed Development is provided within the second Addendum to the Needs and Benefits Report (document reference 7.7.19). The Applicant therefore remains entirely confident that the Project is bankable and that funds will be forthcoming to enable compulsory acquisition within the statutory period following the DCO being made and is of the view there is no rational basis on which to conclude otherwise. Taking into account the fact that (i) the Applicant has had no problems securing financing for the Project to date, (ii) the expected appetite for future investment in interconnectors as part of the green transition is likely to increase, particularly in light of the Energy White Paper; and (iii) it is not unusual for the securing of funding in connection with the delivery of a project to be dependent on the securing of a development consent order, it is considered the Applicant has satisfactorily demonstrated that there is a reasonable prospect of the requisite funds becoming available to enable Compulsory Acquisition within the statutory period following the DCO being made.
CA2.3.9	Applicant	If the Deadline 6 submission by [redacted] relating to Companies House records is correct ([REP6-138], Section E paragraph 35d), explain the reported contrast. If it is not correct, how is there no contrast?	The Deadline 6 submission by [redacted] referred to is not correct. The Companies House records which reveal that there is a protected person with significant control over the Applicant limited company do not "contrast" with the records showing Aquind Energy Limited S.a.r.l to be the sole shareholder and also the parent company of Aquind Limited. A person is considered to have "significant control" over a company if they meet one or more of the specified conditions in relation to the company listed in Part 1 of Schedule 1A of the Companies Act (see section 790C). In summary, a person does not need to own 100% of the shares to have significant control, nor do they need to be an immediate shareholder or named director.
CA2.3.10	Applicant	Please provide the latest accounts for Aquind Energy SARL.	The most recent published accounts for AQUIND Energy Sarl are attached at Appendix 8 to these responses (document 7.4.3.8).
CA2.3.11	Applicant	Who would a claim for Compulsory Acquisition compensation be enforced against should the envisaged funding arrangements for AQUIND not materialise, and is there anything in the dDCO to prevent Compulsory Acquisition or Temporary Possession powers being exercised where	The Undertaker is the person authorised to exercise the CPO Powers, and it would be the Undertaker who a claim for Compulsory Acquisition compensation would be enforced against. Please see the response below to CA 2.3.13 which is relevant to provisions in the DCO to prevent the exercise of Compulsory Acquisition of Temporary Possession powers where funding is not

Reference	Respondent(s)	Question	Response
		funding is not available to the undertaker? (Refer to [REP6-138], Section E paragraph 38.)	available, and which confirms acceptance of an article requiring a guarantee for the CPO costs is confirmed before those powers are exercised.
CA2.3.12	Applicant	Should the ExA decide to include a provision in its recommended DCO along the lines suggested in the Deadline 6 submission by [redacted] relating to the security of Compulsory Acquisition funding ([REP6-138], Section G paragraph 7), what would the Applicant's position on this be and why?	The Applicant confirms it is content to include an article along the lines suggested in the Deadline 6 submission by [redacted]. A new Requirement 26 is included in the dDCO submitted at Deadline 7, as explained further below.
CA2.3.13	Applicant	Should the ExA decide to include any of the following provisions in its recommended DCO along the lines suggested in the Deadline 6 submission by [redacted] relating to the security of Compulsory Acquisition funding ([REP6-138], Schedule 1), what would be the Applicant's position on each of these provisions, and why? (i) Rookery South (Resource Recovery Facility) DCO - enforceable bonded funds located in Jersey ([REP6-138], Section G paragraph 4a). (ii) Able Marine Energy Park DCO - appropriate guarantees to the relevant planning authorities for the payment of compensation under the DCO Compulsory Acquisition provisions before their implementation with any compensation to be met from the Applicant's parent company's existing funds ([REP6-138], Section G paragraph 4e). (iii) Swansea Bay Tidal Generating Station DCO - a mechanism for the provision of security in respect of the payment of compensation under the DCO ([REP6-138], Schedule 1). (iv) Thorpe Marsh Gas Pipeline DCO - a guarantee agreement, Escrow arrangement, bond or other suitable alternative security to cover estimated Compulsory Acquisition costs ([REP6-138], Section B paragraph 21 and Section G paragraph 4b). (v) Manston Airport DCO – a section 120(3) PA 2008 provision that construction cannot commence, and Compulsory Acquisition powers cannot be exercised until a guarantee to pay compensation under the DCO or an alternative form of security Is provided to the satisfaction of the Secretary of State ([REP6-138], Section G paragraph 4c). (vi) Wylfa Newydd (Nuclear Generating Station) dDCO - dDCO articles restricting the exercise of Compulsory Acquisition powers until certain compensation funding	The Applicant has included a guarantee Requirement at Requirement 26, and the Applicant's view is that the Order should be made including this Requirement. The Applicant identifies that the guarantee Requirement included is most closely aligned to that which is contained in the Manston Airport DCO.

Reference	Respondent(s)	Question	Response
		security requirements are met ([REP6-138], Section G paragraph 4d).	
CA2.3.14	Applicant	Would joint bay locations ([REP6-070], Table 2.1) have a wider Compulsory Acquisition width than 2m either side of the installed cable ([REP6-063] paragraph 2.6.1)? If so, what width would it be?	The joint bay locations will not have a wider Compulsory Acquisition width than 2 m either side of the installed cable.
CA2.3.15	Applicant	Is the Applicant intending to reduce further the area of land at Sainsbury's supermarket, Farlington included within the DCO, as suggested in the Deadline 6 submission on behalf of Sainsbury's [REP6-098]?	The Applicant has submitted Change Request 3 at Deadline 7. This contains information in relation to the removal of a number of areas from the Order Limits at Sainsburys as well as the reduction in the class of rights over a proportion of the remaining land within the Order Limits from New Connection Works Rights to Temporary Use.
CA2.3.16	Applicant	What is the Applicant's current position in respect of the Deadline 6 objection from Vodafone and any actions envisaged during the remainder of the Examination [REP6-102]?	The Applicant issued a copy of the proposed protective provisions to Vodafone on 5th October 2020, following technical discussions with Vodafone from early 2020 onwards. Engagement has taken some time to establish despite the Applicant's best efforts. Vodafone responded requesting specific provisions on 21st December 2020 and the Applicant responded confirming that is it amenable to entering into a protective provisions agreement for the protection of Vodafone assets and confirming the terms on which it would be willing to do so on 13 January 2021. The Applicant is now working with Vodafone's appointed solicitors to agree a protective provisions agreement at which point it is expected that the objection would be removed. Should that agreement not be completed for any reasons, the Applicant confirms it is content the protective provisions in included at Part 2 of Schedule 13 to the Order (REP6-015), provide adequate protections for Vodafone's apparatus within the Order limits.
CA2.3.17	Applicant	What is the Applicant's current position in respect of the Deadline 6 objection from Southern Water and any actions envisaged during the remainder of the Examination [REP6-100]?	The objection raised by Southern Water Services appears to be a restatement of their Written Representation from February 2020, albeit not cognisant of that. The Applicant has made numerous attempts to engage with Southern Water Services but to date no contact details have been provided nor has a representative been nominated. If Southern Water Services are able to provide contact details then a meeting can be arranged with the Applicant to discuss any concerns, however the Applicant is not in a position to progress discussions without Southern Water properly engaging. The Applicant is content the protective provisions for the benefit of water and sewerage undertakers apparatus (included at Part 1 of Schedule 13 to the DCO (REP6-015)) provide adequate protections. It is relevant in this regard that the protective provisions align with the form included in many made DCO's.

APPENDIX 4

EXTRACTS FROM THE APPLICANT'S LATEST FUNDING STATEMENT SHOWING FUNDING IS ONLY PROSPECTIVE [REP6-021]

The following extracts from the latest version of the Applicant's Funding Statement (document reference **[REP6-021]**) illustrate why the Applicant's funding case is at best aspirational and based on pure hope:

1. Paragraph 5.1 of **[REP6-021]** states:

   "*The Applicant **continues to work** with its delivery partners to understand the costs of implementing the Order, which includes costs associated with obtaining development consent, construction and land acquisition*".

   The Applicant does not know yet what the *actual* costs could be. It is still working this out. Therefore, if the Applicant does not know how much actual funding could be needed, it cannot confirm to the ExA and SoS there is a reasonable prospect of funding.

2. Paragraph 5.2 of **[REP6-021]** states:

   "*The current cost estimate for the Project is approximately €1.4bn (£1.24bn), **with this estimate being undertaken at beginning of 2019** following two rounds of market engagement with **potential** contractors …*"

   The current cost estimate is over two years' old. Markets (especially in light of the current pandemic and Brexit) change fast and it is questionable whether the Applicant has accurate estimates.

3. Paragraph 6.2 of **[REP6-021]** states:

   "*Post the development stage the Proposed Development, and more broadly the Project, **is to be funded** through project finance …*"

4. Paragraph 6.7 of **[REP6-021]** states:

   "***The Applicant expects** that the financing will be arranged on the basis of project finance debt …*"

5. Paragraph 6.8 of **[REP6-021]** states:

"***It is anticipated that*** *equity capital* ***will be*** *derived from leading international infrastructure funds, and that project debt financing* ***will be*** *secured from various banking sources and/or institutional investors.* ***Possibilities of*** *export financing…"*

6. Paragraph 6.9 of **[REP6-021]** states:

   "*The Applicant has been* ***engaging*** *with a number of* ***potential*** *investors*…."

7. Paragraph 6.10 of **[REP6-021]** states:

   "*Financing for the Project is therefore* ***expected*** *to be subject to* …"

8. Paragraph 9.1 of [REP6-021] states:

   "***It is not anticipated that*** *there will be any funding shortfalls for the Project*…"

   Any developer can anticipate no funding problems. The key point is that they may not be right unless they can produce objective evidence to prove it.

APPENDIX 5

EXTRACTS FROM THE APPLICANT'S EXEMPTION REQUEST SHOWING FUNDING IS ONLY PROSPECTIVE

a) *"**AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do**."*

This is a clear admission from the Applicant that it does not have ANY money to finance any part of this project, including compulsory acquisition costs.

b) *"AQUIND's financing strategy **is to attract** funds to invest in AQUIND interconnector on a project finance basis".*

This makes it clear the funds for the project have not even been identified.

c) "*…AQUIND Interconnector **can be** an attractive business proposition to project-finance providers, **subject to AQUIND being granted appropriate regulatory regimes**, including an Exemption as requested in this Request for Exemption*…"

The reference to "*can be*" gives no certainty. It is a phrase that merely reflects the Applicant's subjective hope. If there is no Exemption, the project is not an attractive business proposition.

d) "*AQUIND is being financed at the development stage by private investments. **This is the riskiest part of financing** and it is hard to attract outside investors*."

We know from the Applicant's Deadline 7 submission however, that this does not mean private investments will be used to fund compulsory acquisition costs. Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference **[REP7-075]**) states (our emphasis added):

"*The Applicant has already confirmed in response to agenda item 5.2 of CAH1 that the **monies secured to date from its current investors do not include the costs associated with compulsory acquisition**, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "**Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition***".

No further information is provided about how land acquisition costs is being funded. Table 4.4. in section 4.5.1 of the Exemption Request refers to the amount of financing Aquind Limited has provided from its own resources, but this amount has been redacted. Aquind Limited's 2019 audited accounts filed at Companies House (attached to its Deadline 6 Funding Statement (document reference **[REP6-021]**) makes no specific mention of these private investments that will cover the 'development stage' which we understand to include compulsory acquistiion. We therefore question the differences between these two documents, and why Aquind Limited needs to hide from the public how much it has invested into the 'development stage' of the project when it would have known it needs to justify its funding position during the DCO Examination.

This sheds **even more doubt**, over whether there is a reasonable prospect of the requisite land acquisition costs becoming available. Paragraph 9 of the Planning Act CPO Guidance states that if a reasonable prospect cannot be demonstrated "*…it will be difficult to show **conclusively** that the compulsory acquisition of land meets the two conditions in section 122 …"*

e) "*AQUIND **will seek** further equity funding and non-recourse project financing from wider **pools of potential** investors…*"
The references to "*will seek*" and "*potential investors*" are expressions of hope and future action, rather than what could actually become available.

f) "*The **target** combination of debt and equity **will be determined** through **ongoing discussions** around the most efficient investment approach with **potential** investors…*"
This shows particular types and sources of financing have not yet been identified, let alone secured in a way that at least creates funding obligations.

g) "*AQUIND **is engaging with** various types of the potential investors…*"
This demonstrates nothing has been secured. There is no degree of certainty. Engagement does not guarantee and not evidence of a reasonable prospect of funding.

h) "*AQUIND **expects** there would be a syndicate of lenders…*"
This is a mere subjective expectation.

i) "*A summary of the **indicative** financing plan is set out at Table 4-4…The final approach to the financing strategy depends on the details of the regulatory arrangement with the NRAs, including the form and the duration of the Exemption*"
This is indicative only. There is no degree of certainty whatsoever, let alone "reasonable prospect".

j) "*The combination of investors **may** include*…[list redacted]"

There is no certainty in "may". The actual list may not eventually include those investors.

k) "*A precise loan strategy will be determined through **further engagement** with debt providers and equity investors, **based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption***."

There is no certainty. There is only engagement at present. The final regulatory regime is unknown.

APPENDIX 6

PLANNING ACT CPO GUIDANCE

Department for Communities and Local Government

Planning Act 2008

Guidance related to procedures for the compulsory acquisition of land

September 2013
Department for Communities and Local Government

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, email contactus@communities.gov.uk or write to us at:

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September 2013

ISBN: 978-1-4098-3996-5

Contents

Introduction

1. The Planning Act 2008 ("the Planning Act") created a new development consent regime for major infrastructure projects[1] in the fields of energy, transport, water, waste water, and waste.

2. This guidance is designed to assist those intending to make an application for a development consent order under the Planning Act where their application seeks authorisation for the compulsory acquisition of land or rights over land[2]. Its aim is to help applicants understand the powers contained in the Planning Act, and how they can be used to best effect. This guidance also advises on the application of the correct procedures and statutory or administrative requirements, to help ensure that the process of dealing with such orders is as fair, straightforward and accurate for all parties as possible.

3. Sections 122 to 134 of the Planning Act set out the main provisions relating to the authorisation of compulsory acquisition of land. These provisions specify the conditions which must be satisfied if a development consent order is to authorise compulsory acquisition, apply the provisions of the Compulsory Purchase Act 1965 (with appropriate modifications), restrict the provision which may be made about compensation in an order, and set out additional requirements which apply in relation to certain special types of land and Crown land.

4. The Planning Act was amended by the Growth and Infrastructure Act 2013. In particular the Growth and Infrastructure Act made changes to the consent and certification requirements (sections 127, 131, 132, 137 and 138 of the Planning Act), and to the circumstances where special parliamentary procedure can be triggered (sections 128, 129, 131 and 132). These changes are reflected in the remainder of this guidance where they are relevant. References to the Planning Act in this guidance should be read as including the amendments made by the Growth and Infrastructure Act.

[1] Major infrastructure projects will be used throughout this guidance to refer to projects that are granted development consent under the Planning Act.

[2] Unless otherwise stated, in the remainder of this guidance document any reference to the compulsory acquisition of land also includes any compulsory acquisition of rights over such land.

Justification for seeking authorisation for compulsory acquisition

5. Applicants seeking authorisation for the compulsory acquisition of land should make appropriate provision for this in their draft development consent order.

6. Section 122 of the Planning Act provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:

- the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132, and

- there is a compelling case in the public interest for the compulsory acquisition.

7. Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below set out some of the factors which the Secretary of State will have regard to in deciding whether or not to include a provision authorising the compulsory acquisition of land in a development consent order.

General considerations

8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

9. The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below).

10. The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.

The purpose for which compulsory acquisition is sought

11. Section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first of these is related to the purpose for which compulsory acquisition is sought. These three purposes are set out in section 122(2):

(i) the land is required for the development to which the development consent relates

For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

(ii) the land is required to facilitate or is incidental to the proposed development.

An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate.

(iii) the land is replacement land which is to be given in exchange under section 131 or 132 of the Planning Act.

This may arise, for example, where land which forms part of an open space or common is to be lost to the scheme, but the applicant does not hold other land in the area which may be suitable to offer in exchange. Again, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose, and that what is proposed is proportionate.

Compelling case in the public interest

12. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

13. For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

Balancing public interest against private loss

14. In determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

15. In practice, there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land.

16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.

Resource implications of the proposed scheme

17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

18. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.

Other matters

19. The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:

- any potential risks or impediments to implementation of the scheme have been properly managed;
- they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

Pre-application

20. A development consent order may only contain a provision authorising compulsory acquisition if one of the conditions set out in section 123(2)–(4) are met. These are that:

- the application for the order included a request for compulsory acquisition of land to be authorised - in which case the proposals will have been subject to pre-application consultation, and the other pre-application and application procedures set out in the Planning Act have been followed; or
- if the application did not include such a request, then the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 have been followed; or
- all those with an interest in the land consent to the inclusion of the provision.

Preparatory work

21. Before an application is made, applicants will need to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Planning Act. In particular, sections 42 and 44 require applicants to consult those with interests in relevant land.

22. Applicants must also ensure that they comply with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the Applications Regulations”). These contain specific requirements where compulsory acquisition is sought, including the following information:

- a statement of reasons (see paragraphs 31-33);

- a statement to explain how the proposals contained in an order which includes authorisation for compulsory acquisition will be funded (see paragraphs 17-18);

- a plan showing the land which would be acquired, including protected land and any proposed replacement land (see Annex C);

- a book of reference (see Annex D).

23. Applicants are expected to seek their own legal and professional advice when preparing an application under the Planning Act. However, where an applicant has concerns or questions about technical points concerning a draft order, including provisions regarding compulsory acquisition, the Planning Inspectorate may be able to provide advice or clarification. Advice is also available to those who wish to make representations in respect of applications for development consent.

Consultation

24. Applicants are required under section 37 of the Planning Act to produce a consultation report alongside their application, which sets out how they have complied with the consultation requirements set out in the Act. Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship with those whose interests are affected, by showing that the applicant is willing to be open and to treat their concerns with respect. It may also help to save time during the examination process by addressing and resolving issues before an application is submitted, and reducing any potential mistrust or fear that can arise in these circumstances.

25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset[3].

[3] It should be noted that in some cases it may be preferable, or necessary, to acquire compulsorily rather than by agreement. In the case of land belonging to and held inalienably by the National Trust, because the Trust has no power to dispose of land so held, the compulsory acquisition of Trust land must be authorised in an order even if the Trust is minded not to oppose the proposals.

26. Applicants should consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan for compulsory acquisition at the same time as conducting negotiations. Making clear during pre-application consultation that compulsory acquisition will, if necessary, be sought in an order will help to make the seriousness of the applicant's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

Use of alternative dispute resolution techniques

27. In the interests of speed and fostering good will, applicants are urged to consider offering full access to alternative dispute resolution techniques for those with concerns about the compulsory acquisition of their land. These should involve a suitably qualified independent third party and should be available throughout the whole of the compulsory acquisition process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed.

28. The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected.

Other means of involving those affected

29. Other actions which applicants should consider initiating during the preparatory stage include:

- providing full information about what the compulsory acquisition process under the Planning Act involves, the rights and duties of those affected and an indicative timetable for the decision making process;

- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

30. The applicant may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)

Statement of Reasons

31. The Applications Regulations require applicants to submit with their application a statement of reasons relating to the compulsory acquisition.

32. The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant's opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights.

33. When serving a compulsory acquisition notice under section 134 of the Planning Act, applicants should also send to each person they are notifying a copy of the statement of reasons and a plan showing how that person's land is affected by compulsory acquisition proposals.

Examination

34. Applications for a development consent order authorising compulsory acquisition will be subject to the same examination procedures as all other applications under the Planning Act. These procedures are set out in the Infrastructure Planning (Examination Procedure) Rules 2010 and in a guidance document[4].

35. Once an application has been accepted for examination, applicants must notify the people who have an interest in the application, and give them a deadline by which they can register their interest and assert their right to make representations about the application to the Planning Inspectorate (section 56 of the Planning Act) providing at least the minimum amount of time prescribed. When the application seeks an order authorising compulsory acquisition, applicants must also notify the Secretary of State of the names and other details of people who are affected (section 59 of the Planning Act).

36. Where the Secretary of State has accepted an application for an order which would authorise the compulsory acquisition of land, section 92 of the Planning Act requires the Secretary of State to hold an oral compulsory acquisition hearing if requested to by an "affected person"[5] within the set deadline. At this hearing each affected person will be able to make oral representations regarding the compulsory acquisition request, subject to the procedures governing the hearing.

[4] See guidance at: https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent

[5] As defined in section 59(5) of the Planning Act.

Authorisation

37. The Secretary of State will decide whether an order can be made granting development consent which authorises the compulsory acquisition of land. Once an order authorising compulsory acquisition has been made, applicants must also ensure that they comply with the notification requirements specified under section 134 of the Planning Act.

Other relevant provisions in the Planning Act

Special categories of land

38. The compulsory acquisition of certain types of land (land held inalienably by the National Trust, land forming part of a common (including a town or village green), open space, or fuel or field garden allotment and statutory undertakers' land) is subject to additional restrictions. These restrictions are described in more detail in Annex A.

Crown land

39. Unlike other land, interests in Crown land cannot generally be compulsorily acquired. Therefore, where such land is required for a major infrastructure project, the land, or an interest in it held by or on behalf of the Crown, will need to be acquired through negotiation and bilateral agreement. Discussions between applicants and the appropriate Crown authority should start as soon as it is clear that such land or interests will be required[6]. As it may be possible that the project as a whole will not get development consent if a voluntary agreement with the Crown authority is not reached, the aim should be to ensure that agreement is in place no later than the time that the application for the project is submitted to the Planning Inspectorate.

40. Section 135 of the Planning Act does allow development consent orders to contain provisions which authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Consent to the acquisition of such an interest must be given by the appropriate Crown authority for the land concerned before the compulsory acquisition provision can be included in a development consent order. Early discussions should be entered into in relation to such land where it is clear that such a provision will be required in the development consent order. Further details on the provisions of section 135 and the need for early agreement on Crown authority consents are set out in Annex B.

[6] Land or interests held by the Crown or a Duchy as defined by section 227(3) and 227(4) of the Planning Act.

Other relevant provisions

41. Applicants should also note that section 125 of the Planning Act applies (with suitable modifications and omissions) the provisions of Part 1 of the Compulsory Purchase Act 1965 to all orders made under the Planning Act which authorise the compulsory acquisition of land (section 125 also makes suitable provision for land in Scotland). These provisions govern the procedures to be followed once the compulsory acquisition of land has been authorised under the Planning Act.

42. An order under the Planning Act may also provide for a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

Decisions

43. Unlike the two stage process which generally operates for compulsory purchase, whereby an order is made by an acquiring authority but then has to be confirmed by a Minister, an order under the Planning Act is made in a single stage and does not have to be confirmed by another authority. Unless it is subject to special parliamentary procedure, an order for development consent under the Planning Act becomes operative when it is made, unless a different coming into force date is provided for in the order itself.

44. Unless the order is subject to legal challenge, the applicant may then implement the compulsory acquisition provisions. Implementation of compulsory acquisition provisions may be by "notice to treat" or, if the order so provides, by "general vesting declaration". A notice to treat must be served within 5 years or within any other period specified in the order.

Further guidance

45. The ODPM circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* contains further general guidance on matters related to compulsory acquisition, including on serving a "notice to treat", making a general vesting declaration, and compensation and other matters[7].

[7] Circular 06/2004 is currently being revised as part of the Government review of planning practice guidance.

Annex A:
Special categories of land

1. Certain special categories of land are subject to additional provisions in the Planning Act where it is proposed that they should be compulsorily acquired. This includes the possibility of any compulsory acquisition provision in the development consent order being subject to special parliamentary procedure.

2. Special parliamentary procedure requires those elements of a development consent order covering the compulsory acquisition of special land to be subject to further scrutiny by Parliament before it can come into effect.

3. Following the amendments to the Planning Act made by the Growth and Infrastructure Act 2013 the compulsory acquisition of the following types of land may, in certain cases, be subject to special parliamentary procedure:

   - Land held by the National Trust inalienably (section 130);
   - Land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132).

   For applications for development consent made after the commencement of the Growth and Infrastructure Act[8], special parliamentary procedure will no longer apply where the land being acquired is held by a local authority or a statutory undertaker. Special parliamentary procedure will still apply, however, to land held by a local authority or statutory undertaker if that land is common land, open space, or fuel or field garden allotments and protected by sections 131 and 132.

National Trust Land

4. An order granting development consent may be subject to special parliamentary procedure to the extent that the order authorises the compulsory acquisition of land held inalienably by the National Trust.

[8] The amendments made by the Growth and Infrastructure Act in respect of special parliamentary procedure will apply to all applications for development consent made on or after 25 June 2013. In addition, certain transitional and savings provisions apply to applications made on or after 19 October 2012 - see http://www.legislation.gov.uk/uksi/2013/1124/made

5. Special parliamentary procedure will be triggered where the National Trust makes a formal objection to compulsory acquisition of that land and that objection is not withdrawn.

Commons (including town or village greens), open space, or fuel or field garden allotments

6. Sections 131 and 132 of the Planning Act make provision for special parliamentary procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common, open space, or fuel or field garden allotment.

7. Special parliamentary procedure will apply in such cases unless the Secretary of State is satisfied that one of the following circumstances applies:

- replacement land has been, or will be, given in exchange for land being compulsorily acquired (sections 131(4) or 132(4));
- the land being compulsorily acquired does not exceed 200 square metres in extent or is required for specified highway works, and the provision of land in exchange is unnecessary in the interests of people entitled to certain rights or the public (sections 131(5) or 132(5));
- for open space only, that replacement land in exchange for open space land being compulsorily acquired is not available, or is available only at a prohibitive cost, and it is strongly in the public interest for the development to proceed sooner than would be likely if special parliamentary procedure were to apply (sections 131(4A) or 132(4A));
- for open space only, if the land, or right over land, is being compulsorily acquired for a temporary purpose (sections 131(4B) or 132(4B)).

The last two of these circumstances were added by the Growth and Infrastructure Act. This Act also removed the separate procedural requirements for issuing a certificate where the Secretary of State is of the view that one of the circumstances described above applies[9]. Instead, these matters will be considered and determined as part of the development consent order application process and recommendations provided to enable the Secretary of State to reach a view.

[9] Subject to the transitional and savings arrangements set out in the Commencement Order: http://www.legislation.gov.uk/uksi/2013/1124/made

Replacement land

8. Where either section 131(4) or 132(4) of the Planning Act applies, the Secretary of State will have regard to such matters as relative size and proximity of the replacement land when compared with the land it is proposed to compulsorily acquire through the development consent order.

9. Land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as replacement land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed replacement land is temporary (e.g. pending development). In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future.

Other provisions

10. Where either section 131(5) or 132(5) of the Planning Act applies, the Secretary of State will need to be satisfied that both criteria are met:

    - the order land (in total) does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and

    - the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

11. In coming to a view as to whether the criteria are met, the Secretary of State will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, the Secretary of State may be reluctant to be satisfied in terms of section 131(5) or 132(5).

Land held by statutory undertakers

12. The Growth and Infrastructure Act repealed sections 128 and 129 of the Planning Act. This removed the possibility of special parliamentary procedure applying to situations where a development consent order provided for the compulsory acquisition of land, or rights over land, held by a statutory undertaker for the purposes of their undertaking.

13. Section 127(2) of the Planning Act places restrictions on the compulsory acquisition of land held by statutory undertakers for the purposes of their undertaking. Where the land falls into the description set out in that section and a statutory undertaker makes a representation, the Secretary of State will need to be satisfied that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

14. Section 127(5) places restrictions on the compulsory acquisition of rights over statutory undertakers' land where new rights over that land are created. If the circumstances in that subsection apply the Secretary of State will need to be satisfied that:

- the rights can be purchased without any serious detriment to the carrying on of the undertaking, and;
- any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

Annex B:
Crown Land

Compulsory acquisition of an interest in Crown land

1. Section 135(1) of the Planning Act enables development consent orders authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Such an interest could include, for example, a lease granted over Crown land to a third party that is not itself the Crown, or an easement or right of way over Crown land granted to such a third party.

2. If provisions to compulsorily acquire such interests are to be included in a development consent order, then the consent of the appropriate Crown authority[10] is needed. It is important that such consent is obtained at the earliest opportunity as the development consent order cannot be made by the Secretary of State until the consent of the Crown authority is in place. The applicant for a project should ensure that any discussions with the Crown authority are started as soon as it is clear that an interest in Crown land will need to be acquired – i.e. before their application is submitted to the Planning Inspectorate for acceptance. The aim should be to ensure that Crown consent is in place before the application for the development consent order is submitted. If consent is not granted by the time an application is submitted, then the applicant should give an indication of when they expect consent to be received. At the very latest, this should be by the time the examination phase of the project is completed. This will allow the Examining Authority's recommendations to the Secretary of State on whether to grant development consent for the project to include a reference to the outcome of the application for Crown consent.

3. Early engagement is vital to ensure that the section 135 consenting requirement does not delay the final decision by the Secretary of State on the development consent order. It is the responsibility of applicants to notify the appropriate Crown authority if a section 135(1) consent is required. Applicants and Crown authorities are expected to do all they reasonably can to ensure an early resolution of any Crown consent needed. If, following notification by the applicant, it is clear that Crown consent is not going to be given, the appropriate Crown authority will aim to notify the applicant of the project before their application is submitted to the Planning Inspectorate.

[10] See section 227 of the Planning Act.

4. Applicants should note that certain Crown authorities may be unable to give general consents for compulsory purchase of interests in Crown land, and applicants should therefore be in a position to identify the specific third party interests which are required to be compulsorily purchased. Drafting in the development consent order may be needed to reflect this and where further specific interests are then identified, further consent would then be required from the appropriate Crown authority.

Other Provisions applying to Crown Land

5. Section 135(2) of the Planning Act allows a development consent order to include any provision which applies "in relation to Crown land or rights benefiting the Crown", but only if the appropriate Crown authority consents to the inclusion of the provision. These provisions could include, for example, a power to use Crown land temporarily for construction or maintenance of a project. “Rights benefiting the Crown” do not include rights that benefit the general public.

6. If the applicant is proposing to include such provisions in a draft development consent order, they should seek early discussions with the relevant Crown authority on whether such consent is likely to be granted before they submit their application to the Planning Inspectorate for acceptance. The Crown authority should also provide an early view on any issues that will need to be resolved if their consent is to be granted. These can then be taken into account by the applicant before they submit their application to the Planning Inspectorate. Any outstanding matters should then be identified in the application so these can be covered during the examination if relevant.

7. Wherever possible, the applicant should seek, and the Crown authority should give, a consent decision before the application is submitted, even if that is only on an “in principle basis” in advance of the examination of the project. The Crown authority should give a final decision on Crown consent by the time the examination of the project is completed. This will ensure that all relevant issues are covered during the examination and that a decision by the Secretary of State on the development consent order is not delayed by the need for Crown authority consent. If, at decision stage, the Secretary of State decides to make changes to the development consent order that go beyond the scope of the earlier Crown consent, then the Crown authority will be consulted and invited to give a final consent. Again decision on that final consent should be given promptly so the final decision on the development consent for the project is not delayed.

Annex C:
Plan which must accompany an application seeking authorisation for compulsory acquisition

1. The Applications Regulations require a land plan (see regulation 5(2)(i)) to identify any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land.

2. Applicants should ensure that references to the plan in the draft order and other documentation relating to the application correspond exactly with headings on the plan itself.

3. All land to be compulsorily acquired, and any replacement land, should be clearly identified on the plan by colouring or by any other method at the discretion of the applicant. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and replacement land is shown green. Where black-and-white copies are used they must still provide clear identification of the land to be compulsorily acquired and, where appropriate, any replacement land (e.g. by suitable shading or hatching).

4. The use of a sufficiently large scale, Ordnance Survey based map is important. The Applications Regulations specifies that maps should be on a scale no smaller than 1/2500. However, experience has shown that for compulsory acquisition a map of this scale is only suitable for rural areas. In general, the map scale should not be smaller than 1/1250, and for land in a densely populated urban area, the scale should be at least 1/500 and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. Where a plan requires three or more separate sheets, they should be bound together, and a key plan should be provided showing how the various sheets are interrelated.

5. Where it is necessary to have more than one sheet, appropriate references must be made to each of them in the text of the draft order so that there is no doubt that they are all related to the order. If it is necessary to include a key plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the plan itself, and not the key plan which identifies the boundaries of the land to be acquired.

6. It is also important that the plan should show such details as are necessary to relate it to the description of each parcel of land (including land affected by temporary occupation) described in the book of reference. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

7. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the book of reference. Land which is delineated on the map but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

8. There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the Secretary of State may refuse to make the order until this is made clear.

9. Where an applicant seeks authorisation for compulsory acquisition of additional land not included in the original application, and has not therefore been able to comply with the Applications Regulations, they must either secure the consent of all those with an interest in the land in question or observe the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

Annex D:
The Book of Reference

1. The book of reference is defined in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It comprises a book, in five Parts, together with any relevant plan.

2. Part 1 should contain the names and addresses for service of each person within Categories 1 and 2 in respect of any land which it is proposed shall be subject to:

   (i) powers of compulsory acquisition;

   (ii) rights to use land, including the right to attach brackets or other equipment to buildings; or

   (iii) rights to carry out protective works to buildings;

   Category 1 persons are the owners, lessees, tenants, or occupiers of land. Category 2 persons are those who have an interest in the land or who have the power to sell or convey the land or release the land.

3. Part 2 should contain the names and addresses for service of each person within Category 3. These are persons who might be entitled to make a relevant claim if the development consent order were to be made and fully implemented (section 57(4) of the Planning Act).

4. Part 3 should contain the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) where these would be extinguished, suspended or interfered with as a result of the provisions in the development consent order for which an application is being made.

5. Part 4 should specify the owner of any Crown interest in the land which it is proposed to use for the purposes of the development consent order for which an application is being made.

6. Part 5 should specify land the acquisition of which could be subject to special parliamentary procedure, or which is special category land or which is replacement land for land being compulsorily acquired.

7. The descriptions of each plot of land included in parts 1-5 of the book of reference where it is intended that all or part of the proposed development and works shall be carried out, should include the area in square metres of each plot.

8. Applicants will need to be aware that each part in the book of reference serves a different purpose and persons may need to be identified in one or more parts. For example, a person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within categories 1 or 2 as set out in section 57 of the Planning Act. Part 4 should specify the owner of any Crown interest in land it is proposed to be used for the purposes of the development consent order. Some (although not necessarily all) of these Crown interests may also be identified in the descriptions of land contained in Part 1 which will be subject to powers of compulsory acquisition, rights to use land or rights to carry out protective works to buildings.

9. Applicants should not add any further (non-prescribed) parts to a book of reference, for example schedules of statutory undertakers or other like bodies having or possibly having a right to keep equipment on, in or over the land within the order limits. 'Dashes' or other ambiguous descriptions should be avoided. Diligent inquiry should enable applicants to know whether or not such persons have an interest or right in land for the purposes of section 57 and if they are known to applicants the names and addresses should be contained in the relevant part(s) of the book of reference.

10. Where it is proposed to create and acquire new rights compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order.

APPENDIX 7

EXPERT EVIDENCE FROM HENRY BRICE OF IAN JUDD & PARTNERS

Statement in relation to the Compulsory Acquisition Compensation Valuation Approach Undertaken

In relation to the Aquind Interconnector Scheme

Prepared on behalf of Messrs G & P Carpenter

In relation to Little Denmead Farm

1. Executive Summary

1.1. Ian Judd and Partners have been instructed as Professional Agents and Advisors for Messrs G & P Carpenter, to provide valuation advise in relation to the DCO Examination, a Private Agreement and Compulsory Purchase advice in relation to the Aquind Interconnector Project. Ian Judd and Partners are a firm of Rural Chartered Surveyors, Land Agents and Values working across South Hampshire and have a specialist knowledge of the rural property and land market in South Hampshire.

1.2. The Applicants Agents, Mr Alan O'Sullivan of Avison Young have been in communication with the landowners since 2017. After months of request, he produced a breakdown of how the Applicant calculated its Compulsory Purchase Value calculations in relation to Little Denmead Farm on 18th May 2020.

1.3. In our opinion, based on open market comparable sales evidence, the Applicants CPO calculations were in the region of two thirds less than our client may achieve under CPO. A detailed letter, providing comparable evidence and justification was sent to Mr O'Sullivan in 23rd June 2020. We have not received any response to that letter as yet and the Applicant has not entered any form of discussions on compulsory purchase compensation valuation since.

1.4. The Applicant has made little attempt to explore "all reasonable alternatives" to the use of compulsory acquisition powers in relation to the Owners' Property. The Applicant has instead been paying lip service issuing revised draft Heads of Terms to the Owners that appear in isolation to be terms indicating some kind of negotiation process on foot whereas in fact each draft is simply based on a different scheme and no iterative discussions have occurred by which to narrow the matters between the parties.

1.5. The Applicant has been acting unreasonably by placing pressure on the Owners to sell and grant rights over their land at an amount that is considerably less than the amount of compulsory acquisition compensation Ian Judd & Partners calculate would be due to the Owners, even though the Owners could not accept a sum less than the compensation scheme provides for.

1.6. Department for Communities and Local Government Guidance related to Procedure for the compulsory acquisition of land (DCLG Guidance) paragraph 25 requires: "Applicants should seek to acquire land by negotiation wherever practicable. As a

general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail."

1.7. Paragraph 30 of the DCLG Guidance provides that "The applicant may offer to alleviate concerns about future compensation entitlement by entering into agreement with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)"

1.8. The basis overriding principle of compulsory purchase compensation is for a landowner to be in an equivalent position after a scheme as they were before the scheme (in a no scheme world). **For the Acquiring Authority to assess the depreciation it is a fundamental principle to have a clear understanding of the property value before the scheme**.

1.9. It would therefore be common for the Acquiring Authority (in this case AQUIND Limited) to undertake a **market valuation of the entire property** on an assumption of no scheme world and a further valuation on the assumption of post scheme world. At no point throughout the project has a qualified or experience Agricultural Valuer, RICS Registered Valuer or Chartered Surveyor, who has experience in the Hampshire rural property market undertaken a formal value of Little Denmead Farm on the Applicant's behalf.

1.10. It is clear from discussion with Mr O'Sullivan that he has no previous experience or knowledge of the South Hampshire Land Market. Due to this we prepared an in-depth letter to Mr O'Sullivan in June 2020, detailing our opinion of freehold land value of Little Denmead Farm at that time in a "no scheme world" and the impact the scheme was likely to have on the residual value of the property, detailing documents of injurious affection and severance on the farm. This was sent to Mr O'Sullivan to address the Applicant's miscalculation (and undervaluation) of the CPO compensation due in relation to Little Denmead Farm.

1.11. **How is the Applicant supposed to provide an accurate value of the existing use of the land and the depreciation it will have on the retained land, if they have not undertaken a value of its existing use**?

1.12. Despite repeated claims within the submitted documents, where the Applicant claim to be in negotiations, they have not made any contact or addressed any of the points they say they should have, and their Agent, refuses to discuss values with Ian Judd & Partners.

1.13. As experts in rural property values in South Hampshire, we have fundamental concerns that the Applicant has significantly undervalued the properties affected by this scheme and as a result have underestimated the total Land Acquisition Costs Estimate within Section 5 of the Funding Statement, document reference **[REP6-021]**).

1.14. It is further evidenced that the Applicant has under-estimated the true costs of purchasing their desired rights. To date, 96% of the affected Landowners and

Occupiers have not agreed to the private agreement terms put forward by the Applicant. This is clear evidence that the remuneration being offered to the affected Landowners and Occupiers is not deemed sufficient in 96% of cases.

2. Background

2.1. The Applicant and the Landowners have the ability to reach a private agreement on mutually agreeable terms throughout the Development Consent Order (DCO) application.

2.2. If parties fail to reach a private agreement and if the Applicant is successful in their DCO application and the Secretary of State awards Compulsory Purchase Power (CPO), the Applicant can then serve a Compulsory Purchase Notice (CPN) on the Landowners, taking the land by compulsion and refer the matter of valuation to the First Tier Tribunal to assess the compensation payable.

2.3. Until the Applicant has their DCO approved, they have CPO powers awarded and they have served the CPN, the Applicant does not have Compulsory Powers to Acquire.

2.4. If the Applicant intends to reach any agreement with the Landowners to purchase the freehold land by agreement, then the purchase price is at Market Value prior to the awarding of CPO Powers.

2.5. The International Valuation Standards Council defines Market Value as "*The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties have each acted knowledgeably, prudently and without compulsion*"

2.6. In assessing Market Value, a Valuer would assess comparable sales evidence. The valuation of any asset relies on the well-established economic principle of substitution. This states that the buyer of an item would not pay more for it than the cost of acquiring a satisfactory substitute. Therefore, a person assessing the price to pay for a particular item will normally look to the price achieved for similar items in the market (the comparable evidence) and make a bid accordingly.

2.7. Whilst the rural property market in South East Hampshire has large variation and the volume of land publicly marketed is relatively low, Ian Judd and Partners are a local firm of rural Chartered Surveyors and Land Agents, who specialise in the marketing and valuation of rural properties in South Hampshire.

3. Principle of Compulsory Purchase

3.1. We are aware of the modifications of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants under Schedule 9 of the Draft DCO **[REP-7-014].** We do not believe they alter the CPO compensation provision for our clients.

3.2. The Compulsory Purchase Act 1965 (CPA 1965) provides a code of law that spells out the powers of the acquiring authority. The Acquisition of Land Act 1981 (ALA 1981) sets out the procedures for compulsory acquisition.

3.3. The Land Compensation Act 1961 (LCA 1961) Section 5 sets out the principles of assessing compensation for Compulsory Purchase

Rule 1: No allowance shall be made on account of the acquisition being compulsory

Rule 2: The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market, by a willing seller, might be expected to realise

Rule 3: The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers:

Rule 4: Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account:

Rule 5: Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Upper Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

Rule 6: The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

3.4. The fundamental principle of the compensation code is that of equivalence, for the Landowner to be put in the same position after a scheme as they are prior to the scheme.

3.5. The Office of the Deputy Prime Minster Compulsory Purchase and Compensation guidance Booklet 3, Compensation to Agricultural Owners and Occupiers, identifies the Heads of Claim for compensation, which will be considered by the Tribunal in assessing the compensation due under compulsory purchase

3.5.1. Land/Interest Taken- The amount which the interest in land might be expected to realise if sold on the open market by a willing seller, as set out in Section 5 Rule 2 of The Land Compensation Act 1961.

3.5.2. Compensation for Severance and/or Injurious Affection as set out in Section 7 Compulsory Purchase Act 1965.

3.5.3. Loss Payments, Land Compensation Act 1973

3.5.4. Compensation for disturbance and other losses not directly based on the value of the land - Land Compensation Act 1961 Section 5 Rule 5.

3.5.5. Legal and Professional Fees- The reasonable surveyors fees incurred in preparing and negotiating a compensation settlement together with solicitors' fees for any conveyancing are normally paid by the acquiring Authority.

4. Compulsory Purchase of Land Taken at Little Denmead Farm

4.1. Land Taken

4.1.1. The Applicant intends to acquire the Freehold Interest 31.80 acres of Little Denmead Farm. In assessing the freehold Market Value (MV), a Valuer would examine sales evidence of comparable properties in the locality.

4.1.2. Whilst there is relatively little comparable land been sold locally. As Rural Chartered Surveyors and Land Agents in South Hampshire, Ian Judd and Partners have an extensive knowledge of local sales evidence. This information has been shared with The Applicant's Agent and it is clear from discussions that the Applicant's Agent has no previous experience in the rural land valuation or any knowledge or evidence of comparable land sales.

4.1.3. The Carpenter Brothers did sell part of Little Denmead Farm in 2013 at £40,000/acre. This is the most local land sale, however, this was some 7 years ago. There is a range of sales evidence in the locality to support values in that region and higher.

4.1.4. The Applicant's approach to valuation of the land taken, is to use value from Carter Jonas Farmland Market Update, Rural Research bulletin Q2 2019. This is fundamentally floored as it does not take into consideration the scale of the holding, the location of the holding or the infrastructure of on a holding. The Farmland Market update focuses on large scale commercial agricultural and estates, whereby the values per acre are reduced due to the scale of the holding sold. It could be viable that 1500 acres of open permanent pasture down land, may achieve £12,000 acres however Little Denmead Farm is a small-scale farm with a range of dwellings and outbuildings and offers an attractive residential small holding, which if marketed would be in demand to a range of purchasers, not only commercial large scale land owners.

4.1.5. The Applicants have not taken into account any actual local market evidence when assessing there CPO calculations. They do not understand the Hampshire rural property market and as such in our opinion have made fundamental errors in assessing the likely levels of compensation on this scheme.

4.1.6. Having practised in South Hampshire for the past 6 years, I can confirm that Ian Judd and Partners have not sold any pasture land for less than £15,000 per acre and the average sale of smaller parcels of pasture land in recent years is in the region of £30,000 per acre.

4.2. **Permanent Rights**

4.2.1. In addition to the Freehold land taken the Applicant intends to take permanent rights on other land retained by the Landowners, principally Landscaping Rights, which defined in the Book of Reference Document Ref 4.3, which significantly limits the use and value of the retained land.

4.2.2. The restrictions placed on the 3.66 acres of Stone Acre Copse and 1.30 acres of field edges and hedgerows has a significant restriction on activities that can take place on that land. As such a valuer would assess the deprecation in the freehold value on that land.

4.2.3. The Applicants approach to assessing the value of land rights is to offer 50% of freehold land values, however the freehold land value put forward by the Applicant is significantly less than open market value. The restrictions placed on the land, make the land completely unusable in anyway and in our opinion the depreciation in the open market value is nearer 80-90% of the open market value.

4.3. **Severance**

4.3.1. Damage due to severance arises when the land acquired contributes to the value of the retained land and the loss of the land acquired reduces the value of the land retained. The measure of compensation in respect of severance is the depreciation in the value of the claimant's retained interest arising from the severing of the land acquired from the original whole.

4.3.2. In this instance the Landowners have land severed to the north of the proposed access track. There are inevitably going to be additional costs in managing the land severed.

4.3.3. A list of examples of Severance at Little Denmead Farm is listed in **Appendix 1.**

4.3.4. Although there is proposed to be a haul road splitting the farm, the Applicant has stated that there is no severance payment. For the reasons stated in Appendix 1, there is a clear and obvious depreciation in the holding, by having 5.25 acres of pasture land and 4.24 acres of woodland disconnected from the main holding. We completely disagree with the Applicant's approach that there is no severance. This clearly has not been allowed for in the Applicants funding statement.

4.4. **Injurious Affection**

4.4.1. Injurious Affection (IA) is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring Authority for the Scheme.

4.4.2. It is the impact of the whole of the proposed Scheme that is to be considered, not just the effect on the area acquired.

4.4.3. The value of Little Denmead Farmhouse, Little Denmead Farm Cottage, Little Denmead Farm Caravan, the traditional and modern agricultural buildings, stables and the retained land are all greatly impacted and depreciated as a result of the Applicant's proposal.

4.4.4. A list of examples of Injurious Affection at Little Denmead Farm is Listed in **Appendix 1.**

4.4.5. Again, the Applicant has stated there is no depreciation, whatsoever to the retained land, Little Denmead Farm House, Little Denmead Caravan, the stables or buildings and a 3% deduction in Little Denmead Cottage. For the reasons stated in Appendix 1, it is obscene and unreasonable that the Applicant does not believe there to be any Injurious Affection on the retained property at Little Denmead Farm. It is clear to us, as qualified Valuers that there is depreciation. Again, it is clear that the Applicant has not allowed for these expenses in the funding statement.

4.5. Disturbance and Loss

4.5.1. In addition to the above capital loses, the landowners will have additional costs and disturbances as a result of the Scheme. These losses will be both temporary and permanent.

4.5.2. These losses include the business losses as a result of having land and rights taken and the costs this puts on the Landowners.

4.5.3. In addition, the landowners will have relocation costs such as the costs of stamp duty, legal and agents' fees on replacement land.

4.5.4. A list of Examples of Disturbance and losses at Little Denmead Farm is in **Appendix 1**.

4.5.5. The Applicant have to date made no attempt to calculate the losses which are anticipated to be incurred at Little Denmead Farm.

4.6. Statutory Loss Payments

4.6.1. In additional to all the above losses, the landowners are also entitled to Statutory Loss Payments, being Basic Loss Payment and Occupiers Loss Payment together amounting to 10% of the claim, capped at £100,000.

5. The Applicant Approach to Valuation

5.1. At this time the Applicant has not been awarded Compulsory Purchase Powers and until the Secretary of State awards these powers as part of the DCO, the Applicant cannot enforce any agreement on the Landowners.

5.2. However, the Applicant's Agent has insisted throughout the process that the Applicant will only offer Existing Use Values through the limited Private Agreement discussions.

5.3. The Applicant has no intention of using the land for agricultural purposes and are a private limited company, who are undertaking this Scheme solely for commercial gains.

5.4. As such, until the Applicant is awarded CPO powers, the Applicant should be negotiating with the landowners on commercial terms to find a commercially mutual term. They should not be relying on their Compulsory Purchase Powers solely to buy the land at a discounted rate.

5.5. To date the Applicant has not in any way negotiated on commercial terms. In fact, they have not negotiated at all. The terms that they have put forward have been significantly less than what would, in our opinion be achieved under CPO.

5.6. At no point during the 5 years that this Scheme has been on-going has a qualified Chartered Surveyor or Agricultural Valuer undertaken a full inspection of the properties at Little Denmead Farm on the Applicant's behalf.

5.7. How is the Applicant going to be able to negotiate and agree a purchase by agreement, if they do not know the value of Little Denmead Farm before the scheme takes place?

5.8. Throughout the DCO process, it has been clear that the Applicant has no intention of reaching a private agreement with the landowners. They are willing and hoping to rely solely on Compulsory Purchase.

5.9. To date in the Terms offer to the Landowners, The Applicant has made **no Allowance for Severance, Injurious Affection or Disturbance and Loss or Statutory Payments**. The Freehold Land payments have been significantly less than comparable land sales evidence for the local area.

5.10. As a result, The Applicant Terms for a Private Agreement are significantly less than we would expect under CPO and the Landowners have been put in a position by The Applicant, whereby they have been forced to object to the DCO and incur significant costs to put their case forward.

5.11. It is as a result of the Landowners not been offered terms which they could possibly agree to, that they have been forced to fight and object to this DCO, at every stage and as a result of they have incurred substantial costs to fight for a fair value for their homes.

5.12. The Applicant has only been seeking a five-year Option Agreement, to purchase the land and rights they require. They are unwilling to enter into a conditional contract on the granting of the DCO. We can only assume that this is because the Applicant does not have the funds available at this time to purchase the Landowner's property.

6. Land Registry Valuations

6.1. Mr O'Sullivan, the Applicant's Agent has based his value on a figure taken from the HM Land Registry Title Document. The figure stated on HM Land Registry document, in this case, is not directly related to the market value but has been supplied to set the fee scale of HM Land Registry charges to register the land. The provision to supply a figure to HM Land Registry at the time of the ownership change is based upon the fee tiering, being in excess of £1m, the highest tier on the Fee Charge.

6.2. The figure does not have any consideration for the occupation or other restrictions placed on the property at that time. At that time no formal valuation was undertaken and clearly the property has not been publicly marketed for three generations, however the Land Registry charge a fee based on the value of the land. These fees are tiered, and the highest tier is £1m and over. As a result, the Land Registry recorded a figure of £1.08m. This was not a formal valuation and clearly should not be relied upon.

6.3. The HM Land Registry cannot be regarded as a valuation. HM Land Registry Practice Guide 7, Section 9- Reliability of Information clearly states that value shown may not represent the full market value of the property and the Land Registry do not verify the figures. Given that the full fee was paid to the Land Registry this value is not relevant.

6.4. It is surprising and most concerning that in light of the Land Registry's statement, Mr O'Sullivan on behalf of the Applicant has based his assessment of valuations for compulsory acquisition compensation on a figure submitted for land registry fees and not on comparable market evidence. Whilst Mr O'Sullivan is not a Chartered Surveyor or an RICS Registered Valuer or Fellow of the Association of Agricultural Value, I regard this as a fundamental error to rely on the Land Registry figure. I therefore consider that the Applicant's calculation of CPO compensation relating to Little Denmead Farm is therefore wrong and grossly undervalued.

6.5. In the absence of any other evidence, it is assumed that Mr O'Sullivan has considered the same approach to other evidence. I myself as a Chartered Surveyor, RICS Registered Valuer and Fellow of Association of Agricultural Valuers, am surprised that Mr O'Sullivan on behalf of the Applicant had decided on such an approach to land valuation, with no consideration to comparable market evidence.

7. Funding Statement

7.1. The Applicant helpfully produced a Funding Statement as part of its application, and second iteration of the Funding Statement at Deadline 6 of the Examination, which includes at paragraph 5.6 a table of Land Acquisition costs, which totals (including fees) £4,970,755.54

7.2. On the basis of the Applicants agents CPO calculations, Aquind have assessed the land acquisition costs of Little Denmead Farm at £369,675, being 28.95% of the £1,277,000 allocated for land acquisition.

7.3. On our own assessment of land acquisition costs under the CPO calculation submitted to the Applicants agent, it is our assessment that the value for Land Acquisition costs at Little Denmead Farm, based on market evidence **is £751,800**, some 103% increase. **On this assumption the Applicant's Total Land Acquisition cost within section 5 the funding statement should be in the region of £2,592,310**. I am not, but Mr Stott is, advising on the separate compensation values for commercial telecoms.

7.4. Given that the acquisition of rights and restrictions and injurious affection are all based on market land values, which the Applicants agent, has in our opinion, significantly under valved, it is a fair assumption that the our CPO compensation total estimate is over twice the amount stated in the Applicant's Deadline 6 Funding Statement **[REP6-021],** and this should be verified and altered within the Funding Statement

8. Status of Negotiations with Landowners and Occupiers

8.1. As stated in paragraph 1.6 of this report, the acquiring authority (AQUIND Limited) should seek to acquire land by negotiation wherever practical and compulsion should only be sought if attempts fail.

8.2. To date this has not been the case. Communication from the Applicant's Agent has been very limited. Whenever the Applicant's Agent has communicated with us, they have applied pressure on the Landowners to accept an offer atless than the amount of CPO compensation. At every stage, whenever the Landowners have stated to the Applicant's Agent that the voluntary agreement figure is less than CPO compensation, the Applicant's Agent would threaten compulsory acquisition if the Landowners do not relent and accept what is on offer.

8.3. The Statement of Reasons, Document 4.1 amended at Deadline 7 ([**REP7-018**]), is correct that multiple Heads of Terms have been issued by the Applicants Agent. However the Statement of Reasons is misleading, as other than issuing Heads of Terms, at no point has the Applicant entered into any form of open discussion on the Heads of Terms with us or with the Landowners. The tone the Applicant's Agent has been "*take it or CPO powers*". With this constant lack of communication and strongarming of the Landowners, I am unclear how the Applicant can claim *"is still hopeful that the necessary land and rights ca be acquired by voluntary agreement"* if they are unwilling to enter any form of discussion with us.

8.4. Having reviewed the Table in Section 2 of Appendix C of the Statement of Reasons [REP7-018], I can see that after years of alleged negotiations with affected Landowners and Occupiers, the Applicant has not completed a single option agreement. Here is my own summary of the Applicant's status of private negotiations, based on the information contained in the Table in Section 2 of Appendix C of the Statement of Reasons [REP7-018]:

Aquinds Stated Negotiating Status	Number of Landowners and Occupiers
Hopeful that necessary land and rights can be acquired by voluntary agreement	**25**
Confident that necessary land and rights can be acquired by voluntary agreement	**22**
Head of Terms Agreed	**2**
No Engagement	**2**
Total	**51**

8.5. The Applicant has not defined the difference between "hopeful" and "confident", but given the time frame, it is fundamentally clear from this table, that to date 96% of Landowners have not agreed to the Applicant's proposed Heads of Terms and as such the Applicant has clearly not complied with Government Guidance to "seek to acquire land by negotiation wherever practicable".

8.6. Furthermore, given that Aquind are "hopeful" of agreeing terms with Messrs Carpenters, I am surprised this can be claimed given the Applicant has been wholly unwilling to enter into any discussion on the draft Heads of Terms. It is a fair assumption that the Applicant has not fully entered into any real discussion with other Landowners.

8.7. I act for several other affected landowners on this scheme and I can confirm that this is the case.

8.8. The principle fact is that the monetary term on offer is significantly less than the Carpenters would receive under CPO provisions. Aquind have mis-calculated the value of the land and rights, and as a result 96% of the Landowners have been unable to reach an agreement.

8.9. It can be a fair assumption that 96% of Landowners affected have a similar view to my client and Aquind have essentially misjudged the property market and therefore it is fair to assume the Total Land Acquisition costs within the Funding Statement is significantly less than actual costs/ value of the Total Land Acquisition.

9. Stone Acre Copse

9.1. At an early meeting with the Applicant's agent, he made it clear that the Applicant did not want acquire the copse at all, as this would attract additional management costs for the developer. It was the Applicant's view that the copse is an ancient woodland and the Landowners cannot remove it, therefore why would the Applicant want to pay for it. This approach was supported by the Landowners as the copse has special sentiment for them as it is the last resting place of their Father's ashes.

9.2. Somewhat surprisingly in early 2021 the Applicant, without informing the Landowners, revised its plans and now want to acquire rights over this special place to manage the woodland, which they previously expressed they did not want or

need. This special area is of significant importance to the landowners and do not wish for it to be altered by the Applicant.

10. Conclusion

10.1. The Landowners aim to reach a private agreement with the Applicant.

10.2. The Landowners are farmers and Little Denmead Farm is their principal landholding. It has been their family home for three generations. They did not want or ask for The Applicant to take their land. They want to be left in a position whereby they can purchase replacement land to overcome the land area that they are losing.

10.3. The Applicant has been unwilling to enter any form of negotiations with the Landowners or their representatives, they have refused to meet the Landowners reasonable legal and professional fees associated with a Private Agreement.

10.4. It is clear that the Applicant has no interest or intention of reaching any form of agreement with the landowners and they are intent on relying solely on the Compulsory Purchase Powers, if granted by the Secretary of State. A clear breach of the DCLG Guidance.

10.5. Having assessed the CPO calculations that the Applicant has supplied for our client's property, we have significant and underlying concerns, which have been raised with the Applicant's Agent, that the Applicant has made fundamental errors when assessing the Market Value of Little Denmead Farm and as a result have made intrinsic errors in assessing the compensation that would be due under CPO.

10.6. We have estimated that true level of CPO compensation due under CPO for Little Denmead Farm could be **3 times more than the Applicant's CPO calculations**.

10.7. Whilst we cannot comment on other landowners, as we have not seen the Applicant's full CPO calculations and we have not undertaken "no scheme world" market values, we have serious concerns that the estimated land acquisition costs are significantly less than would be required and using Little Denmead Farm as a basis could be 300% less than what would be required to purchase the land and rights under CPO powers.

10.8. If the Applicant has not undertaken market valuations, prepared by qualified Chartered Surveyors, RICS Registered Valuers and fellows of the Association of Agricultural Valuers with the relevant experience and knowledge of the local property market of each and every property which is affected by the scheme, it is not going to be possible for the Applicant to put forward accurate estimates of the CPO compensation due.

10.9. I fear that £4,970,775.54 estimated of total land costs, is a fabricated figure based on incorrect evidence and a gross underestimate of the true cost.

Henry Brice

On behalf of Ian Judd + Partners LLP

Appendix 1

Examples of the impact of the Severances at Little Denmead Farm

1. **Management of Livestock**

    a. The additional management of livestock as a result of the The Applicant road through the farm
    b. the additional cost of having to move livestock safely and the additional labour requirements to complete this task.

2. **Safety of Crossing the Road**

    a. During the construction period, estimated to be 3 years, there will be high volumes of transport along the roadway. The landowners will need to cross this traffic with stock, machinery and people and there would be increased risk to their safety. A manually operated signalling system would help reduce such risks.

3. **Services**

    a. There will be a need to have services to the north of the highway, including water and electricity. The Applicant have not made any allowance for this.

Examples of the Impacts of Injurious Affection at Little Denmead Farm

1. **Buyers Perception**
   A bidder's first impression of a property is vitally important. The approach to Little Denmead Farm from the south will have a 23 metre plus industrial building on the immediate skyline. It will considerably change the landscape character of the surrounding area. It is not possible to screen a building of this height and scale. One of the most unique features of this property is the remote rural location. The overbearing presence of this structure will deter purchasers.

2. **Loss of Quiet enjoyment**
   Excluding years of construction, the property will lose it peaceful nature, it will be constantly being over-looked by workmen on-site.

3. **Visual amenity**
   The visual impact and close proximity of this giant structure being immediately adjacent to the property, will impact on a purchaser's perceptions of the woodland. One of the principal reasons of purchasing small woodland is for privacy, to relax in peace and quiet and get back to nature.

   Arguably the single biggest impact is the fact that there is a building 200m x 200m x 23m+ high immediately on the boundary, plus the telecommunications buildings and other infrastructure. The buildings will completely change the character of the area

from a quiet rural landscape on the edge of the South Downs National Park to an industrial eye sore, visible for miles.

4. Noise

Not only the noise from the fans/cooling system and additional buzz from the transformers, but from workmen on site, vehicle movements 24 hours day, which would reduce the peaceful environment and enjoyment of the land the site will generate constant noise, whether from cooling fans, transformers, traffic, or people on site. This will impact on the enjoyment of the land; the noise or movement could also potentially disturb livestock.

11. Dust

During the construction period considerable quantities of dust will be generated. Post construction dust will also occur from the road and site. This dust will settle on the grass, reducing photosynthesis and growth rate of the grass, reducing yield, income, and value of the grass land.

12. Impact on Sporting Rights

The remaining land is insufficient to support the sporting potential of the land, whether rough shooting, game shooting or hunting, the impact is severe. The noise and disturbance will also have a negative impact on game and wildlife.

13. Potential Loss of Wildlife Due to Lighting:

The impact of the noise, light and activity could affect the wildlife, including the protected species such as owls which are less likely to roost in the woodland. This loss of wildlife could impact on the woodland's appeal and value.

14. Light Pollution

The The Applicant site will be lit with work lights, 24 hours a day, this light pollution will have an impact on the stock grazing in the fields.

15. Field Size

The retained fields have significantly reduced field sizes, with no field greater than 3 acres. This has a significant impact on the workability of the land and adds significant costs to farming operations. It increases the headland, turning areas and field corners reducing the grass yield, increasing the cost of management and significantly reduces the value and usefulness of the field parcels.

16. Field Shape

The proposed land take leaves irregular field shapes, which are increasingly difficult to work with agricultural machinery. It increases the cost of field management and field operations, which results in more wasted land, field corners, turning areas and reduces the productive yield from the field.

17. Drainage impact:

There is to be a considerable volume of earth moved within The Applicant's site to construct the Inter-connecter and there will be a large, consolidated area. The surface water from this area is designed to drain into the holding ponds, which then drain onto our client's retained land. This could result in increased flooding/waterlogging of the land and reduce crop yields. The additional water will result in increased ditch

maintenance/silting of the retained ditches at the landowner's expense. The bunding of a road through the land will impact on the land drainage and could cause water logging above the track, reducing yield further. There is the risk of pollution through oil leaks, soil erosion and damage to soil structure.

18. **Loss of privacy**
The access track runs through the centre of the Farm and overlooks every field. The Applicant employees will use the access 24 hours a day, 7 days a week. Currently there are no public rights of way over the land. This loss of privacy will have a significant impact on the enjoyment and value of the retained land.

19. **Loss of Rights Re: Hedgerows**
The Applicant propose to take rights to access the retained land to maintain the hedgerows. They propose to take access without notice at any time, travel across the entirety of the retained land to implement these rights. Having these rights in perpetuity has a significant impact on the value of the retained land.

20. **Fencing**
There are significantly more fences which will have to be maintained in perpetuity at the cost of the retained landowner. This will also have significant costs, modern fencing stakes only last 15 years, after which time the fences will have to be replaced.

21. **Livestock Worrying**
There is a real risk of livestock worrying caused by activities on the site, loud noises, or traffic along the road or by dogs brought onto site.

22. **Loss of Riding**
Currently the applicant benefits from a circular riding route along the existing stone track, through the woodland and back across the grassland, which is enjoyed by the landowners and their families. This will be lost, due to the shape and size of the retained land.

23. **Scale of Enterprise**
The applicant's land holding has reduced from circa 53 acres to circa 15 acres. It is not possible to operate the agricultural business at the same scale.

24. **Loss of potential Leisure Uses - Camping**
The land has potential for other uses, camping for example, the demand for these leisure and recreational uses are significantly hampered by the presence of the Interconnector.

25. **Weed Spread from The Applicant Site**
The Applicant are acquiring a large area of grassland. It is expected that this grassland will be left to nature and weeds will naturally occur. These weeds will spread into the retained land, incurring extra land management costs to deal with these weeds, if the grassland is not effectively managed and controlled.

26. Impact on the Farmhouse

The approach from the south is going to be dwarfed by the scale of the Converter Station. The Converter Station will be extremely visible from within the dwelling and from the gardens.

27. Impact on the Mobile Home

The Caravan is approximately 30 metres from the site. Vehicle headlights travelling along the drive will intrude directly into the Caravan and the noise and dust during construction works will be significant. There will be a serious loss of privacy and everybody accessing the site will look directly into the Caravan and its garden. The Caravan currently has far reaching views over open countryside.

28. Future Development Potential

The presence of the Interconnector will have a significant impact on any developers' aspirations for the buildings and the GDV of a developed site along with significant impact on the value of the buildings.

Examples of the Disturbances and Loss expected at Little Denmead Farm

1. Ditch Maintenance

There will be additional costs associated with clearing the field ditches, into which The Applicant intend to discharge large volumes of water. This ditch maintenance will have to be undertaken every couple of years in perpetuity to avoid flooding. We will assess a value of this once we have further detail on how surface water is to be managed.

2. Fence Maintenance

Similarly, there are going to be annual costs associated with repairing the fences. Any new fencing should last 10-15 years, however thereafter the fence will need to be replaced every 10-15 years.

3. Maintenance of New Hedgerow

The Applicant propose to plant new hedgerows along the new boundaries. This will result in annual costs.

4. Loss of Business

Details of loss of business, due to the reduction of holding size will be supplied at a later date, once full analysis has been undertaken

5. Relocation Cost

For example the cost of purchasing replacement land, including Stamp Duty, Legal Fees, Agents Fees .

APPENDIX 8

EXPERT EVIDENCE FROM GATELEY HAMER

Aquind Interconnector: Use of compulsory acquisition powers for commercial telecommunications uses and availability of funding

Client:	Mr. Geoffrey Carpenter & Mr. Peter Carpenter
Author:	Jonathan Stott MRICS
Date:	15 February 2021
Status:	Final
Reference:	128917.913

Gateley HAMER

1. Introduction

1.1 My name is Jonathan Stott and I am Managing Director of Gateley Hamer Limited, a practice of Surveyors within the Gateley professional services group of companies, specialising in the field of utilities, compulsory purchase, infrastructure and telecoms.

1.2 I hold a Bachelor's Degree in Planning and International Development, a Post-Graduate Diploma in Estate Management and I have been a Member of the Royal Institution of Chartered Surveyors (**"RICS"**) since 2009.

1.3 Between 2004 and September 2013 I was employed by Ardent Management Limited, a property consultancy specialising in land assembly for infrastructure and regeneration projects, in various positions up to Associate Director. I worked on a wide range of compulsory purchase matters, primarily acting for scheme promoters of Compulsory Purchase Orders and Development Consent Orders.

1.4 In October 2013 I joined Hamer Associates (now Gateley Hamer Limited) as a Director and Head of Compulsory Purchase. I became Managing Director in July 2015 and I have continued to advise promoters of regeneration and infrastructure projects through the process of promoting and implementing compulsory purchase powers, negotiating compensation claims and undertaking valuation work. I also advise affected businesses and landowners.

1.5 Since 2017 I have also advised various telecoms operators in relation to the assessment of consideration and compensation pursuant to the Electronic Communications Code as set out in Schedule 3A of the Communications Act 2003 as inserted by section 4 and Schedule 1 of the Digital Economy Act 2017, which came into force in December 2017. Since its implementation I have been appointed expert witness on a number of cases and advised operators including Cornerstone Telecommunications Infrastructure Limited, Arqiva Limited, Wireless Infrastructure Group Limited and IX Wireless Limited. I have also advised West Midlands 5G in its efforts to educate Local Authorities in relation to the purpose and application of the Code and I have previously advised site providers of their rights under the Code.

1.6 I was the Chairman of the Compulsory Purchase Association in 2018-19, a national, not for profit member organisation which promotes best practice in the fields of compulsory purchase and statutory compensation. I remain a board member, a position I have held for over five years.

1.7 I have contributed to the RICS Guidance Note for Surveyors advising in respect of the Electronic Communications Code and its Professional Statement for Surveyors advising in relation to Compulsory Purchase and Statutory Compensation.

2. My instructions

2.1 I am instructed by Mr Geoffrey Carpenter and Mr Peter Carpenter ('Clients'), who are the joint owners of Little Denmead Farm, Broadway Lane, Denmead, Waterlooville, PO8 0SL ('the Property') to provide my observations and opinions on the following points:

2.2 The appropriateness of Aquind Limited ('Aquind') seeking compulsory acquisition ('CA') powers to enable it to acquire land and rights for commercial telecoms use.

2.3 The implications of Aquind being granted development consent to use elements of its proposed development for commercial telecoms uses, and how that interrelates with Aquind's status as a Code Operator under the Electronic Communications Code ('ECC').

2.4 The statement in Aquind's Funding Statement that the '*estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £5m'* and whether Aquind has demonstrated that there is a reasonable prospect of the requisite funds for acquisition becoming available.

2.5 The likely cost to Aquind of acquiring land and rights for the proposed commercial telecoms use in the absence of Aquind being granted CA powers for that purpose and in the absence of Acquid being able to benefit from its status as a Code Operator under the ECC.

3. The appropriateness of Aquind seeking CA powers to enable it to acquire land and rights for commercial telecoms use.

3.1 The relevant law and guidance relating to the use of CA powers within Development Consent Orders is clear, as follows:

3.2 Sections 122(1), (2), and (3) of the Planning Act 2008 ('PA') provides that a development consent order may authorise the compulsory acquisition of land only if the Secretary of State is satisfied that the following conditions are met:

(a) the land is:

(i) required for the development to which the development consent relates;

(ii) is required to facilitate or is incidental to that development; or

(iii) is replacement land which is to be given in exchange for commons, open spaces etc.; and

(b) there is a compelling case in the public interest for the land to be acquired compulsorily.

3.3 Planning Act 2008, Guidance on Compulsory Purchase Acquisition of Land (September 2013) ('Government Guidance') also requires that to establish that there is a compelling case in the public interest, there must be compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

3.4 Government Guidance requires an applicant to demonstrate:

(a) that all reasonable alternatives have been explored;

(b) that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate;

(c) that the applicant has a clear idea of how they intend to use the land which it is proposed to acquire;

(d) that there is a reasonable prospect of the requisite funds for acquisition becoming available; and

(e) that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the affected land, with particular regard given to Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of the acquisition of a dwelling, Article 8 of the Convention.

3.5 Government Guidance also states that the land in relation to which compulsory acquisition powers are sought must be no more than is needed for the development for which consent is sought.

3.6 It is not apparent to me that a compelling case has been made or is capable of being made for CA powers to be used to acquire land and rights for commercial telecoms use. In my opinion it is telling that Government has not granted compulsory purchase powers to telecoms operators and I am not aware of any precedent having been set in any other DCO.

3.7 I am not aware of any compelling evidence that the public benefits that would be derived from the CA of land and rights for commercial telecoms use will outweigh the private loss that would be suffered by my Clients. Indeed, I have not seen any evidence whatsoever of there being public benefits to Aquind being granted the use of CA powers for that purpose. In my opinion Aquind should be required to demonstrate what those public benefits would be, and how they will outweigh the private loss that would be suffered by my Clients. From all of the material I have read it appears that the only party to benefit from the grant of CA powers to enable land and rights to be acquired for commercial telecoms use is Aquind itself.

3.8 As to the tests set out in Government Guidance, in my opinion Aquind has failed to demonstrate a) that the proposed use of CA powers is for a legitimate purpose, b) that it is necessary (in the context of the Interconnector scheme) and proportionate, or c) that there is a reasonable prospect of the requisite funds for acquisition becoming available.

3.9 I provide further commentary to support my opinion in the following sections of this report. However, in summary:

3.9.1 I do not consider the use of CA powers to acquire land and rights for commercial telecoms use is legitimate because it is not permitted in any National Policy Statement and because that use does not qualify as 'associated development' to the Interconnector development for which the Secretary of State granted a direction under Section 35 of the Planning Act 2008 on 30 July 2018.

3.9.2 I do not consider that the use of CA powers is necessary and proportionate, particularly noting that Aquind has confirmed that a) only a small percentage of the fibre-optic cables will be required for the safe operation of the project (i.e. for monitoring purposes) (see **REP6-063)** and b) that *'the telecommunications buildings are required solely in connection with the commercial use'* (see **REP1-127**). In this context my opinion takes account of the fact that Government Guidance also states that the land in relation to which CA powers are sought must be no more than is needed for the development for which consent is sought; clearly that cannot be said to be the case here.

3.9.3 Aquind has not demonstrated that it has funds available to respond to blight notices (for which it could be liable from any point since the dDCO was submitted) and it is apparent that its estimate of compensation liability is unsound and significantly underestimated.

3.10 My conclusion is that Aquind has failed to satisfy all the requirements in law and Government Guidance to justify the CA powers sought over my Clients' Property.

4. The implications of Aquind being granted development consent to use elements of its proposed development for commercial telecoms uses, and how that interrelates with Aquind's status as a Code Operator under the Electronic Communications Code ('ECC').

4.1 I have had regard to both the direction granted by the Secretary of State under Section 35 of the PA on 30 July 2018 ('the s35 Direction) and the direction granted by Section 106(3) of the Communications Act 2003 by the Competition Policy Director on 27 March 2020 ('the s106 Direction).

4.2 My understanding is that the s106 Direction grants Aquind the ability to seek the imposition of rights under the Electronic Communications Code 2017 ('ECC') to facilitate the deployment of UK transmission links, which in conjunction with the fibre-optic cables that it is seeking development consent to lay within the Interconnector project, would be used to supply wholesale products and services to telecoms providers in the UK. I understand that the s106 Direction specifically precludes Aquind from imposing ECC powers in relation to what is referred to in the s106 Direction as the 'Aquind Interconnector Fibre'.

4.3 As such, I understand that Aquind is asking the Secretary of State to grant development consent to install significantly more fibre-optic cables within the Interconnector development than is actually required for monitoring the interconnector, as associated development, so that it will be able to operate a commercial telecoms network.

4.4 In isolation neither the s106 Direction nor the s35 Direction enable Aquind to operate a commercial telecoms network, and it is only if the Secretary of State grants the laying and use of additional fibre-optic cables as associated development within the DCO that Aquind will be able to implement the s106 Direction for the UK transmission links.

4.5 In my opinion it is clear that the laying of additional fibre optic cables for commercial telecoms use is in no way associated with the Interconnector project. Such a use is not ancillary to that development and it seems that Aquind's request for consent to be granted for that purpose within the dDCO is not only opportunistic and inappropriate, but it is also impermissible insofar as it is asking the ExA and the Secretary of State to consent something it is not empowered to.

4.6 I conclude that it is impermissible having had regard to the Government guidance on associated development applications for major infrastructure projects, which states:

(i) The definition of associated development….. requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.

(ii) Associated development should not be an aim in itself but should be subordinate to the principal development.

(iii) Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development.

4.7 I have not seen any suggestion by Aquind that the commercial telecoms use supports the construction of operation of the Interconnector, or that it is subordinate to the principal development (rather it is a development and aim in its own right, as is made clear in the context of the s106 Direction). Furthermore, noting that paragraph 6.4 of Aquind's Funding Statement

confirms that *'the revenues from the commercial use of the FOC within the Project may contribute an additional 5% of total revenues'*, it is evident that it is only necessary as a means of cross-subsidising the cost of the principal development.

5. **The statement in Aquind's Funding Statement that the '*estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £5m*' and whether Aquind has demonstrated that there is a reasonable prospect of the requisite funds for acquisition becoming available.**

5.1 As a precursor to giving my opinion on this issue, I note that in the case of Prest v Secretary of State for Wales (1982), which related to an appeal against the confirmation of a Compulsory Purchase Order, it was held that:

(1) the onus of showing that the order should be confirmed lay on the authority who sought the order;
(2) the Secretary of State should not limit his attention to the material put before the inspector and the matters canvassed at a public enquiry, but should take into account all matters which seemed to him to be relevant; and
(3) on the facts of the case, the Secretary of State had failed to consider the question of the land acquisition cost, which was a material factor.

5.2 I refer to the Prest case to evidence why, in my opinion, the question of whether Aquind is able to demonstrate that there is a reasonable prospect of funds being available to cover land acquisition costs, is a relevant issue for the ExA to consider. Clearly, land acquisition costs are a material factor in this case, and in my opinion Aquind has both under-estimated those costs and failed to demonstrate availability of funds to cover them, for the reasons I will explain.

<u>Availability of funds</u>

5.3 Government Guidance requires Funding Statements to '*provide as much information as possible about the resource* implications *of both acquiring the land and implementing the project for which the land is required*'. In this regard, the brevity and lack of detailed contained within Aquind's Funding Statement is striking, and gives cause for me to concern about the availability of funding to cover land acquisition costs.

5.4 Government Guidance states:

'The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of'.

5.5 In view of this Guidance it is important to note that blight notices may be submitted by qualifying parties from the date on which a dDCO is submitted. The Explanatory Notes to the PA explain as follows:

281. A national policy statement identifying a location as a suitable (or potentially suitable) location for a nationally significant infrastructure project may create blight at that location, reducing land values and making it hard to sell the land. Blight may also result from an application being made for

an order granting development consent authorising the compulsory acquisition of land or from such authorisation being given.

282. Section 175 amends TCPA 1990 (which extends to England and Wales), so as to allow owner occupiers adversely affected in this way to have the benefit of the existing statutory provisions relating to blight. The effect of subsection (6) is that the "appropriate authority" (who should receive the blight notice) in the case of blight caused by a national policy statement is the statutory undertaker named as an appropriate person to carry out the development in the national policy statement, or the Secretary of State where there is no such named undertaker. The Secretary of State is to determine any disputes as to who should be the appropriate authority. Subsection (4) prevents the appropriate authority from serving a counter-notice to a blight notice on grounds of having no intention of conducting the development. Subsection (7) makes it clear that the "appropriate enactment" for a blight notice is the development consent order, or the draft order in the terms applied for.

5.6 The Town and Country Planning Act 1990 specifies that blight notices may be served by qualifying parties, including owner occupiers of residential property, owner-occupiers of business premises with a net rateable value not exceeding £44,200 in Greater London and £36,000 in the rest of England) and an owner-occupier of an agricultural unit or part of an agricultural unit.

5.7 As such, Aquind has a live compensation liability in relation to blight, not least in the context of my Clients' Property. To place that in context, Mr Henry Brice MRICS FAAV of Ian Judd & Partners LLP, acting on behalf of my Clients, has assessed the market value of my Clients' Property to be £2.87m. As far as I am aware, Aquind has not demonstrated that adequate funding is currently available to service that liability.

5.8 It appears to me that this is an entirely speculative project in terms of funding and Aquind does not appear to currently have available funds to cover its existing compensation liability (noting that Aquind's 2018 and 2019 accounts show that is only has just over £1 million of cash in the bank or to hand).

5.9 Aquind sets out in paragraph 7.11 of its updated Funding Statement **[REP6-021]** that *'it is not anticipated any claims for blight will arise. Should any claims for blight arise in consequence of the Application the cost of meeting such claims will be met from the sources of funding described above at section 6 to this Statement.'*

5.10 In my experience of advising project promoters I am not aware of any case of a promoter not anticipating blight notices and therefore not having the necessary funds available to service blight notices. The fact is that Aquind has a live statutory liability for blight and there is no justifiable reason why it should not be anticipating blight notices being served.

5.11 The suggestion that if claims for blight arise then the cost of meeting such claims will be met from the sources of funding described at section 6 of the revised Funding Statement is unsatisfactory in my opinion. Section 6.1 of Aquind's revised Funding Statement states:

The Applicant has secured from its current investors financing sufficient to support the Project until the completion of the development stage, which includes obtaining all necessary permissions and authorisations, including the DCO. The Applicant has invested approximately £35m in the development of the Project as of 30 June 2020. The residual cost of completing the pre-construction stage of the Project is forecasted at £15m. This amount has been revised taking into account delays as a consequence of the Covid-19 pandemic extending the pre-consent stage, and the resultant changes in the processes to obtain the required consents.

5.12 There is no breakdown of the £15m stated to be the forecasted residual cost of completing the pre-construction stage of the Project and there is certainly no suggestion that this includes any allowance for blight notices. Taking Mr Brice's valuation referred to above, it is evident that Aquind's liability for blight solely in relation to my Clients' Property accounts for around 20% of Aquind's £15m pre-construction figure (in the interest of presenting a balanced position, it should be noted Aquind's valuers themselves value my Clients' Property at over £2.1m).

5.13 Based on the information submitted to the ExA it appears that there is currently no certainty as to the nature or timing of the sources of funding for the project. In my opinion Aquind's Funding Statement is lacking in detail and its unsubstantiated statement that it *'intends to raise equity capital and project debt financing to meet the estimated costs of the Proposed Development'* is nothing more than an optimistic proclamation.

5.14 In the context of the Government Guidance set out above, in my opinion there is no doubt that Aquind has failed to demonstrate that '*the resource implications of a possible acquisition resulting from a blight notice have been taken account of'.* Furthermore, there is no evidence that there is a reasonable prospect of the requisite funds being available to cover the costs of acquiring the land and rights that it is seeking powers for. Aquind estimate those costs will be in the order of £4.97m however, for the reasons I set out below, I am concerned that may be grossly under-estimating what the actual costs will be.

<u>Reliability of Aquind's land acquisition costs</u>

5.15 Paragraph 7.6 of Aquind's revised Funding Statement states:

'The total estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £5m. It should be noted that this is an estimated valuation of the worst case land and rights required for the Project, and excludes the valuation of the Crown Estate's seabed interest (discussed below at paragraph 7.8) and professional fees and stamp duty land tax. The Applicant considers that the actual cost of acquiring land and rights required will be less than the above sum'.

5.16 The figure of 'approximately £5m' is broken down in a table below paragraph 5.6 of the Funding Statement as follows:

Land acquisition:	£1,277,000.00
Land rights:	£1,973,775.21
Disturbance compensation:	£664,980.33
Injurious affection:	£645,000.00
Professional fees:	£410,000.00
Total:	£4,970,755.54

5.17 There is a clear disparity between the statement in paragraph 7.6 of the Funding Statement that the estimated costs exclude professional fees and the breakdown provided at paragraph 5.6 of the same document. Paragraph 7.6 explicitly states that the total estimated land acquisition costs exclude professional fees, whereas the table in paragraph 5.6 includes an allowance of £410,000 for professional fees. Whilst this in itself is not necessarily of significant concern, it exemplifies the lack of clarity associated with Aquind's estimate of land acquisition costs and gives me cause to be concerned that the costs are not reliable. Further reasons for me being concerned about the reliability of Aquind's estimate are as follows:

5.17.1 If one removes the £410,000 allocation for professional fees from Aquind's updated

estimate, it is alarming that the estimate has increased by over 24% in 13 months, between the original Funding Statement being published in November 2019 (which stated the worst case land acquisition cost would be £4m) and the updated Funding Statement being published in December 2020. Land values have not generally increased to that extent over that period. This indicates that Aquind does not have a proper handle on the potential compensation liability and calls into question the reliance that should be placed on the estimate.

5.17.2 It is apparent from the breakdown provided at 5.6 of the updated Funding Statement that the estimate does not include any allocation for compensation associated with the temporary possession of land (despite the dDCO including temporary possession powers under Article 30), severance or injurious affection relating to the diminution in value to land retained by parties from whom some land is compulsorily acquired, or material detriment (i.e. the prospect that a party from whom some land is taken might require Aquind to acquire the entirety of their interest).

5.17.3 It appears that the estimate has not been prepared by a Surveyor who meets the mandatory requirements of the RICS Professional Statement for Surveyors advising in relation to compulsory purchase and statutory compensation.

5.18 I understand that it has been confirmed to the ExA by Mr Jarvis, on behalf of Aquind, that Aquind has only financially evaluated the "pink land" shown on the Land Plans, which is identified as being required for 'permanent acquisition of land'. However, under Article 30(1)(a)(ii) Aquind is seeking consent to take temporary possession of all of the land within the dDCO, whilst under Article 30(4) of the dDCO it is seeking the ability to compulsorily acquire all of the land over which it has sought temporary possession powers. As such, it is apparent that Aquind's intended land strategy is to use temporary possession powers over all land initially, before subsequently using CA powers to acquire the full extent of land and rights that it requires permanently, including potentially permanently acquiring some or all of the yellow land. Such a strategy is not uncommon in my experience and it is often employed by infrastructure promoters where the precise extent of land and rights required permanently might not be known until works have commenced or been completed (which, I expect, is why Aquind is seeking the ability to remain in temporary possession of land for up to one year after the authorised development within each parcel has been completed). As such, whilst the intended approach is not unusual, it is apparent that Aquind's estimate of compensation completely ignores its liability flowing from taking temporary possession of land, for which purpose Article 30(5) requires:

The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

5.19 This is a very broad provision and in my experience compensation is commonly claimed to reflect the rental value of land subject to temporary possession, as well as businesses losses, removal costs and deferred development costs. These costs can be very significant and it is apparent from Mr Jarvis's oral evidence presented to the ExA that Aquind has not assessed or made any provision for such compensation.

5.20 It is also apparent that no consideration has been given by Aquind to the prospect of claims for severance or injurious affection (under section 7 of the Compulsory Purchase Act 1965) in the context of diminution in value of land retained by parties from whom some land is acquired) or

material detriment. I make this assertion on the basis that I understand that the provision of £645,000 for 'injurious affection' within Aquind's breakdown of the land cost estimate relates to claims that may be made by parties from whom no land has been taken, but who are able to claim for injurious affection due to their property being reduced in value either due to interference with their rights during the execution of Aquind's works (under section 10 of the Compulsory Purchase Act 1965) or due to physical factors such as noise, dust or artificial lighting emanating from the operation of Aquind's development (under Part 1 of the Land Compensation Act 1973).

5.21 In my experience of advising promoters of linear schemes, and of advising landowners affected by such schemes, it is highly unusual for there not to be any diminution in value to retained land where part only of a landholding is acquired. By way of example in the context of this proposed development, Mr Brice has assessed that my Clients claim for injurious affection will be in the order of £421,500, with a further entitlement of £12,155 for severance

5.22 In my experience it is also highly uncommon for there not to be any claims for material detriment. Such claims may be submitted in accordance with section 8 of the Compulsory Purchase Act 1965 by landowners to require an acquiring authority to purchase the whole of their interest if part cannot be taken without causing material detriment to the remainder. From the information submitted by Aquind it does not appear that any assessment of liability for material detriment has been made.

5.23 I have referenced in 5.14.3 above that it appears that Aquind's estimate has not been prepared by a Surveyor who meets the mandatory requirements of the RICS Professional Statement for Surveyors advising in relation to compulsory purchase and statutory compensation. I believe this has resulted in certain compensation liabilities having been overlooked, as referenced above, and I am also of the opinion that the approach taken to the valuation of the land to be acquired permanently is flawed.

5.24 I understand that the estimate has been prepared by Mr Alan O'Sullivan of Avison Young. According to his LinkedIn profile Mr O'Sullivan's key focus area is advising and assisting clients in the nuclear and utilities sectors to optimise the use of their assets. His profile does not refer to compulsory purchase expertise and based on Mr O'Sullivan's correspondence with Mr Brice, it is also apparent that he has no previous experience or knowledge of the South Hampshire land market. Whilst I have no doubt that Mr O'Sullivan is an experienced expert in his field, it is clear that field is not compulsory purchase, and it is likely that is the reason why Aquind's land cost estimate is inadequate, both in the context of the points I have made above, and also in terms of the approach taken to the assessment of market value of land that is proposed to be compulsorily acquired.

5.25 I understand that the approach taken to assessing the market value of land to be acquired has been to use figures taken from HM Land Registry title registers. Those figures reflect the price that was recorded as having been paid when an interest was acquired, which may not reflect market value, and will often be well out of date. In the case of my Clients' Property, as explained in Mr Brice's report, the figure referenced on the title register was supplied to set the fee scale of HM Land Registry charges to register the land; it was not based on a formal valuation and quite clearly should not be relied upon as the basis of a compensation assessment.

5.26 HM Land Registry Practice Guide 7, Section 9 - Reliability of Information, clearly states that the value stated on a title register may not represent the full market value of the property and HM Land Registry do not verify the figures. As such, it is very concerning that Aquind's estimate of

market value compensation appears to be based on those figures, as opposed to valuations undertaken to reflect comparable market evidence, as is usual practice.

5.27 In conclusion, in my opinion Aquind has failed to demonstrate compliance with Government Guidance both in terms of being able to a) demonstrate that that the resource implications of a possible acquisition resulting from a blight notice have been accounted for or could be serviced, or b) demonstrate that adequate funding is likely to be available to enable compulsory acquisition within the statutory period.

5.28 Furthermore, in my opinion Aquind has failed to provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required'. Indeed, the scant information that has been provided in relation to the estimated cost of acquiring land and rights appears to fail to fully take account of Aquind's potential compensation liabilities and uses an incorrect basis for assessing market value; certainly, there is no basis for the statements in Aquind's Funding Statement that the estimate represents the 'maximum costs' or the 'worst case' scenario, let alone the statement that Aquind' '*considers that the actual cost of acquiring land and rights required will be less than the above sum'* .

5.29 In my opinion, based on my extensive experience of acquiring land for major infrastructure projects, the costs of acquiring the land and rights, and temporarily possessing land in the manner that Aquind is seeking consent to do, will be very significantly higher that the figure that it has forecast.

6. The likely cost to Aquind of acquiring land and rights for the proposed commercial telecoms use in the absence of Aquind being granted CA powers for that purpose

6.1 It is not possible to provide a precise assessment of the costs that Aquind would incur if it were to seek to acquire the land and rights for the proposed telecoms use in the absence of benefiting from CA powers, without further information being made available by Aquind in relation to its revenue projections.

6.2 However, having regard to Aquind's Funding Statement, on the basis that the total cost of the Project is estimated to be £1.24 billion, of which £623 m relates to the Proposed Development (i.e. the element for which development consent is being sought), if one assumes that Aquind might seek a rate of return in the order of 5% (say £60m per annum) it is possible to assume that the revenue that it anticipates to generate from the commercial telecoms uses is in the order of £3m per annum (noting that the Funding Statement states that Aquind anticipate that use to account for 5% of revenue).

6.3 If the commercial telecoms use is anticipated to generate £3m per annum it is reasonable to assume that the capital value of the associated rights might be in the order of £60m - £80m.

6.4 If Aquind were negotiating in the open market with parties to acquire land and rights from them, for such a high-value use, there is no doubt that each party from whom rights are acquired would seek to extract an element of marriage value, which would result in a figure being agreed which is far in excess of the value of each interest in isolation (i.e. the market value as it is required to be assessed in accordance with the compulsory purchase compensation code).

6.5 Noting that my Clients own such a key site for the commercial telecoms use (i.e. the site on which the telecoms building is to be located, and through which the fibre-optic cable is proposed to run) I would anticipate that through an arms' length negotiation my Clients could realistically expect to sell the land and rights to Aquind for a figure in the order of £6m - £8m, over and above the market value of the interests that are to be compulsorily acquired for the purpose of the Interconnector.

7. My conclusions

7.1 I do not consider that it is appropriate for Aquind to be granted CA powers to enable it to acquire land and rights for commercial telecoms use on the basis that it has not presented a compelling case in the public interest, the land that it is seeking powers over is greater than the extent of land needed for its development, and it has not demonstrated that it has funding in place to respond to any blight notices that may be submitted, or to compulsorily acquire the land and rights that it is seeking powers for.

7.2 I do not consider that Aquind should be granted development consent to use elements of its proposed development for commercial telecoms uses because such uses cannot properly be said to qualify as 'associated development', as defined by Government guidance.

7.3 In my opinion it is likely that Aquind has grossly underestimated its maximum compensation liability within its Funding Statement and it does not appear to have had any regard or made any provision for blight notices, which could be served at any time. Furthermore, in my opinion Aquind has not evidenced that it will have funds available to pay compensation for the land and rights it is seeking CA powers for.

7.4 If Aquind were seeking to acquire land and rights from my Clients for the proposed commercial telecoms use in the absence of being granted CA powers for that purpose I would anticipate that the land and rights would be valued in the order of £6m - £8m, over and above the compensation payable for the compulsorily acquisition of land and rights for the Interconnector.

gateleyhamer.com

APPENDIX 9

REVISED FUNDING STATEMENT – UPDATED BY BLAKE MORGAN LLP

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

The Planning Act 2008

INSERTIONS BY BLAKE MORGAN LLP AT DEADLINE 7C OF THE EXAMINATION

Document Ref: 4.2

PINS Ref.: EN020022

AQUIND Limited

AQUIND INTERCONNECTOR

Funding Statement

INSERTIONS BY BLAKE MORGAN LLP AT DEADLINE 7C OF THE EXAMINATION

PINS REF.: EN020022

DOCUMENT: 4.2

DATE: DECEMBER 2020

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DOCUMENT

Document	**4.2 Funding Statement**
Revision	003
Document Owner	WSP UK Limited
Prepared By	HSF
Date	22 December 2020
Approved By	HSF
Date	22 December 2020

AQUIND Interconnector Order 202[X]

Funding Statement

Planning Act 2008

Document Ref: 4.2, Rev 002

PINS Reference: EN20022

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264) (Regulation 5(2)(h))

Author: Herbert Smith Freehills LLP [SUPPLEMENTED BY INSERTIONS BY BLAKE MORGAN LLP AT DEADLINE 7C OF THE EXAMINATION]

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1. INTRODUCTION

1.1 This funding statement (Statement) relates to an application by AQUIND Limited (the 'Applicant') to the Secretary of State ('SoS') under the Planning Act 2008 (as amended) (the 'Act') for the AQUIND Interconnector Order (the 'Order') (the 'Application').

1.2 The Application is submitted to the Secretary of State pursuant to section 37 of the Act. This statement has been prepared in accordance with the requirements provided for by section 37(3)(d) of the Act and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the '2009 Regulations'), and with relevant guidance issued by the Department for Communities and Local Government.

1.3 The Application seeks development consent for those elements of AQUIND Interconnector (the 'Project') located in the UK and the UK Marine Area (the 'Proposed Development').

2. PURPOSE OF THIS STATEMENT

2.1 This Statement has been submitted as it will be necessary to acquire land and rights over land in order to construct, operate and maintain the Proposed Development and therefore powers of compulsory acquisition have been sought in the Order. This Statement explains how the shareholders of the Applicant and their parent companies expect that the construction of the Proposed Development and, as necessary, the acquisition compulsorily of land and rights over land as are required in connection with the Proposed Development and authorised by the Order will be funded.

2.2 This Statement forms part of a suite of documents accompanying the Application, submitted in accordance with section 37 of the Act and regulation 5 of the 2009 Regulations, and should be read together with those documents, in particular the Statement of Reasons (Application Document Reference 4.1) which justifies the powers of compulsory acquisition that are sought.

3. THE PROPOSED DEVELOPMENT

3.1 The Project is a new 2,000 MW subsea and underground High Voltage Direct Current ('HVDC') bi-directional electric power transmission link between the South Coast of England and Normandy in France. By linking the British and French electric power grids it will make energy markets more efficient, improve security of supply and enable greater flexibility as power grids evolve to adapt to different sources of renewable energy and changes in demand trends such as the development of electric vehicles. The Project will have the capacity to transmit up to 16,000,000 MWh of electricity per annum, which equates to approximately 5% and 3% of the total consumption of the UK and France respectively.

3.2 The Application seeks development consent for those elements of the Project located in the UK and the UK Marine Area (the 'Proposed Development'). The Proposed Development includes:

3.2.1 HVDC marine cables from the boundary of the UK exclusive economic zone to the UK at Eastney in Portsmouth;

3.2.2 Jointing of the HVDC marine cables and HVDC onshore cables;

3.2.3 HVDC onshore cables;

3.2.4 A Converter Station and associated electrical and telecommunications infrastructure;

3.2.5 High Voltage Alternating Current ('HVAC') onshore cables and associated infrastructure connecting the Converter Station to the Great Britain electrical transmission network, the National Grid, at Lovedean Substation; and

3.2.6 Smaller diameter fibre optic cables ('FOC') to be installed together with the HVDC and HVAC cables and associated infrastructure.

3.3 Chapter 3 (Description of the Proposed Development) of the Environmental Statement ('ES') (Application Document Reference 6.1.3) contains a detailed description of the Proposed Development for which development consent is sought by the Applicant.

3.4 On 19 June 2018 the Applicant submitted a request to the SoS for a direction pursuant to section 35 of the PA 2008 that the Proposed Development is to be treated as development for which development consent is required.

3.5 The SoS, being satisfied that the relevant legal requirements were met and of the view that the Proposed Development is by itself nationally significant, issued a direction on 30 July 2018 directing that the Proposed Development, together with any development associated with it, is to be treated as development for which development consent is required.

4. CORPORATE STRUCTURE AND ASSETS

4.1 AQUIND Limited, the Applicant, is a company registered in England and created in accordance with the laws of England and Wales, with company number 06681477 and registered at OGN House, Hadrian Way, Wallsend, NE28 6HL.

4.2 The Applicant was incorporated with the sole purpose of promoting and developing AQUIND Interconnector, the Project, and will be the undertaker for the purposes of the Order.

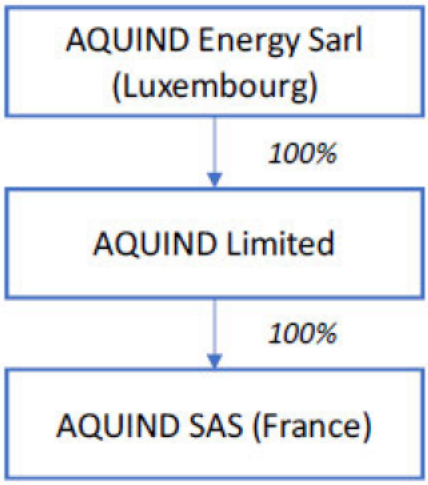
4.3 The sole shareholder (100%) of AQUIND Limited is AQUIND Energy Sarl, a company registered in Luxembourg with company number B 229924 and registered at 26, boulevard de Kockelscheuer, L-1821 Luxembourg.

[BLAKE MORGAN INSERT: paragraph 4.4.1.1. on page 13 of the Exemption Request submitted by AQUIND LIMITED states:

"***AQUIND Interconnector is promoted by:***

- ***AQUIND SAS, société par actions simplifiée, created in accordance with the laws of France with registration R.C.S. number 808 503 940 and registered address at 72 rue de Lessard 76100 Rouen and;***
- ***AQUIND Limited, a limited liability company under the laws of England and Wales with company number 06681477 and the registered address at OGN House, Hadrian Way, Wallsend, NE28 6HL; and***
- ***AQUIND Energy Sarl, Société à responsabilité limitée, created in accordance with the laws of Luxembourg with registration number B229924 and registered address at 26 boulevard de Kockelscheuer, 1821 Luxembourg.***

Figure 4-6 AQUIND Interconnector ownership structure



No entities or people involved in the AQUIND company group structure have control over any energy generator, producer or supplier."

4.4 As at 30 June 2018 the total company assets of the Applicant were £13.3m according to the annual audited account, mainly consisting of the capitalised development costs £12.2m. [**BLAKE MORGAN INSERT**

Page 15 of section 4.5 of the Exemption Request states:

"*AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do*."

4.5 A copy of the audited accounts for the year ended 30 June 2018 are contained at **Appendix 1** to this Statement.

4.6 The updated audited accounts for the year ended 30 June 2019 were submitted into the Examination at Deadline 1 (REP1-095).

4.7 As at 30 June 2019 the total company assets of the Applicant were £25m according to the annual audited account, mainly consisting of the capitalised development costs £23.3m.

[**BLAKE MORGAN INSERT:**

Page 15 of section 4.5 of the Exemption Request states:

"*AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do*."

4.8 A copy of the audited accounts for the year ended 30 June 2019 are contained at **Appendix 2** to this Statement.

[**BLAKE MORGAN INSERT:**

Page 15 of section 4.5 of the Exemption Request states:

"*AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do*."

Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference [REP7-075]) states (our emphasis added):

"*The Applicant has … confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "Financing for the Project secured*

***following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition*".**

Paragraph 4.5 of the Applicant's Exemption Request states page 15 (our emphasis added):

"*Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do*."

The Applicant also states on page 16 of Section 4.5 of the Exemption request that::

" *As AQUIND is unable to operate an interconnector in France without an exemption,…[the exemption] would ensure that the project is able to address the following risks:…Actual terms and conditions of financing…market conditions…. Programme and costs risks…*".

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5. ESTIMATED PROJECT COST

5.1 The Applicant continues to work with its delivery partners to understand the costs of implementing the Order, which includes costs associated with obtaining development consent, construction and land acquisition.

5.2 The current cost estimate for the Project is approximately €1.4bn (£1.24bn), with this estimate being undertaken at beginning of 2019 following two rounds of market engagement with potential contractors in respect of the design, engineering, supply and installation of converters and cables.

5.3 The cost estimate has been forecasted in both real and nominal terms, with the inflation for the future period taken at a rate of 2%, which is broadly considered a target inflation rate by the modern monetary policy[1]. Whilst this rate of inflation has been applied, the Applicant is confident that inflation rates will not significantly affect the feasibility of the Project, either in the case of lower inflation or higher inflation than the target inflation rate of 2%.

5.4 The current capital cost estimate for the Proposed Development, based on an equal split of the estimated cost of the Project between the elements in France and in the UK, is approximately £623m. For the purposes of the Application an equal split of capital costs between the French and UK parts of the Project is assumed. Whilst there may be some variance in practice, the elements of the Project and the costs associated with delivery of the Project in both countries are broadly similar.

5.5 A broad breakdown of the estimated costs is included in the table below.

Works/Costs	**Estimate**
Development costs (including professional and other fees)	£19m
Construction costs	£599m
Land acquisition costs	£4.97m
Estimated Total Capital Cost	**£623m**

5.6 With regard to estimated land acquisition costs, a breakdown of how these have been calculated is as follows:

Land Acquisition	£1,277,000.00
[BM INSERT: (Ian Judd & Partner's estimate for Land Acquisition Costs)]	**£2,592,310**
Acquisition of Rights and Restrictions	£1,973,775.21
Disturbance Compensation	£664,980.33
Injurious Affection	£645,000.00
Professional Fees	£410,000.00
Estimated Total	**£4,970,755.54**

1 https://www.bankofengland.co.uk/monetary-policy

5.7 The cost of interest and other debt servicing will be met from revenues generated by the Project. The Applicant's financial forecasts shows that the Project will generate sufficient operating profits to ensure that Debt Service Cover Ratio and Interest Cover Ratio are at an acceptable level. In addition, generally low interest rates have been a feature of the economic situation over the past decade[2], which creates favourable conditions for securing infrastructure financing. Other debt servicing costs, in addition to interest, typically include a commitment fee of around 2% of the respective debt facility and a reserve fee between 0.5% and 1%.

6. **PROJECT FINANCING**

6.1 The Applicant has secured from its current investors financing sufficient to support the Project until the completion of the development stage, which includes obtaining all necessary permissions and authorisations, including the DCO. The Applicant has invested approximately £35m in the development of the Project as of 30 June 2020. The residual cost of completing the pre-construction stage of the Project is forecasted at £15m. This amount has been revised taking into account delays as a consequence of the Covid-19 pandemic extending the pre-consent stage, and the resultant changes in the processes to obtain the required consents.

[BLAKE MORGAN INSERT: Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference [REP7-075]) states (our emphasis added):

"The Applicant has … confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition".

6.2 Post the development stage the Proposed Development, and more broadly the Project, is to be funded through project finance secured against the operational profits (revenues) of the Project.

[Blake Morgan insert:
Paragraph 4.5 of the Applicant's Exemption Request states page 15 (our emphasis added):

"Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do."

The Applicant also states on page 16 of Section 4.5 of the Exemption:

" As AQUIND is unable to operate an interconnector in France without an exemption,…[the exemption] would ensure that the project is able to address the following risks:…Actual terms and conditions of financing…market conditions…. Programme and costs risks…".

THE JOINT STATEMENT ON 28 JANUARY 2021 BY OFGEM AND THE CRE STATES:

"On 2nd June 2020, Aquind submitted to Ofgem and CRE (together, the "NRAs") a request for partial exemption from Articles 19(2) and 19(3) of Regulation (EU) 2019/943 (the "Regulation"), concerning Use of Revenues obligations, for a period of 25 years from the start of commercial operations (the "Exemption Request").On 18th December 2020, the NRAs published a joint consultation document outlining the scope and rationale of the Exemption Request, as well as the supporting

evidence provided by Aquind. The consultation was originally planned to close on 29th January 2021. The NRAs issued this consultation in line with our obligations under the applicable legal framework at the time, and with uncertainty as to the future trade and cooperation arrangements between the UK and the EU beyond the end of the transition period. In light of the new Trade and Cooperation Agreement (the "TCA") agreed between the UK and the EU on 24th December 2020, following the UK's departure from the EU, the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request. Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process. Ofgem and CRE will continue to cooperate closely in regards to the functioning and the development of interconnections between the UK and France and the implementation of the arrangements envisaged in the TCA."

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6.3 Typically interconnectors have the following streams of revenues:

6.3.1 Congestion charges - up to 75% of total revenues: Congestion charges are charges collected by the interconnector operator for access to the interconnector's capacity from parties wishing to transmit electricity from one country to another[3].

6.3.2 Capacity market payments – up to 20% of total revenues: GB interconnectors have been able to participate in the GB capacity market since 2018. These are the payments for interconnectors providing a security of supply services at the time of high demand and/or low supply as a stand-by capacity[4].

6.3.3 Ancillary services – up to 5% of total revenues: These revenues arise from provision of various services to National Grid and RTE, which they require in order to ensure the stability of national transmission systems[5].

6.4 In addition, the revenues from the commercial use of the FOC within the Project may contribute an additional 5% of total revenues.

6.5 The cost of regular operation and maintenance of the Project are very low comparing to most of other types of energy infrastructure and are expected to be at the level of around 1% of the capital costs, or nearly 2% of capital costs if business rates in England and local land-related taxes in France are included.

6.6 Accordingly, it is expected the revenues to be generated will leave sufficient cash flows available to repay project finance debt and provide adequate returns to investors.

6.7 The Applicant expects that the financing will be arranged on the basis of project finance debt with the tenure of 15 to 25 years constituting circa 70% of the total capital costs of the Project, with the remainder to be financed with equity.

6.8 It is anticipated that equity capital will be derived from leading international infrastructure funds, and that project debt financing will be secured from various

3 Baringa, February 2014, New electricity interconnection to GB – operation and revenues, for Department of Energy and Climate Change, available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/322005/new_electricity_interconnection_to_gb_operation_and_revenues_baringa.pdf

4 Ibid, also BEIS, Capacity Market, Five-year Review (2014-2019), available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819760/cm-five-year-review-report.pdf

5 National Grid SO Submission to Cap and Floor, June 2017, available here https://www.ofgem.gov.uk/system/files/docs/2018/01/nget_report_to_ofgem_-_quantified_interconnector_impacts.pdf

banking sources and/or institutional investors. Possibilities of export financing by export agencies of the countries of origin of key components of the Project are also being considered as part of the public tender process.

6.9 The Applicant has been engaging with a number of potential investors since the start of the Project directly, including British and international investment funds and international energy companies. The engagement with a group of debt providers and equity investors completed for the Applicant by KPMG in 2019 showed that subject to obtaining necessary and appropriate consents, permissions and approvals, investors consider interconnectors to be an attractive type of future investment and therefore the Project is considered to be bankable.

6.10 Financing for the Project is therefore expected to be subject to grant of the development consent order and the settlement of regulatory status of the Project (see section 8 of this statement for further information in this regard':

4.5.1 AQUIND Indicative financing plan

AQUIND Interconnector is the sole business of AQUIND. For these purposes, AQUIND can be considered a project entity.

AQUIND's financing strategy is to attract funds to invest in AQUIND Interconnector on a project-finance basis. Our analysis shows that AQUIND Interconnector can be an attractive business proposition for project-finance providers, subject to AQUIND being granted appropriate regulatory regimes, including an Exemption as requested in this Request for Exemption.

AQUIND is being financed at the development stage by private investments. This is the riskiest part of financing and it is very hard to attract outside investors. Up to the present moment, nearly [redacted] have been invested by AQUIND and its shareholders in the development stage of the Project.

AQUIND will seek further equity funding and non-recourse project financing from wider pools of potential investors for the construction stage of the Project. The target combination of debt and equity will be determined through the ongoing discussions around the most efficient investment approach with potential investors while the Exemption is assessed, but in any case project debt is unlikely to be less than 50%.

A summary of the indicative financing plan is set out in Table 4-4.

Table 4-4 Indicative financing plan

Source of financing	Financial contribution
AQUIND's own resources	▸ [redacted]m to date; plus ▸ [redacted] until FID
Project finance	▸ [redacted] ▸ Expected [redacted]% of capex
Other sources (equity investors)	▸ Expected [redacted]% of capex

The final approach to the financing strategy depends on the details of the regulatory arrangement with the NRAs, including the form and duration of the Exemption.

The combination of investors may include:

- Equity providers:

[redacted]

[4] Directive 2009/72/EC, Article 9.

[redacted]

- Non-recourse finance providers:

[redacted]

AQUIND is engaging with various types of the potential investors, at this stage primarily equity providers, including specialised investment funds, corporate investors, EPCI contractors and high net worth individuals. These discussions are covered by mutual confidentiality requirements.

Taking into account that a typical ticket size for banks in such project finance deals is around € [redacted] million, AQUIND expects there would be a syndicate of lenders. While there are not many examples of fully private interconnectors, recent offshore wind transactions suggest that AQUIND should expect that term loans would be for at least [redacted] years.[5] AQUIND may opt for a share of shorter- or longer-term loans subject to future refinancing after a certain period of time. A precise loan strategy will be determined through further engagement with debt providers and equity investors, based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption.

Recent transactions involving offshore wind farms also show that if it is possible to confirm a business case for a project, then it is also possible to attract investors such as infrastructure funds, pension funds and sovereign funds who have a longer investment horizon than private investors. In offshore wind it has been achieved through a direct tariff support by Government.

Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.

AQUIND, with its advisors, has prepared a financial model to simulate the expected cash-flows based on a set of economic assumptions outlined in Exhibit 1. The financial model is provided in Exhibit 3. [redacted]

As AQUIND is unable to operate an interconnector in France without an exemption, the exemption length will be linked to the expected debt repayment period, incorporating at least 5 years additional

[5] Page 30 of "Where's the money coming from? Financing offshore wind farms" European Wind Energy Association, November 2013.

headroom. The exemption is therefore required for a period of time that exceeds the term of the non-recourse debt by a safe margin. It would ensure that the project is able to address the following risks:

- Actual terms and conditions of financing – given uncertainties affecting exchange and interest rates, which stem from Brexit and other political and macro-economic factors, AQUIND will be able to finalise its financing package at the point of Final Investment Decision. At this stage, AQUIND requires an appropriate amount of flexibility to make prospective investors comfortable.
- Market conditions as discussed in this Request for Exemption.
- Programme and cost risks of the project as discussed in this Request for Exemption.

7. FUNDING CLAIMS FOR COMPENSATION

[BLAKE MORGAN INSERT: Paragraph 9.2 of Appendix B to the Applicant's Responses to Deadline 6 Submissions (document reference [REP7-075]) states (our emphasis added):

"The Applicant has already confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition".

7.1 Compulsory acquisition

7.2 The Order contains powers to enable the acquisition of land, new rights over land and the imposition of restrictions that are necessary in connection with the construction, operation and maintenance of the Proposed Development. Such powers will be necessary to be used where the necessary land or rights over land cannot be acquired by voluntary agreement.

7.3 In summary, the following land and rights over land are sought for the purposes of the Proposed Development:

7.3.1 Acquisition of all freehold and leasehold interests over land required for the construction of a Converter Station at Lovedean;

7.3.2 Rights to plant and maintain landscaping, including maintaining existing hedgerows, on parcels of land necessary to mitigate the visual and ecological impact of the Proposed Development;

7.3.3 Easements authorising the laying, operation and maintenance of the HVAC onshore cables between the converter station and the existing National Grid substation at Lovedean;

7.3.4 Easements authorising the laying, operation and maintenance of the HVDC onshore cables between the Converter Station at Lovedean and the landfall site at Eastney;

7.3.5 Temporary use of land in connection with the construction and maintenance of the Proposed Development;

7.3.6 Easements of access necessary to construct and maintain the Proposed Development;

7.3.7 Acquisition of all freehold and leasehold interests over land required for construction of two optical regeneration stations near to the landfall at Eastney.

7.4 Further details of the rights and interests over land sought for the purpose of the Proposed Development are set out in section 6 of the Statement of Reasons (Application Document Reference 4.2).

7.5 Professional advice and landowner negotiations

7.6 The total estimated maximum costs to acquire the land and rights required in connection with the Proposed Development and for which powers of acquisition in the Order are sought in relation to are approximately £5m. It should be noted that this is an estimated valuation of the worst case land and rights required for the Project, and excludes the valuation of the Crown Estate's seabed interest (discussed below at paragraph 7.8) and professional fees and stamp duty land

tax. The Applicant considers that the actual cost of acquiring land and rights required will be less than the above sum.

7.7 The current position regarding negotiations with landowners and those with interest in land affected by the Proposed Development is summarised in the Statement or reasons (Application Document Reference 4.1).

7.8 The Applicant has signed an option agreement with the Crown Estate for the licencing of a corridor of the seabed being 1,000 metres in width and lying inside the territorial limit. Within this seabed area, the Applicant may carry out site investigations and / or install temporary works during the option period. The Applicant may elect to exercise the option to draw down the licence within the option period (being six years) and once granted, the licence grants the Applicant rights to lay, bury, protect and use the section of the cable system for the Proposed Development within a certain designated area for a period of 49 years. The Applicant is negotiating a further option agreement with the Crown Estate for the leasing of a corridor of the foreshore and bed of the river at Eastney, Portsmouth. This lease contains similar rights to the aforementioned seabed licence.

7.9 **Blight**

7.10 The current cost estimate (see section 5 of this Statement) includes an amount to cover the total costs of the payment of compensation for the compulsory acquisition of land and rights included in the Order and required in connection with the Proposed Development.

7.11 It is not anticipated that any claims for blight will arise. Should any claims for blight arise as a consequence of the Application the cost of meeting such claims will be met from the sources of funding described above at section 6 to this Statement

8. REGULATORY STATUS

[BLAKE MORGAN INSERT: THIS SECTION NEEDS TO BE READ IN LIGHT OF THE DEPARTURE OF THE UK FROM THE EU AT THE END OF 2020]

8.1 The Applicant continues to work to secure regulatory arrangements for the Project which would enable it to operate in the UK and France. In this regard, the Applicant presently has two separate ongoing applications for an "exemption" from certain regulations which are being considered by the relevant authorities.

8.2 An application for an exemption under the Electricity Regulation needs to meet six criteria set out in the Electricity Regulation. In its decision of 2018, the Agency for the Cooperation of Energy Regulators ('ACER') assessed the Applicant's exemption request against all six criteria and confirmed that the Applicant passed five of the six tests set out in the Electricity Regulation. In relation to the element that ACER deemed the Applicant not to have passed, the General Court of the European Union has ruled that ACER acted unlawfully as it wrongly created a hierarchy between two EU regulations and wrongly sought to create a further conditionality for the exemption for which the Applicant had applied. On the basis that this approach by ACER was held to be unlawful and given that the Applicant had met all other criteria for the exemption, the Applicant has a pathway to an exemption in 2021.

8.3 In respect of the ongoing exemption applications:

8.3.1 the first application relates to an exemption for the entire Project. This application was submitted in December 2017 and was rejected by the Agency for the Cooperation of Energy Regulators ('ACER'). Following an unsuccessful appeal to the Board of Appeal of ACER, the Applicant brought an appeal before the General Court of the European Court of Justice. On 18 November 2020, the General Court annulled the decision of the Board of Appeal and this exemption application has therefore been remitted to the Board of Appeal to reconsider in light of the judgment; and

8.3.2 the second application relates to a partial exemption, which was submitted to the national regulatory authorities for the UK and France (Ofgem and CRE) in June 2020. This application only seeks an exemption for the portion of the project in French territory. The application is progressing and a public consultation on the application was launched by the regulators on 18 December 2020[6] and which will continue until 29 January 2021.

8.4 The grant of either of these exemption applications would allow the Project to operate in France. If the second 'partial' exemption is granted, further regulatory arrangements would be required for the UK portion of the Project. In this regard, the Applicant intends to apply for a cap and floor regime, or its equivalent/replacement, as soon as applications are invited following the conclusion of Ofgem's present interconnector policy review and the Applicant has advised Ofgem of this intention.

8.5 In this regard the Energy White Paper: Powering our net zero future published by the Department for Business, Energy and Industrial Strategy on 14 December 2020[7] identifies that Ofgem will work with developers and the UK's European partners to realise at least 18GW of interconnector capacity by 2030[8], and it is

[6] https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf

anticipated an appropriate policy mechanism will be introduced to ensure the realisation of this increase at least cost to consumers.

9. CONCLUSION

9.1 Whist the Project does not have the benefit of full funding at this stage, this is not unusual for a project where the securing of funding is dependent on the securing of a development consent order. It is not anticipated that there will be any funding shortfalls for the Project in terms of its principal project cost, financing or land acquisition at the time of when such finance is required.

BM INSERT:

Paragraph 9.2 of REP7-075 states:

"The Applicant has … confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition…"

Section 4.5 of the Applicant's Exemption Request states (at pages 14 to 17):

- ***"AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do."***

- ***'Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity."***

- ***"…AQUIND Interconnector can be an attractive business proposition to project-finance providers, subject to AQUIND being granted appropriate regulatory regimes, including an Exemption as requested in this Request for Exemption…"***

- ***"…AQUIND is unable to operate an interconnector in France without an exemption…"***

ON 28 January 2021, Ofgem and the CRE issued the following joint statement:

"On 2nd June 2020, Aquind submitted to Ofgem and CRE (together, the "NRAs") a request for partial exemption from Articles 19(2) and 19(3) of Regulation (EU) 2019/943 (the "Regulation"), concerning Use of Revenues obligations, for a period of 25 years from the start of commercial operations (the "Exemption Request").On 18th December 2020, the NRAs published a joint consultation document outlining the scope and rationale of the Exemption Request, as well as the supporting evidence provided by Aquind. The consultation was originally planned to close on

29th January 2021. The NRAs issued this consultation in line with our obligations under the applicable legal framework at the time, and with uncertainty as to the future trade and cooperation arrangements between the UK and the EU beyond the end of the transition period. In light of the new Trade and Cooperation Agreement (the "TCA") agreed between the UK and the EU on 24th December 2020, following the UK's departure from the EU, the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request. Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process. Ofgem and CRE will continue to cooperate closely in regards to the functioning and the development of interconnections between the UK and France and the implementation of the arrangements envisaged in the TCA."

9.2 The explanation set out in this Statement provides a basis for concluding that the compensation arising from the potential exercise of compulsory acquisition powers under the Order will be met, and that the necessary funding for the development of the Project will be secured.

[BM INSERT: SEE ABOVE RELATING TO THE UK'S EXIT FROM THE EU ON 24 DECEMBER 2020]

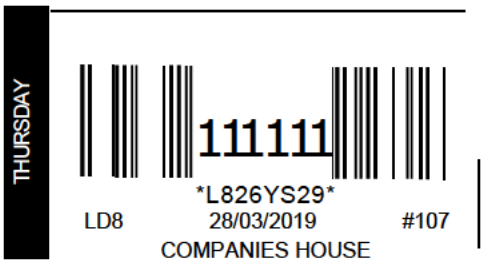
APPENDIX 1

AUDITED ACCOUNTS FOR AQUIND LIMITED FOR THE YEAR ENDED 30 JUNE 2018

COMPANY REGISTRATION NUMBER: 06681477

Aquind Limited
Financial Statements

For the year ended
30 June 2018



Aquind Limited

Directors' Report

For the year ended 30 June 2018

The directors present their report and the audited financial statements of the company for the year ended 30 June 2018.

Principal activities

The principal activity of the company during the year was the development of the Aquind Interconnector - a 2000MW high voltage direct current power transmission line between the UK and France.

On June 23, 2016, the United Kingdom (UK) held a referendum in which voters approved an exit from the European Union (EU) referred to as "Brexit"). As a result of the referendum, it was expected that the UK would leave the EU by 29 March 2019 althOugh at the time of this report the terms and timing of any final Brexit negotiations remain unknown. The Directors anticipate that Brexit could cause disruption and uncertainties around AQUIND's business and relationships with both future users of the Interconnector and create a short term uncertainty in respect of the regulatory treatment of AQUIND Interconnector by the UK, French and EU electricity market regulators. Brexit is unl kely to have a direct impact on environmental, planning and consenting activities, which are being currently undertaken by the company. Nevertheless, since construction of the interconnector is not planned earlier than. 2020 and its commissioning planned for after 2022, we consider that the interconnector's business model will remain viable. Any short-term immediate disruptions arising from Brexit are unlikely to undermine the fundamental, long-term conditions of energy markets in the UK and France, which suggest significant economic benefits of the transmission of electricity between the two markets.

Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a company registered in Luxemburg and the transaction has been registered with the UK tax authorities.

Directors

The directors who served the company during the year; and up to the date of signing were as follows:
Mr R D Glasspool
Mr. K Glukhovskoy
Mr A Temerko

The Company has granted an indemnity to its directors against liability in respect of proceedings brought by third parties, subject to the conditions set out in the Companies Act 2006: Such qualifying third party indemnity provision remains in force as at the date of approving the directors' report.

Donations

£34,000 was paid to the Conservative party for attendance at various events and conferences during the year. A proportion of the cost of these events are treated as donations by the recipient. It has not been poss ble to split this out. Further purchases of £8,000 were also made from the Conservative party during the year. •

Auditor

Each of the persons who is a director at the date of approval of this report confirms that:

- so far as they are aware, there is no relevant audit information of which the company's auditor is unaware; and
- they have taken all steps that they ought to have taken as a director to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on 27 March 2019 and signed on behalf of the board by:

Mr R D Glasspool
Director

Aquind Limited

Directors' Responsibilities Statement

For the year ended 30 June 2018

The directors are responsible for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law), including FRS 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland". Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with *the* Companies Act 2006. They *are* also responsible for safeguarding *the* assets of *the* company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The directors are respons ble for the maintenance and integrity of the corporate and financial information included on the company's website. Legislation in the United Kingdom governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

Aquind Limited

Independent Auditor's Report to the Members of Aquind Limited

For the year ended 30 June 2018

Report on the audit of the financial statements

Opinion
In our opinion the financial statements of Aquind Limited (the 'company'):

- give a true and fair view of the state of the company's affairs as at 30 June 2018 and of its loss for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted. Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

We have audited the financial statements which comprise:

- the profit and loss account;
- the statement of comprehensive income;
- the balance sheet;
- the statement of changes in equity;
- the statement of accounting policies; and
- the related notes 1 to 12.

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

Basis for opinion
We conducted our audit in accordance with international Standards on Auditing (UK) (iSAs (UK)) and applicable law. Our resdonsibilities under those standards are further described in the auditors respons bilitiei for the audit of the financial statements section of our report.

We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the 'FRG's') Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern
We *are required by* ISAs (UK) to report *in respect of the* following *matters where:*

- the directors' use of the going concern basis of accounting in preparation of the financial statements is not appropriate; or
- the directors.have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue. • . •

We have nothing to report in respect of these matters.

Other information
The directors are responsible for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditors report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with *our audit of the financial statements, our responsibility* is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have. performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. •

We have nothing to report in respect of these matters.

Responsibilities of directors
As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements *and for being* satisfied that they give a true and *fair view,* and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In. preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditors responsibilities for the audit of the financial statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from Material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion: Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. .

A further description of our responsibilities for the audit of the financial statements is located on the FRC's website at: www.frc.org.ukiauditorsresponsibilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements

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Opinions on other matters prescribed by the Companies Act 2006
In our opinion, based on the work undertaken in the course of the audit:

the information given in the directors' report for the financial year.for which the financial statements are prepared is consistent with the financial statements; and

the directors' report has been prepared in accordance with applicable legal requirements.

In the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the directors' report.

Matters on which we are required to report by exception

Under the Companies Act 2006 we are required to report in respect of the following matters if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and •ekplanations we require for our audit.; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the directors' report and from the requirement to *prepare a* strategic report.

We have nothing to report in respect of these matters.

Use of our report
This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume • responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the o'.inions we have formed.

27 March 2019

Aquind Limited

Statement of Comprehensive Income

For the year ended 30 June 2018

	Note	2018	2017
Administrative expenses		(1,023,130)	(579,725)
Operating loss		(1,023,130)	(579,725)
Interest payable and similar expenses		(363,565).	(87,060)
Loss before taxation		(1,386,695)	(666,785)
Tax on loss			
Loss for the financial year and total comprehensive income		(1,386,695)	(666,785)

All the activities of the company are from continuing operations.

The notes *on* pages 8 *to* 10 *form part of these financial statements.*

Aquind Limited

Statement of Financial Position

As at 30 June 2018

	Note	2018	2017
		£	£
Fixed assets			
Intangible assets	6	12,169,613	3,225,247
Tangible assets	7	8,109	
		12,177,722	3,225,247
Current **assets**			
Debtors	8	1,014,452	254,383
Cash at bank and in hand		50,666	420,064
		1,065,118	674,447
Creditors: **amounts falling due within one year**	9	(15,092,991)	(4,363,150)
Net current liabilities		**(15,092,991)**	**(3,688,703)**
Total assets less current liabilities		**(1,850,151)**	**(463,456)**
Net liabilities		**(1,850,151)**	**(463,456)**
Capital and reserves			
Called up share capital		**330,001**	**330,001**
Profit and loss account		(2,180,152)	(793,457)
Shareholders deficit		(1,850,151)	(463,456)

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small
- companies' regime and in accordance with FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

These financial statements were approved by the board of directors and authorised for issue on 27 March 2019 and are signed on behalf of the board by:

[redacted]

Mr R D Glasspool
Director

Company registration number: 06681477

The notes on pages 8 to 10 form part of these financial statements.

Aquind Limited

Statement of Changes in Equity

For the year ended 30 June 2018

	Called up share capital	Profit and loss account	**Total**
At 1 July 2016	330,001	(126,672)	203,329
Loss for the year		(666,785)	(666,785)
Total comprehensive loss for the year	**—**	(666,785)	(666,785)
At 30 June 2017	330,001	(793,457)	(463,456)
Loss for the year		(1,386,695)	(1,386,695)
Total comprehensive loss for the year	**—**	(1,386,695)	(1,386,695)
At 30 June 2018	330,001	(2,180,152)	(1,850,151)

The notes on pages 8 to 10 form part of these financial statements.

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is OGN House: Hadrian Way, Wallsend, NE28 6HL.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of preparation
The financial statements have *been* prepared on the historical cost basis and in sterling, which is the functional currency of the entity.

Going concern .
The company has been and is dependent upon the shareholder in providing funding to cover the initial project development costs. A number of shareholder loans have been provided to the company which are for a fixed term of one year. The shareholder has agreed to roll-over each loan and to extend for one further year. A budget has been prepared covering one years required project development and overhead costs to 31 March 2020. The shareholder has provided a letter of comfort to the company that the budget will be funded by additional shareholder loans and that all individual loans made to date to the company will be extended for one further year. The shareholder.is therefore committed to provide continued funding to the company for the current project development phase. The directors are•also investigating alternative sources of finance, including commercial banks, other financial institutions and strategic partners to fund subsequent project stages.

Taking into account the above and the ongoing financial support demonstrated by the shareholder, the directors continue to adopt the going concern basis in preparing the financial statements.

Development costs
Expenditure to establish the Project is recognised in the Profit and Loss Account on an accruals basis. Expenditure on-the development of the Project is capitalised when its future recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction.

Foreign currencies
Foreign currency transactions are initially recorded in the functional currency, by applying the spot exchange rate as at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are translated at the exchange rate 'ruling at the reporting date, with any gains or losses being taken to the profit and loss account.

Intangible assets
Intang ble assets are initially recorded at cost, and are subsequently stated at cost less any accumulated amortisation and impairment losses. Amortisation will be charged once the related asset is available for use.

Tangible assets
Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any.subsequent accumulated depreciation and subsequent accumulated impairment losses.

0. Auditor's remuneration

	2018	2017
	£	£
Fees payable for the audit of the financial statements	7,550	7,550

5. Employee numbers

The average number of persons (baSed on the monthly average number in line with Companies Act requirements) employed by the company during the year amounted to 7 (2017: 7).

6. Intangible assets

	Development - costs £	Intellectual property rights £	Other intangibles £	Total £
Cost				
At 1 July 2017	3,195,998	5,850	23,399	3,225,247
Additions	8,944,366		—	8,944,366
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
Amortisation				
At 1 July 2017 and 30 June 2018				
Carrying amount				
At 30 June 2018	12,140,364	5,850	23,399	12,169,613
At 30 June 2017	3,195,998	5,850	23,399	3,225,247

***7.* Tangible assets**

	Fixtures and fittings £	Total
Cost		
At 1 July 2017		
Additions	9,018	9,018
At 30 June 2018	9,018	9,018
Depreciation		
At 1 July 2017 and 30 June 2018	909	909
Carrying amount		
At 30 June 2018	8,109	8,109
At 30 June 2017		

***8.* Debtors**

	2018	2017
Prepayments and accrued income	16,028	20,480
Other debtors	795,184	.114,814
VAT	203,240	119,089
	1,014,452	254,383

9. Creditors: amounts falling due within one year

		2018	2017
		£	£
Trade creditors		1,542,026	530,401
Amounts owed to group undertakings		12,596,004	3,517,404
Accruals and deferred income .	I	. 921,426	. 307,532
Social security and other taxes		32,063	—
Other creditors	1,472	•	7,813
		15,092,991	4,363,150

Amounts owed to group undertakings have been advanced at an interest rate of 4.5% above the Barclays bank base rate.

10. Related party transactions

During the year, the•Company received marketing services from a relative of the company director in the amount of £6,300 (2017: £Nil). The services were provided under the normal market conditions. During the year the costs of these services were included in administrative expenses.
The outstanding amount at the reporting date was £Nil (2017: £Nil).

11. Controlling party

The company's immediate parent undertaking was OGN Enterprises Limited, a company registered in the British Virgin Islands. The directors regarded the ultimate controlling party to be TMF (BVI) Limited, a company registered in the British Virgin Islands.

12. Subsequent events

Subsequent to the year end, on 15 February 2019 100% shares of the Company were sold to Aquind Energy SARL, a - company registered in Luxemburg and the transaction has been registered with the UK tax authorities. •

APPENDIX 2

AUDITED ACCOUNTS FOR AQUIND LIMITED FOR THE YEAR ENDED 30 JUNE 2019

COMPANY REGISTRATION NUMBER: 06681477

Aquind Limited
Financial Statements

For the year ended
30 June 2019

Aquind Limited

Directors' Report

Year ended 30 June 2019

The directors present their report and the financial statements of the company for the year ended 30 June 2019.

Principal activities

The principal activity of the company during the year was the development of the Aquind Interconnector - a 2000MW high voltage direct current power transmission line between the UK and France.

On 23 June, 2016, the United Kingdom (UK) held a referendum in which voters approved an exit from the European Union (EU) (referred to as "Brexit"). Following a general election held on 12 December 2019, the elected government moved forward with seeking Parliamentary approval of a new Withdrawal Agreement which was considered and agreed by the European Council on 17 October 2019. The Withdrawal Agreement was approved in January 2020. The new Withdrawal Agreement sets out the terms of the UK's exit from the EU. In addition, the UK and EU also agreed upon a new Political Declaration which sets out the framework for the future relationship between the EU and the UK, and reflects the Government's ambition to conclude an ambitious, broad, deep and flexible partnership across trade and economic co-operation across a number of sectors, including energy, with a free trade agreement with the EU at its core. As the outcome, the UK left the EU on 31 January 2020. There is currently a transition period during which the UK and the EU should agree on post-Brexit trading arrangements. The transition period is currently due to expire on 31 December 2020, but might be extended in order to complete negotiations.

Accordingly, uncertainty still remains over the future nature and timing over agreement on the future economic and trading relationship *between the UK and EU.* This may lead to ongoing disruptions and uncertainties around AQUIND's business and relationships with both future users of the interconnector and in respect of the regulatory treatment of AQUIND Interconnector by the UK, French and EU electricity market regulators.

However, Brexit is unlikely to have a direct impact on environmental, planning and consenting activities, which are being currently undertaken by the company. Nevertheless, since construction of the interconnector is not planned earlier than 2021 and its commissioning planned for after 2023, we consider that the interconnector's business model will remain viable. Any short-term immediate disruptions arising from Brexit are unlikely to undermine the fundamental, long-term conditions of energy markets in the UK and France, which suggest significant economic benefits of the transmission of electricity between the two markets.

The Directors have considered the current economic uncertainty reflecting the Covid 19 outbreak and the associated economic uncertainties and implications for delays to ongoing political dialogue associated with Brexit and the operation of the power markets for the future. Whilst short term delays are expected the underlying economic requirements supporting the need for greater interconnector capacity and the value of this project specifically are considered to remain strong.

Directors

The directors who served the company during the year were as follows:

Mr R D Glasspool
Mr K Glukhovskoy
Mr A Temerko

The company has granted an indemnity to its directors against liability in respect of proceedings brought by third parties, subject to the conditions set out in the Companies Act 2006. Such qualifying third party indemnity provision remains in force as at the date of approving the directors' report.

£13,000 (2018: £34,000) was paid to the Conservative party for attendance at various events and conferences during the year. A proportion of the cost of these events are treated as donations by the recipient. It has not been possible to split this out. Further political donations of £70,600 (2019: £8,000) were also made to the Conservative party during the year.

Auditor

Each of the persons who is a director at the date of approval of this report confirms that:

- so far as they are aware, there is no relevant audit information of which the company's auditor is unaware; and
- they have taken all steps that they ought to have taken as a director to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on 20 May 2020 and signed on behalf of the board by:

Mr R D Glasspool
Director

Registered office:
OGN House
Hadrian Way
Wallsend
NE28 6HL

Directors' Responsibilities Statement

Year ended 30 June 2019

The directors are responsible for preparing the directors' report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent.

The directors are respons ble for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The directors are responsible for the maintenance and integrity of the corporate and financial information included on the company's website. Legislation in the United Kingdom governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

Report on the audit of the financial statements

Opinion

In our opinion the financial statements of Aquind Limited (the 'company'):

- give a true and fair view of the state of the company's affairs as at 30 June 2019 and of its loss for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and the Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

We have audited the financial statements which comprise:

- the profit and loss account;
- the statement of comprehensive income;
- the balance sheet;
- the statement of changes in equity;
- the statement of accounting policies; and
- the related notes 1 to 14.

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our respons bilities *under those standards are* further descr bed *in* the auditor's *responsibilities* for *the audit* of the financial statements section of our report.

We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the FRC's) Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We are required by ISAs (UK) to report in respect of the following matters where:

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

We have nothing to report in respect of these matters.

Other information

The directors are respons ble for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of *assurance* conclusion thereon.

In connection with our audit of *the* financial statements, our respons bility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in respect of these matters.

Responsibilities of directors

As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the direct ors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are respons ble for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our respons bilities for the audit of the financial statements is located on the Financial Reporting Council's website at www.frc.org.uk/auditorsrespons bilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements

Opinions on other matters prescribed by the Companies Act 2006
In our opinion, based on the work undertaken in the course of the audit:

- the information given in the directors' report for the financial year, for which the financial statements are prepared is consistent with the financial statements; and
- the directors' report has been prepared in accordance with applicable legal requirements.

In the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the directors' report.

Matters on which we are required to report by exception

Under the Companies Act 2006 we are required to report in respect of the following matters if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the directors' report and from the requirement to prepare a strategic report.

We have nothing to report in respect of these matters.

Use **of our report**
This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our work, for this report, or for the opinions we have formed.

Anthony Matthews (Senior Statutory Auditor)

For and on behalf of
Deloitte LLP
Statutory Auditor

20 May 2020

Aquind Limited

Statement of Comprehensive Income

Year ended 30 June 2019

	Note	2019 £	2018 £
Administrative expenses		(1,390,077)	(1,023,130)
Operating **loss**		(1,390,077)	(1,023,130)
Interest receivable and similar income		753	
Interest payable and similar expenses		(929,732)	(363,565)
Loss before taxation	**6**	(2,319,056)	(1,386,695)
Tax on loss			
Loss for the financial year and total comprehensive income		(2,319,056)	(1,386,695)

All the activities of the company are from continuing operations.

The notes on pages 9 to 11 form part of these financial statements.

Statement of Financial Position

30 June 2019

		2019 Note£	2018 £
Fixed **assets**			
Investments	7	894	
Intang ble assets	**8**	23,355,679	12,169,613
Tangible assets	**9**	5,591	8,109
		23,362,164	12,177,722
Current assets			
Debtors	10	651,710	1,014,452
Cash at bank and in hand		1,049,684	50,666
		1,701,394	1,065,118
Creditors: amounts falling due within one year	**11**	(3,796,950)	(15,092,991)
Net current liabilities		(2,095,556)	(14,027,873)
Total assets less current liabilities		21,266,608	(1,850,151)
Creditors: amounts falling due after more than one year	**11**	(25,435,815)	
Net liabilities		(4,169,207)	(1,850,151)
Capital and reserves			
Called up share capital		330,001	330,001
Profit and loss account		(4,499,208)	(2,180,152)
Shareholders deficit		(4,169,207)	(1,850,151)

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

These financial statements were approved by the board of directors and authorised for issue on 20 May 2020, and are signed on behalf of the board by:

Mr R D Glasspool
Director

Company registration number: 06681477

The notes on pages 9 to 11 form part of these financial statements.

Aquind Limited

Statement of Changes in Equity

Year ended 30 June 2019

	Called up share capital	Profit and loss account	Total
	£	£	£
At 1 July 2018	330,001	(2,180,152)	(1,850,151)
Loss for the year		(2,319,056)	(2,319,056)
Total comprehensive income for the year		(2,319,056)	(2,319,056)
At 30 June 2019	330,001	(4,499,208)	(4,169,207)
Profit for the year			
At 30 June 2019	330,001	(4,499,208)	(4,169,207)

The notes on pages 9 to 11 form part of these financial statements

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is OGN House, Hadrian Way, Wallsend, NE28 6HL.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of **preparation**
The financial statements have been prepared on the historical cost basis and in sterling, *which* is the functional currency of the entity.

Going concern
OGN Enterprises Limited has provided a number of shareholder loans to the company over the years. OGN Enterprises Limited has confirmed its commitment to provide funding to cover the initial project development costs irrespectively of the sale of 100% of shares of the company to Aquind Energy S.a.r.l.. OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021. OGN Enterprises Limited has provided a letter of comfort to the company that the budget will be funded by additional loans and that all individual loans made to date to the company is extended to 1 June 2021. OGN Enterprises Limited is therefore committed to provide continued funding to the company for the current project development phase. The directors are also investigating alternative sources of finance, including commercial banks, other financial institutions and strategic partners to fund subsequent project stages.

In addition to the above the Directors have also considered the current economic uncertainty reflecting the Covid 19 outbreak as set out in the Directors' Report. Reflecting that the company is not currently reliant on revenues, and has secured funding to manage its spending plans for the next 12 months which has been reconfirmed as available in the light of the Covid 19 developments. Whilst there could be some delays to the progress of the plans for the project this is not considered to have a significant impact on the going concern assumption.

Taking into account the above and the ongoing financial support demonstrated by OGN Enterprises Limited, the directors continue to adopt the going concern basis in preparing the financial statements.

Investments
Fixed assets investments are shown at cost less provision for impairment in value.

Development costs
Expenditure to establish the Project is recognised in the Profit & Loss Account on an accruals basis. Expenditure on the development of the Project is capitalised when its future recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction.

Foreign currencies
Foreign currency transactions are initially recorded in the functional currency, by applying the spot exchange rate as at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are translated at the exchange rate ruling at the reporting date, with any gains or losses being taken to the profit and loss account.

Intangible assets
Intang ble assets are initially recorded at cost, and are subsequently stated at cost less any accumulated amortisation *and* impairment losses. Amortisation will be charged once the related asset is available for use.

Tangible assets
Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

4. Auditor's remuneration

	2019	2018
	£	£
Fees payable for the audit of the financial statements	11,750	7,550

5. Employee numbers

The average number of persons employed by the company during the year amounted to 7 (2018: 7).

6. Profit before taxation

Profit before taxation is stated after charging:

	2019 £	2018 £
Depreciation of tang ble assets	3,145	909

7. Investments

	Subsidiary undertakings £	Total £
Cost		
Additions	894	894
At 30 June 2019	894	894

Aquind SAS (France) is **a** 100% subsidiary of the company **and was registered on 31 May 2019 for the** purposes of developing the Aquind interconnector in France. It is currently operating under the control of the company and was dormant as at 30 June 2019. The investment in the subsidiary company is carried at cost of £894 (2018: £nil).

1. Intangible assets

	Development costs £	Intellectual property rights £	Other intangibles £	Total £
Cost				
At 1 July 2018	12,140,364	5,850	23,399	12,169,613
Additions	11,176,066	10,000	-	11,186,066
At 30 June 2019	23,316,430	15,850	23.399	23,355,679
Amortisation				
At 1 July 2018 and 30 June 2019				
Carrying amount				
At 30 June 2019	23,316,4a0	15,850	23,399	23,355,679
At 30 June 2018	12,140,364	5,850	23,399	12,169,613

2. Tangible assets

	Fixtures and fittings £	Total £
Cost		
At 1 July 2018	9,018	9,018
Additions	627	627
At 30 June 2019	9.645	9,645
Depreciation		
At 1 July 2018	909	909
Charge for the year	3,145	3,145
At 30 June 2019	4,054	4,054
Carrying amount		
At 30 June 2019	5,591	5,591
At 30 June 2018	8,109	8,109

10. Debtors

	2019 £	2018 £
Prepayments and accrued income	13,205	16,028
VAT	228,055	203,240
Other debtors	410,450	795,184
	651,710	1,014,452

11. Creditors

	2019 £	2018 £
Amounts falling due within one year:		
Trade creditors	2,463,860	1.542,026
Amounts owed to group undertakings		12,596,004
Accruals and deferred income	1,200,962	921,426
Social security and other taxes	79,219	32,063
Other creditors	52,909	1,472
	3.796,950	15,092,991

	2019 £	2018 £
Amounts falling due more than one year:		
Amounts owed to group undertakings	25,435,815	

Amounts owed to group undertakings represent loans made by OGN Enterprises Limited and have been advanced at an interest rate of 4.5% above the Barclays bank base rate. OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021.

12. Related party transactions

During the year, the company received loans from OGN Enterprises Limited £11,910,079 (2018: £8,678,425). The outstanding amount at the reporting date was £24,105,908 (2018: £12,195,829). Interest was charged on the loans from OGN Enterprises Limited at 4.5% above the Barclays bank base rate and amounted to £929,732 (2018: £563,007). Interest of £1,329,907 was outstanding at 30 June 2019 (2018: £400,175). OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021.

During the year, the company received marketing services from a relative of the company director in the amount of £38,850 (2018: £6,300). The services were provided under the normal market conditions. During the year the costs of these services were included in administrative expenses. The outstanding amount at the reporting date was £Nil (2018: ENil).

13. Controlling party

The parent of the company is Aquind Energy S.a.r.l., whose registered office is at 26, boulevard de Kockelscheuer, L-1821, Luxembourg. The Directors have the power to govern the financial and operating policies of the company.

14. Subsequent events

The Directors have considered the current economic uncertainty reflecting the Covid 19 outbreak and the associated economic uncertainties and implications for delays to ongoing political dialogue associated with Brexit and the operation of the power markets for the future. Whilst short term delays are expected the. underlying economic requirements supporting the need for greater interconnector capacity and the value of this project specifically are considered to remain strong.

BM INSERT

APPENDIX 3

SECTION 4 OF AQUIND LIMITED EXEMPTION REQUEST RELATING TO EU REGULATION 2019/943

Request for Exemption: AQUIND Interconnector

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4 Project description

4.1 Introduction

This section of the Request for Exemption:

- Introduces the AQUIND project promoters.
- Provides a technical description of the Project.
- Summarises the project ownership and commercial arrangements, including the proposed financing structure and the supply chain strategy.
- Sets out the project plan and timelines.

4.2 AQUIND Interconnector project developers

AQUIND Interconnector is being promoted by AQUIND SAS (France) and AQUIND Limited (UK) and their 100% holding company AQUIND Energy Sarl in Luxembourg – referred to throughout this document as "AQUIND". AQUIND has been actively working with a range of parties to develop the Project since 2014 and is supported throughout by a delivery focussed and committed project team. AQUIND is not affiliated with any other business involved in production, transmission, distribution or sales of either electricity or gas in any of the Member States or states – members of the European Economic Area ("EEA"). The development of AQUIND Interconnector is the sole business of AQUIND.

The project team has previous experience in the energy sector, including oil and gas and offshore engineering, construction and procurement. AQUIND has selected a group of experienced specialist advisors to assist its core management team including consultant engineers (WSP), economic and policy advisors (Baringa, FTI), legal advisors (Herbert Smith Freehills), network/system modelling advisors (Consentec and Tractebel), and planning and land experts both in England (WSP, Natural Power) and France (Arcadis, Natural Power).

4.3 Technical description

This section sets out a summary of the technical specification and planned connection locations of AQUIND Interconnector in both GB and France, along with the rationale behind the choice of technology, the map of the planned route, as well as information on the technical losses and project lifetime.

AQUIND has undertaken detailed technical analysis to ensure the project is technically feasible. This has included extensive engagement with the national TSOs, NGET and RTE, to ensure appropriate sizing and location of the connections to the national transmission systems. Throughout the project, AQUIND has been advised by leading technical advisors. A full technical overview of the project and key technical decisions has been provided in *Exhibit 8*, and is summarised in this section of the Request for Exemption.

Figure 4-1 Overview and key components of AQUIND Interconnector

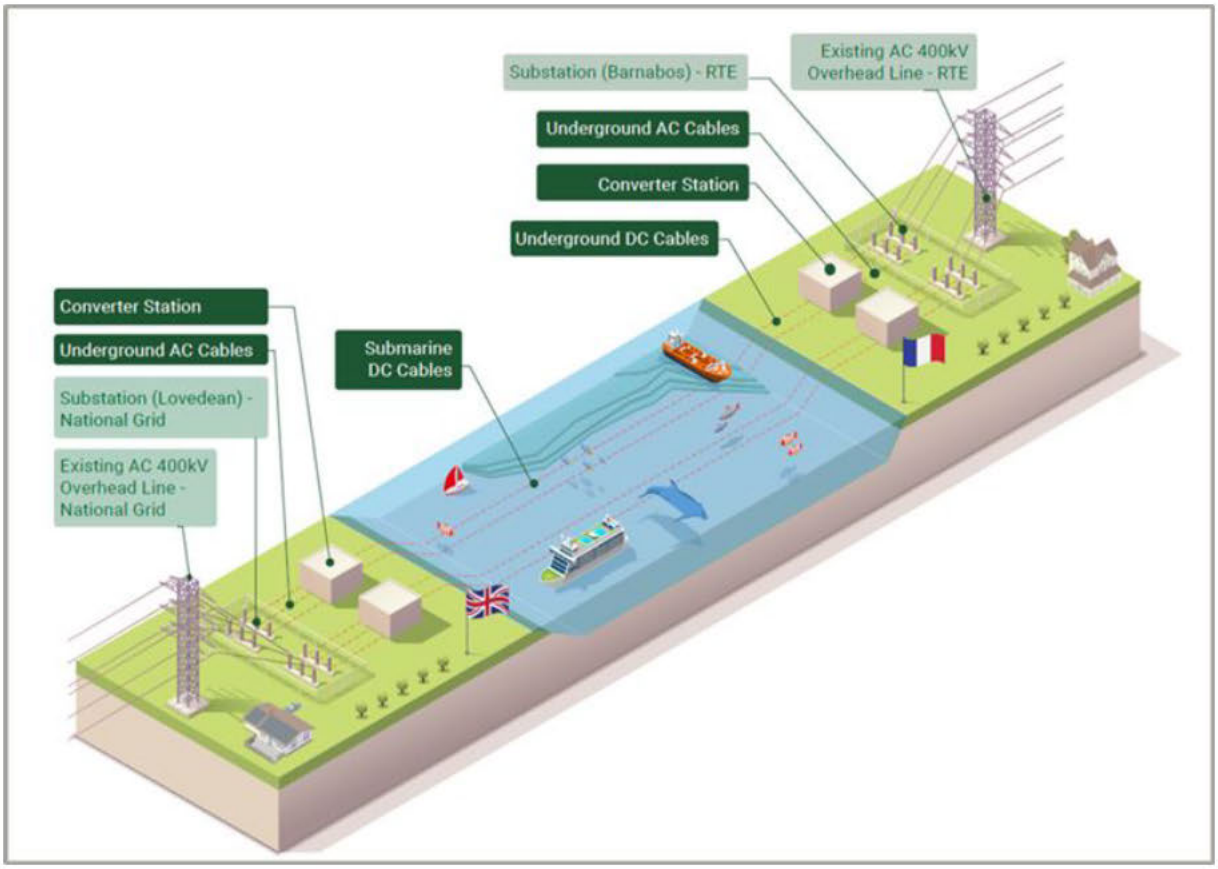


Table 4-1 summarises the key technical characteristics (both onshore and offshore) of AQUIND Interconnector.

Table 4-1 Summary of AQUIND project characteristics

Project characteristic	
Transmission cables	▸ Capacity: 2,000 MW (net of losses) ▸ Configuration: two independent symmetrical monopole HVDC links ▸ DC voltage: 320kV ▸ AC voltage: 400kV in both France and GB ▸ Technology: XLPE
Routing	▸ Approximate submarine HVDC cable route: 182km (landfalls at Eastney and Pourville) ▸ Approximate HVDC cable route in France: 36km (landfall to converter stations) ▸ Approximate HVDC cable route in the UK: 20km (landfall to converter stations) ▸ Approximate HVAC cable route: <3km (converter stations to TSO substations at Lovedean and Barnabos).[1]

[1] The HVAC cable from AQUIND Converter Station (G.RUE) to the RTE switching station Barnabos (≤ 2 km) will be installed and maintained by RTE. This is because the French Energy Code, Articles L. 121-4 and L. 321-6, entrust the development, construction and operation of interconnectors solely with RTE.

Converter stations	▸ Two converter stations (GB and France), access road to each, and ancillary infrastructure ▸ Rating: 2,075 MW ▸ Technology: VSC (Voltage Source Converter)
System availability	▸ Based on the dual monopole topology of the scheme and associated length of DC and AC cables the system availability is expected to be 98%. Further information can be found in Exhibit 8 – AQUIND Feasibility Opinion.
Additional features	▸ Telecommunications: Fibre optic data transmission cables (one per circuit) and ancillary infrastructure at the converter stations and the landfall (GB and France) ▸ Lifetime: assumed lifetime of 25 years (technical lifetime >40 years)

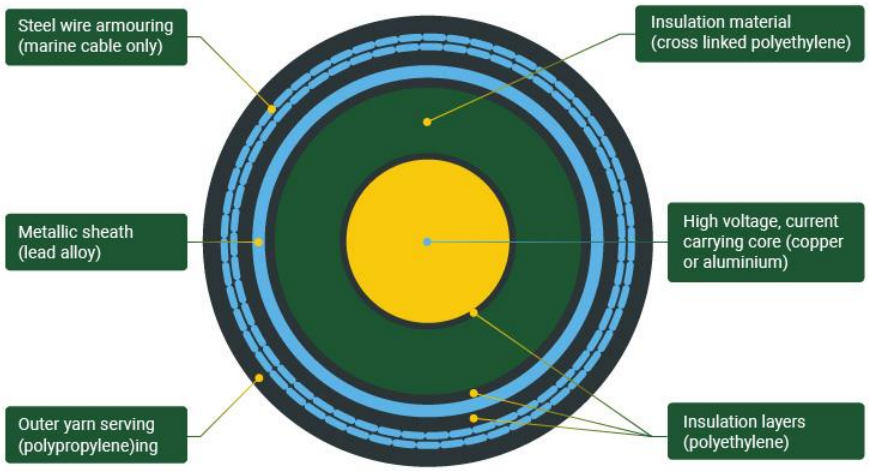
4.3.1 Cables

4.3.1.1 Cable description

Both the AC and DC cables will be polymerically insulated using cross linked polyethylene (XLPE) with either copper or aluminium.

XLPE cables are the leading high voltage cable technology. They are solid-type cables that do not contain gases like gas insulated cables or liquids like mass impregnated cables. This means that there is no risk of leaking such gases or liquids into the environment. It is generally recognised that XLPE cables are inert to the environment and this technology has the least environmental impact among commercially available high voltage cable technologies.

Figure 4-2 AQUIND Interconnector XLPE cable

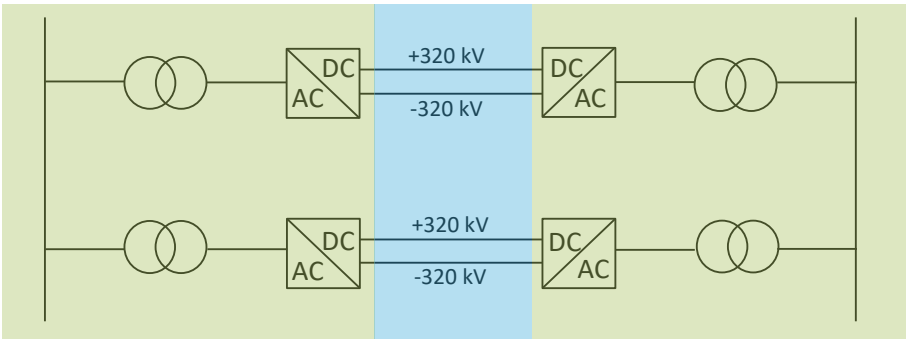


4.3.1.2 Choice of cable capacity and configuration

AQUIND Interconnector will comprise two independent symmetrical monopole HVDC links (“poles”), as shown in Figure 4-3 below. This is to ensure that no single fault results in a complete loss of the capacity. The two symmetrical monopoles will be fully self-sufficient in terms of control systems, protection systems, auxiliary power supplies and cooling systems providing redundancy to the system.

Each pole will have the export capacity of 1037.5MW and the import capacity of around 1000MW, net of transmission and conversions losses, which are described in more detail in Section 4.3.4. Such an arrangement provides at least 50% power availability under all credible scenarios, as the two poles are designed to be completely electrically independent, with no overlapping equipment or services. Throughout this document, the Project's capacity is referred to as 2000MW.

Figure 4-3 AQUIND symmetrical monopole design



RTE 400kV bus
(Barnabos)

National Grid 400kV bus
(Lovedean)

The selection of the project capacity was made based on the market assessment together with technological and grid constraints appraisal in France and the UK. There are limitations imposed by the national TSOs based on the size of any individual block of power that the AC network can accommodate should there be a sudden loss of that power. These are defined as infeed-loss limits. For AQUIND the limiting factor is the island GB transmission system, which can withstand a 1320MW power loss on a routine basis (up to several time per year), and up to 1800MW loss on a less frequent basis.[2] The limitations on the larger continental synchronous grid are much higher.

During the feasibility phase in 2015 AQUIND considered the option to build a 1320MW monopole, or two 1320MW monopoles or an 1800MW bi-pole. Early discussions with manufacturers indicated challenges with this cable size, suggesting that each of these solutions would require cutting edge and untested designs to achieve the required transmitted power and DC voltage. The only currently operational interconnector between GB and France (IFA) also has a capacity of 2,000MW, which includes 2 sets of 2 cables (bi-poles) of 500 MW each.

AQUIND Interconnector ultimately selected a twin symmetrical monopole configuration over a bi-pole due to better supply chain readiness and the present technology level. A detailed assessment of the technology choice is provided in Exhibit 8 of this Request for Exemption (AQUIND Feasibility Opinion).

4.3.1.3 Choice of cable voltage

AQUIND has selected a DC voltage of 320kV, which, at the time of the decision, represents 'state of the art' VSC technology. It also represents the highest commercially available voltage for XLPE cables. All major manufacturers of HVDC equipment had projects in construction or operation of this power/voltage class and were therefore comfortable to support the AQUIND scheme at this level.

[2] These limits are defined in National Grid Electricity Transmission Security and Quality of Supply Standard, (SQSS), Issue 2.2, dated 5th March 2012. This defines normal infeed loss risk as 1320MW and infrequent infeed loss risk as 1800MW. Both limits became active in April 2014.

4.3.1.4 Cable route

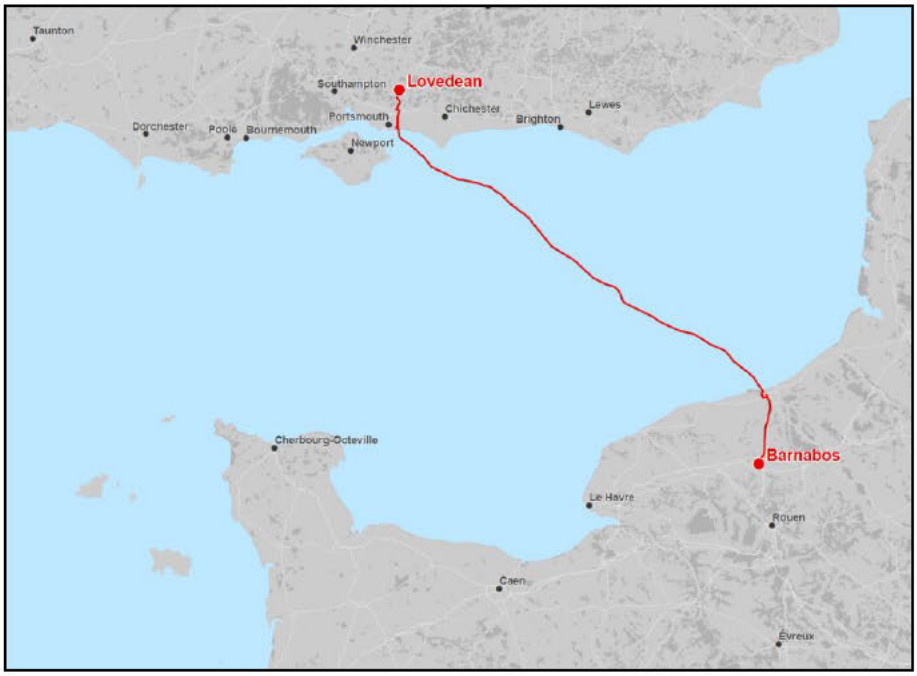
Underground HVDC cables will connect each converter station to the coast, between which a submarine HVDC cable will run from Eastney in Portsmouth, Southern England, to Pourville in Normandie. The converter stations will be connected to their respective substations by HVAC cables. The breakdown of the cable route is set out in Table 4-2.

Table 4-2 Breakdown of cable route

Route	Approximate Cable Route Length	Cable type
Barnabos 400kV switching station to French converter station	<2 km	AC
French Converter station to Pourville	36 km	DC
Submarine cable	182 km	DC
Eastney to UK converter station	20 km	DC
Converter station to NG 400 kV sub-station	<1 km	AC
Total	**240km**	

The planned route for AQUIND Interconnector is shown in Figure 4

Figure 4-4 Indicative cable route



AQUIND carried out detailed environmental impact assessments of all elements of the cable route, which are now under consideration by the National Planning Inspectorate in the UK and relevant authorities in Normandy. The following subsections set out the approach to installing the subsea and terrestrial cables.

4.3.1.5 Marine Cable installation

The design and installation of marine cables is not only focussed on delivering the required power but also on reducing the risk of damage from the sea environment and anchors. To reduce environmental risks, XLPE technology has been selected. To reduce the risk of physical damage the marine cables are designed with steel wire armour surrounding the internal parts of the cable.

Further risk mitigation measures include burying the cable within trenches excavated into the sea floor. Where the cable cannot be buried due to trenches not being able to be excavated, the cable will require protection with the installation of concrete mattresses or rock placement over the cables.

Cable installation will be undertaken by purpose-built vessels which carry many kilometres of cable. The cable is stored on the vessel within a carousel which unreels the cables for laying onto the sea floor. Remotely operated underwater vehicles (ROV) then install the cable into excavated trenches, or if trenching is not possible, cover the cables with protective concrete mattresses or rock.[3]

In 2017-2018, a specialist marine survey company MMT undertook, on behalf of AQUIND, an offshore geophysical and geotechnical survey campaign that confirmed feasibility of the proposed marine cable route. The conclusions of the report have been previously made available to CRE and Ofgem.

4.3.1.6 Terrestrial cable installation

A cable supplier selected by AQUIND via a competitive tendering process will be responsible for the installation of terrestrial DC cables which will run between the converter stations and the landing point. AQUIND will aim, where possible, to install terrestrial DC cables within roads or on road verge in order to avoid and/or minimise environmental impact. At the landing points and other locations where required, the Horizontal Direct Drilling technique will be utilised.

In GB, for the AC connection between the converter and Lovedean substation, there will be two AC cables circuits, each comprising three cables. Consequently, these cables will require a wider corridor than the DC cable and will mostly be installed through private lands. The AC cable route length will be minimised as far as practicable. In GB, design, installation and maintenance of the AC cables will be performed by the National Grid at the cost to the Project Promoter.

In France, design, installation and maintenance of the AC cables will be performed by RTE at the cost of the Project Promoter.

4.3.2 Converter stations

4.3.2.1 Choice of HVDC technology and converter stations

AQUIND Interconnector will use Voltage Sourced Converter HVDC technology to connect the French and GB transmission systems.

HVDC technology provides a number of advantages compared to AC technology. It has much lower cable losses over a long distance and requires fewer cables for an equivalent power.

[3] Cable damage during installation might call for expensive and time-consuming repair operations, during which the damaged pole(s) will be unavailable to the market. Once installed typical hazards to cables may be man-made (such as damage from fishing gear, ships anchors, dredging and dumping activity, impact of existing or new cables and pipelines, military activity or oil and gas exploration or production activities, etc) or natural such as erosion and sedimentation, hard substrates, sediment mobility and high current regimes.

However, as both transmission networks use conventional Alternating Current (AC) technology, the Project will require the construction of two HVDC converter stations in order to convert AC to DC and vice-versa at the remote ends. One converter station will be in England, within 1km of National Grid's Lovedean substation, and the second will be in France, less than 2km from RTE's Barnabos switching station.

4.3.2.2 Choice of VSC technology

There are two commonly used variants of HVDC technology: Line Commutate Converter (LCC) and Voltage Source Converter (VSC) technology. AQUIND Interconnector has chosen the VSC technology, due to a number of technical advantages over LCC, including lower harmonic emissions, black start capability and a reduction in the site footprint requirement. The VSC technology typically allows very rapid change of flow and direction as well as reactive power, which is valuable to system operators when managing grid stability. VSC is also currently the preferred HVDC technology for applications in Europe.

VSC technology will enable AQUIND Interconnector to provide voltage control, frequency control and black start capability services to both National Grid and RTE. Provision of these ancillary services can help strengthen the quality and security of supply of both networks.

AQUIND does not anticipate that revenues arising from the provision of ancillary services will be material in the context of its overall revenues from AQUIND Interconnector. AQUIND is in discussions with National Grid and RTE in relation to mandatory and commercial ancillary services the TSOs might require, and the future commercial arrangements for providing such services.

AQUIND previously sought views from National Grid and RTE on the most recent valuation of the benefits that AQUIND is expected to provide from an ancillary services perspective, but neither of the two TSOs were able to provide any quantitative estimates of the potential value of ancillary services.

A detailed assessment of the technology choice is provided in Exhibit 8 of this exemption Request (AQUIND Feasibility Opinion).

4.3.3 Sub-station connections

4.3.3.1 Grid connection

Due to the large connection size of 2075MW, AQUIND Interconnector will connect at the highest available voltage level, which is 400kV in both countries.

In France, AQUIND signed a technical and financial connection proposal (*Proposition Technique et financière* or "PTF") with RTE on 06 March 2017 for a connection to the Public Transmission Network with a maximum import capacity of 2000MW and a maximum export capacity of 2075MW. The PTF is conditional on the grant of an exemption (as requested in this document) and no alternative grid connection route for independent non-RTE interconnectors currently exists in France.

In GB, AQUIND accepted National Grid Electricity Transmission's "non-firm" 2000MW connection offer for either import or export scenarios in June 2016. In March 2018 AQUIND signed a Modification Offer with National Grid to adjust the total UK export capacity to 2075MW to ensure that the transmission loss adjusted import capacity of the interconnector is the same in both directions.

National Grid will undertake connection works at their Lovedean substation, including building two new bays for AQUIND and reinforcement works within the Transmission system. National Grid will also

build two AC cable circuits between Lovedean substation and AQUIND converter station and will carry out operation and maintenance support of the GB AC connection throughout the project life. The cost of these works as well as the operational and maintenance costs in respect of the GB AC connection will be paid by AQUIND.

AQUIND is in the process of discussing a further modification to its connection agreement to take into the proposal of the National Grid to carry out the construction works in respect of the GB AC connection.

During the non-firm offer period National Grid may curtail AQUIND Interconnector due to planned and unplanned outages in certain parts of the grid without financial compensation. The curtailment of AQUIND in GB due to the planned outages can only occur between April and September and the level of curtailment will be known once such outages are scheduled by the National Grid. Based on historical average circuit date and the estimated time circuits may be out of service due to non-scheduled outages (faults) National Grid has calculated the probability of forced outages of AQUIND Interconnector due to unplanned faults to be [redacted] **hours per year which is around 0 [redacted]% per year**. National Grid may perform further assessments of the probability of forced outages as part of their routine procedures.

4.3.3.2 Barnabos Substation

Following feasibility studies conducted by RTE in 2016 and initial landfall/cable route desktop studies, Barnabos 400 kV switching station was identified as the preferred point of connection to the French transmission network. Other connection locations (Penly substation, Le Havre substation, new substation on Havre – Rougemontier) were discounted because of constraints on the surrounding electrical network, technical and environmental constraints, and considerably longer DC cable route options.

As a result, AQUIND will connect into the Barnabos 400 kV substation in Haute Normandie. RTE will construct two new 400 kV bays to accommodate connections from the French AQUIND converter station.

- In March 2017, AQUIND signed a Technical and Financial Proposal (PTF) with RTE for the connection to Barnabos switching station.
- In July 2018, WSP completed initial converter station optioneering report which identified land opposite Barnabos switching station as a preferred location for the converter station.

The connections will be made using relatively short lengths of AC underground cables. RTE will construct these cables (which will terminate inside the AQUIND converter station), as well as connection bus bars at AQUIND's substation, and carry out all necessary works and improvements at Barnabos substation. The costs of this work will be paid by AQUIND. No wider reinforcements of the French grid are envisaged by RTE to accommodate the connection.

4.3.3.3 Lovedean Substation

The choice of the connection point in GB has been informed by a bespoke feasibility study produced in 2015 by the GB TSO, National Grid Electricity Transmission ("NGET"). This study identified potential connection locations to the GB electricity transmission grid as well as the associated constraints and cost. NGET identified only two practically possible connection locations out of the assessed existing 400 kV substations on the South Coast of England – Lovedean and Bramley. Following a further assessment, National Grid's cost-benefit analysis showed that the most optimal scenario was for an interconnector with a capacity of 2,000MW connecting to Lovedean substation. It demonstrated that

from a cost perspective and to utilise efficiently available connection points on the South Coast of England, a connection at a higher capacity is preferred. This formed the basis for the formal Connection and Infrastructure Options Note, that identified Lovedean as the preferred connection option.

In April 2016, AQUIND conducted a preliminary Converter Station site identification exercise. Potential Converter Station site locations were identified by placing the existing Lovedean substation at the centre of an optioneering exercise. In 2017 AQUIND conducted further detailed assessments to ensure the technical viability of siting the Converter Station in or around the proposed Converter Station Area. Based on this analysis, two suitable locations were identified: South-west of Lovedean substation (Option A) and West of Lovedean substation and between the existing 400 kV overhead line circuits (Option B). In H2 2017, AQUIND conducted a desktop study to inform the environmental constraints for both options and consulted with the Local Planning Authorities. In 2018, based on the analysis and assessment undertaken for both Converter Station options and following the input from the LPAs, Option B was identified as the preferred option.

To accommodate the full capacity of the Interconnector under all conditions mandated by the Security and Quality of Supply Standards (SQSS), National Grid must undertake reinforcement works within the 400 kV AC network. Until these reinforcement works are completed in Q4 2029, the connection offer is considered “non-firm”, meaning the System Operator can constrain AQUIND Interconnector with no compensatory payments. The frequency, duration and severity of constraints will be subject to a number of variables over which AQUIND has no control, such as the level of generation on the system and outages on transmission circuits.

4.3.4 Technical Losses

The transmission losses in the underground cables and submarine cables will depend on the route length, the conductor material used and the cross-sectional area of the conductor. We have, however, prepared estimates of the transmission losses that we anticipate will occur in full power scenarios on AQUIND Interconnector. These are shown in Table 4-3 and are based on: (i) the fact that VSC converter station losses are typically 1.0% of their rating; and (ii) the current AQUIND Interconnector specifications.

The overall scheme loss is expected to be 75.3 MW, rounded to 75MW. This represents total losses of approximately 3.6%.

Table 4-3 Technical line losses

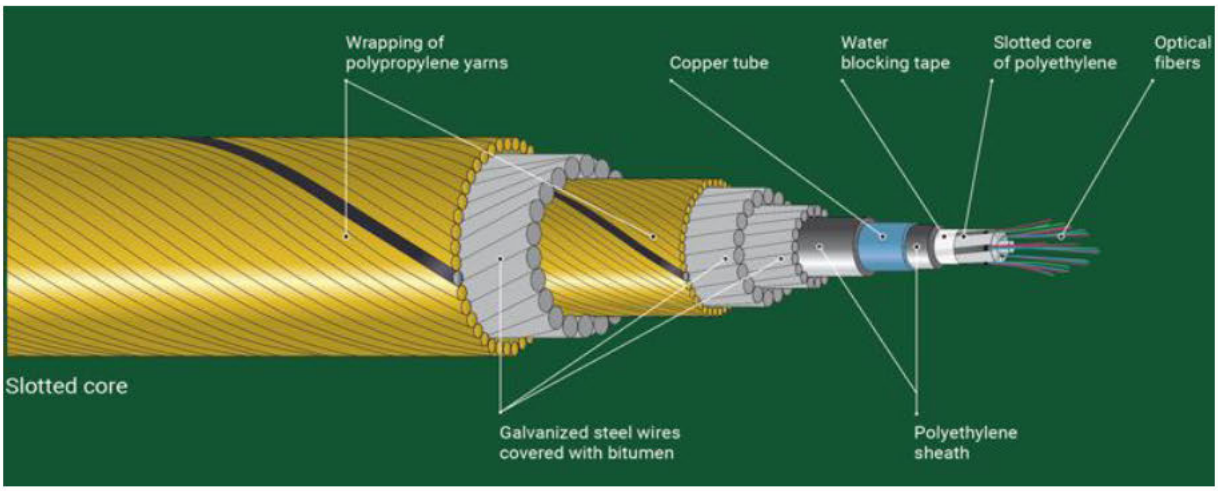
Component	Loss (MW)
Converter Station	20.75
DC Marine Cables	13.2
French DC Cables	1.9
GB DC Cables	1.4
French AC Cables	0.2
GB AC Cables	0.2
Total losses scheme	**75.3 MW**
Loss per pole	**37.65 MW**

4.3.5 Inclusion of data cable

As part of the Project, AQUIND will be deploying fibre optic infrastructure for protection and monitoring purposes. A fibre optic data transmission cable will be installed in a trench alongside and at the same time with each of the two power cable pairs both offshore and onshore. The spare data transmission capacity of such cables may be used to transfer data of third parties, providing further connectivity between France and England.

Up to [redacted] "dark" fibres in each of the two data transmission cables may be available for third-party access enabling the high data transfer rates of up to [redacted] Gbps per fibre pair. The AQUIND fibre optic transmission link offers a shorter route than some of the existing systems, ensuring the low latency time of approximately [redacted] ms. The system will be capable of connecting the French and English shores without the need for amplification by subsea repeaters.

Figure 4-5 AQUIND Interconnector data cable



Installation in the same trench as the power cables and alongside them, together with separation of the two cable systems, ensures consistent protection against fishing and anchor damage as well as natural hazards.

4.4 Ownership and commercial arrangements

This section of the Request for Exemption explains the ownership structure of the Project and the proposed operating arrangements. We note that the future operating arrangements will be further developed as the project progresses. AQUIND will keep the NRAs informed of any developments.

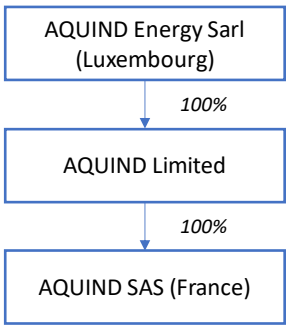
4.4.1 Ownership and shareholding

4.4.1.1 Project promoters

AQUIND Interconnector is promoted by:

- AQUIND SAS, société par actions simplifiée, created in accordance with the laws of France with registration R.C.S. number 808 503 940 and registered address at 72 rue de Lessard 76100 Rouen and;
- AQUIND Limited, a limited liability company under the laws of England and Wales with company number 06681477 and the registered address at OGN House, Hadrian Way, Wallsend, NE28 6HL; and
- AQUIND Energy Sarl, Société à responsabilité limitée, created in accordance with the laws of Luxembourg with registration number B229924 and registered address at 26 boulevard de Kockelscheuer, 1821 Luxembourg.

Figure 4-6 AQUIND Interconnector ownership structure



No entities or people involved in the AQUIND company group structure have control over any energy generator, producer or supplier.

4.4.1.2 Future equity holdings

AQUIND shareholders may consider investing in other assets in the electricity industry in the UK or France in the future (for example, electricity storage, renewable power generation or marginal balancing plant).

AQUIND anticipates seeking further equity investment as part of its financing strategy in the future. AQUIND is currently discussing an equity investment potentially including an entity that holds some generation assets interest in the UK, French or other European markets. If these investments go ahead, AQUIND would seek to be compliant with the relevant unbundling regulations and in particular with

the provisions regarding the "*control over an undertaking performing any of the functions of generation or supply*".[4]

Further information on AQUIND's proposed approach is identified in Section 4.5.

4.5 AQUIND Financing structure

This section sets out AQUIND's indicative financing plan (Section 4.5.1), followed by a description of the planned commissioning date (Section 4.5.2).

4.5.1 AQUIND Indicative financing plan

AQUIND Interconnector is the sole business of AQUIND. For these purposes, AQUIND can be considered a project entity.

AQUIND's financing strategy is to attract funds to invest in AQUIND Interconnector on a project-finance basis. Our analysis shows that AQUIND Interconnector can be an attractive business proposition for project-finance providers, subject to AQUIND being granted appropriate regulatory regimes, including an Exemption as requested in this Request for Exemption.

AQUIND is being financed at the development stage by private investments. This is the riskiest part of financing and it is very hard to attract outside investors. Up to the present moment, nearly [redacted] have been invested by AQUIND and its shareholders in the development stage of the Project.

AQUIND will seek further equity funding and non-recourse project financing from wider pools of potential investors for the construction stage of the Project. The target combination of debt and equity will be determined through the ongoing discussions around the most efficient investment approach with potential investors while the Exemption is assessed, but in any case project debt is unlikely to be less than 50%.

A summary of the indicative financing plan is set out in Table 4-4.

Table 4-4 Indicative financing plan

Source of financing	Financial contribution
AQUIND's own resources	▸ [redacted]m to date; plus ▸ [redacted] until FID
Project finance	▸ [redacted] ▸ Expected [redacted]% of capex
Other sources (equity investors)	▸ Expected [redacted]% of capex

The final approach to the financing strategy depends on the details of the regulatory arrangement with the NRAs, including the form and duration of the Exemption.

The combination of investors may include:

- Equity providers:
  - [redacted]
  - [redacted]
  - [redacted]

[4] Directive 2009/72/EC, Article 9.

- Non-recourse finance providers:

AQUIND is engaging with various types of the potential investors, at this stage primarily equity providers, including specialised investment funds, corporate investors, EPCI contractors and high net worth individuals. These discussions are covered by mutual confidentiality requirements.

Taking into account that a typical ticket size for banks in such project finance deals is around € million, AQUIND expects there would be a syndicate of lenders. While there are not many examples of fully private interconnectors, recent offshore wind transactions suggest that AQUIND should expect that term loans would be for at least years.[5] AQUIND may opt for a share of shorter- or longer-term loans subject to future refinancing after a certain period of time. A precise loan strategy will be determined through further engagement with debt providers and equity investors, based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption.

Recent transactions involving offshore wind farms also show that if it is possible to confirm a business case for a project, then it is also possible to attract investors such as infrastructure funds, pension funds and sovereign funds who have a longer investment horizon than private investors. In offshore wind it has been achieved through a direct tariff support by Government.

Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.

AQUIND, with its advisors, has prepared a financial model to simulate the expected cash-flows based on a set of economic assumptions outlined in Exhibit 1. The financial model is provided in Exhibit 3.

As AQUIND is unable to operate an interconnector in France without an exemption, the exemption length will be linked to the expected debt repayment period, incorporating at least 5 years additional

[5] Page 30 of "Where's the money coming from? Financing offshore wind farms" European Wind Energy Association, November 2013.

headroom. The exemption is therefore required for a period of time that exceeds the term of the non-recourse debt by a safe margin. It would ensure that the project is able to address the following risks:

- Actual terms and conditions of financing – given uncertainties affecting exchange and interest rates, which stem from Brexit and other political and macro-economic factors, AQUIND will be able to finalise its financing package at the point of Final Investment Decision. At this stage, AQUIND requires an appropriate amount of flexibility to make prospective investors comfortable.
- Market conditions as discussed in this Request for Exemption.
- Programme and cost risks of the project as discussed in this Request for Exemption.

4.5.2 AQUIND commissioning date and project cost breakdown

AQUIND is working with technical advisors, WSP, to plan all project milestones through the planning, construction and commissioning phases of the project. This complex planning exercise takes into account a range of contingencies that may arise during the programme. Based on this analysis, AQUIND will be ready to commission in Q2 2024.

For a project of this size and cost, it is not unusual for unexpected events to delay the projected commissioning date. A number of the possible reasons for such a delay are outside of AQUIND's control – for example, unforeseen planning challenges or weather conditions delaying offshore works. At this early stage of the project, it is not possible to identify an accurate specific commissioning date for the project.

As an exempt investor with no financial support, any project delay will increase the project cost and delay revenue recovery. AQUIND, and its shareholder, are therefore strongly incentivised to minimise project delays. Rather than setting the start of the exemption period at this stage, AQUIND requests that the exemption start date is aligned with the actual full commissioning date of the project.

In order to give the NRAs clear sight of project progress, AQUIND will provide NRAs with appropriate updates.

Table 4-5 provides a detailed breakdown of costs based on the latest procurement and technical information.

Table 4-5 AQUIND indicative project cost breakdown

Capex	Assumptions	Cost (Real €m 2018)					
		2015-19	2020	2021	2022	2023	2024
Cables	Cost for equipment and installation. *Excludes type tests/prequalification tests, tax, customs charges.*	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	...of which [redacted]% Marine (DC): 4 cables with total length of 728km.						
	...of which [redacted]% Underground (DC): 4 HVDC cables with total length of 224km.						
	...of which: [redacted]% Fibre optic cables and other costs						

Capex	Assumptions	Cost (Real €m 2018)
France connection works	Cost for RTE construction works, including AC cables, and studies required to connect asset at Barnabos. Excludes VAT.	[redacted]
GB connection works	Construction works, including AC cables, and studies required to connect asset at Lovedean. Excludes VAT.	[redacted]
Converter stations	2 x VSC HVDC converter stations for each monopole (4 in total).	[redacted]
Owner's costs	Owner's project management, engineering and supervision costs	[redacted]
	CAR insurance	[redacted]
Total CAPEX (2021-2024)		[redacted]
Total DEVEX (2015-2021)		[redacted]
Total CAPEX and DEVEX costs (used in the CBA), 2015-2024		**1,426**

4.6 Supply chain strategy

This section sets out the supply chain strategy that AQUIND will implement to deliver the Interconnector. The main contract lots that AQUIND is planning to procure are set out in Section 4.6.1. Section 4.6.2 describes the competitive tender process for the construction contracts and Section 4.6.3 summarises AQUIND's approach to managing the interfaces among relevant contractors.

4.6.1 Contract lots

AQUIND will use a single open procurement process for the Project and is currently planning to award up to three Engineering, Procurement, Construction and Installation ("EPCI") contracts as outlined below:

- **EPCI Lot 1 (converter stations)**: the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos
- [redacted]
- **EPCI Lot 2 (HVDC Cables (Marine and Land) and Fibre Optic Cables and Equipment):** the design, manufacturing, installation, commissioning and maintenance of the HVDC Sub Marine and Land Cable and the Fibre Optic Cable – Poles No 1 and 2. An invitation to the prequalified suppliers to put in place necessary arrangements for consortiums or subcontracting has been made.
- **EPCI Lot 3 (Optional – Lots 1 and 2 combined):** the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos and Poles 1 and 2.

The current conditions of the HVDC industry and the nature of interconnector projects are such that it is unlikely that there will be a single contractor, who would undertake delivering Lot 3. An agreement with National Grid to perform the design, manufacture, maintenance and commissioning of the HVAC cable connection from the converter station to Lovedean substation has recently been achieved. A separate design and engineering contract may be signed with each supplier to be triggered prior to the main contract taking effect.

4.6.2 Tender process and next steps

As set out in detail in Exhibit 11, development of AQUIND Interconnector creates a range of market and commercial risks, including cost increases and overrun, implementation/programme delays and design changes. As part of our strategy to mitigate these risks, AQUIND will be putting in place a competitive tender process to deliver a comprehensive set of contracts that will allocate risks to the most appropriate parties. The context and the detailed plan for the tender process are set out in the following paragraphs.

The costs for the construction stage are based on the quotes elicited from prospective suppliers. To date, AQUIND has formally engaged with suppliers as follows:

- [redacted]
- [redacted]

The responses from the supply chain have been discussed at meetings with respective suppliers and also reviewed by AQUIND's advisors. The content of such responses is confidential, but the information provided by the suppliers has been used to calculate the expected capital costs of the Project. As a result of this engagement the procurement and lot structure strategy have been confirmed. AQUIND published the contract notice that started the procurement process on 3 June 2019 in OJEU.[6]

Following the pre-qualification stage, commenced in July 2019, AQUIND pre-qualified 5 potential converter station suppliers and 6 potential cable suppliers in October 2019. The prequalified suppliers were updated on the project's progress in January – February 2020 in a series of meetings.

The next steps of this tender process will include:

- preparation of the terms and conditions of the contract - ongoing,
- preparation of attachments to ITT with all technical information - ongoing;
- invitation to tender;
- review and assessment of tender submissions; and
- negotiations with potential suppliers of the Best and Final Offer.

The EPCI Terms and Conditions are planned to be structured to facilitate project finance and will be based upon fixed cost and schedule parameters with liquidated damages to guard against non-

[6] Link available here.

delivery. Where cost certainty cannot be achieved in the EPCI market for specific items, such as commodity price changes, labour costs changes, legislation changes, adverse unforeseen offshore weather and subsoil conditions, a limited number of instances of engineering changes and other construction risks, as appropriate, AQUIND will aim for these additional costs to be incorporated into the eligible project costs for both the GB and French regulatory settlements for the Project. The contracts are proposed to be in line with the FIDIC Silver/Yellow book.[7]

Construction will begin promptly after Financial Close with total construction cost estimated at approx. €1,426 million. The construction programme will be informed by the EPC engagement and is expected to be c.3 years with a target commissioning date in Q2 2024.

In all activities above, AQUIND's team will be supported by the relevant external advisors, including on procurement, engineering, legal and commercial aspects of the tender process.

We consider that the process described above will enable AQUIND to select the contractors that would be responsible for delivering the project in a competitive and transparent manner and thus secure the best value for the GB and French network users, as well as the investors of the project.

4.6.3 Approach to interface management

It will be the contractor's responsibility to ensure the design, construction and commissioning of the converter stations and cables meets the AQUIND technical specification outlined as well as the parameters established under the EPCI contract. They will also be responsible for appointing and managing Tier 2 civil contractors.

AQUIND and the Owner's Engineer will monitor compliance with the EPC contract(s). They will review deliverables, programme and cost as well as identify associated risk and reporting on agreed Key Performance Indicators.

However, based on the analysis in the previous sections, we anticipate that there will be two or more suppliers delivering different parts of the Project, and the interfaces between them will need to be managed. For each interface, we will consider the party best placed to manage it – whether this is one of the suppliers or AQUIND. In general, we consider that contractors delivering two or more packages would seek to internalise the interface risks and this would be reflected in a higher cost. Conversely, if AQUIND were to manage the interface risks themselves, this could reduce the cost of individual supply lots.

AQUIND will put in place suitable arrangements to manage the interface risks appropriately. At this stage, we anticipate that this would require:

- a project management team to sequence and align a timely delivery of different elements of the project;
- an engineering team, to address technical interface issues such as physical dimensioning and electro-engineering issues;
- a technical and legal team to manage issues arising if competitors were required to collaborate (and potentially share commercially sensitive information); and
- an external engagement team to support AQUIND's public relations throughout the construction of the project.

[7] EPC/Turnkey Contract 2nd Ed (2017 Silver Book) and Plant and Design-Build Contract 2nd Ed (2017 Yellow Book).

4.7 Project plan and timeline to operation

AQUIND have been working with a range of parties to develop the Interconnector proposition presented in this Request for Exemption. Along with the national TSOs and NRAs, this has also included technical, economic and legal consultants to advise on all aspects of the project.

4.7.1 Key milestones reached by AQUIND

AQUIND Interconnector has been in development since April 2014. Key progress to date includes:

- A range of **feasibility studies** have been completed and AQUIND **consulted widely** on the project in accordance with the TEN-E Regulation.
- A **connection offer** from National Grid was signed in June 2016.
- A *Proposition Technique et Financière* (**PTF**) was signed by AQUIND in March 2017.
- AQUIND reached a major project milestone in September 2016 with Ofgem granting AQUIND a **GB Electricity Interconnector licence.**
- AQUIND is also recognised in Europe having been listed in **ENTSO-E's Ten Year Network Development Plan** (TYNDP) 2016 and 2018, and has also been identified as a **Project of Common Interest** (PCI) on the Third PCI List. AQUIND has been included in TYNDP 2020 (Project number 247).
- AQUIND has been designated as a **Nationally Significant Infrastructure Project** in the UK in July 2018, and submitted an application for the **Development Consent Order** in November 2019, which was accepted for examination in December 2019.
- AQUIND has ensured continued engagement with the NRAs and the TSOs in GB and France, and maintained regular contact with the **supply chain.** As part of this, AQUIND engaged with prospective suppliers and initiated an **OJEU tender process** for the Engineering, Procurement, Construction and Installation of the interconnector.
- Converter station locations, landfalls and cable routes have been identified. This has included detailed marine geophysical and geotechnical surveys of the total length of the marine cable route and ground investigation surveys in France and the UK.
- AQUIND continues investor engagement.

The key milestones for the project, including those agreed in the GB with the National Grid as part of the connection agreement, are set out in the AQUIND delivery programme, which is included in detail in Exhibit 11 – "Programme plan and programme risks". The connection procedures in both GB and France provide for modification procedures, including the timing of the connection that might be subject to changes due to various circumstances.

4.7.2 Consents and licences

A project of AQUIND's size, spanning two jurisdictions, requires an extensive planning schedule with a number of necessary consents and licence. Exhibit 9 provides a summary of the required consents and licences.

4.8 Operating arrangements

This section sets out initial arrangement with respect to capacity allocation and market reporting and transparency.

4.8.1 Transparency and reporting obligations

AQUIND recognises the importance of timely and transparent reporting requirements. For all capacity, AQUIND will ensure reporting of all auction timetables and auction results to ensure compliance with European and national transparency requirements. The detailed provisions for reporting will be set out in the AQUIND Access Rules. These will be subject to NRA approval and align with equivalent product rules on the GB-France border.

AQUIND will publish all results for the allocation of all capacity auctions as soon as practicable after the auction has taken place. The information will comply fully with the requirements the relevant legislation and, as a minimum, will include:

- Names of registered winning bidders
- The marginal auction clearing price
- Total capacity demanded
- Total capacity awarded

This public information will be in addition to information regarding auction results provided directly to winning bidders in the relevant auction. AQUIND anticipates that this information will be made available through the procured auction trading system. The specific details of the trading system will be developed and shared with NRAs in due course.

*4.8.1.1 **Secondary trading***

Secondary trading offers market participants a route to re-sell capacity awarded through the multi-year auctions. AQUIND proposes to facilitate secondary trading to ensure that unused capacity is re-allocated. This principle will be supported by the UIOSI rules that will force capacity holders to recycle capacity if it is not nominated for delivery by the Day-ahead stage. These functions and processes will be formalised through the procurement and design of the AQUIND auction platform.

*4.8.1.2 **European Network Code compliance***

AQUIND will ensure full compliance with the market related European Network Codes and subsequent Regulations (Forward Capacity Allocation and Capacity Allocation and Congestion Management) for all capacity. In this respect, AQUIND will not be any different to other regulated GB-France interconnectors.

4.8.2 Transparency

AQUIND will put in place data and transparency processes to provide relevant information to NRAs, TSOs, market participants and the market, as required under relevant legislation. The requirements for this data provision will come from a number of sources, not limited to the Transparency Regulation 543/2013, European Network Codes, and any additional requirements proposed by the NRAs through the exemption decision or otherwise.

AQUIND will put in place communication procedures that take into account the format, frequency and recipients of each data items. These procedures will include:

- Information sent directly to the NRAs
- Information sent directly to other relevant organisations
- Information sent directly to AQUIND capacity holders
- Information made available on the AQUIND public website (public).

The precise mechanisms will be developed through the construction phase of the project as the project developers prepare for operation. For information required during the construction phase of the project, AQUIND will engage bilaterally with the national TSOs and NRAs as required to provide regular updates on the construction progress, to be agreed with the NRAs as part of this Request for Exemption.

BM INSERT

APPENDIX 4

OFGEM & CRE ANNOUNCEMENT ON 28 JANUARY 2021

RELATING TO

AQUIND LIMITED EXEMPTION REQUEST RELATING TO EU REGULATION 2019/943

Coronavirus (COVID-19)

- For consumer advice on energy and information for licensees and industry, see our coronavirus pages (https://www.ofgem.gov.uk/coronavirus-covid-19)
- View the government response on GOV.UK (http://www.gov.uk/coronavirus)

CRE and Ofgem discontinue public consultation on Aquind's exemption request

Publication date
28th January 2021

Information types
Decisions

Policy areas
Electricity - distribution
Electricity - transmission

Decision for

A Joint Consultation on AQUIND's Exemption Request (https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request)
18th December 2020

A Joint Consultation on AQUIND's Exemption Request

A Joint Consultation on AQUIND's Exemption Request (https://www.ofgem.gov.uk/publications-and-updates/joint-consultation-aquind-s-exemption-request)

On 2nd June 2020, Aquind submitted to Ofgem and CRE (together, the "NRAs") a request for partial exemption from Articles 19(2) and 19(3) of Regulation (EU) 2019/943 (the "Regulation"), concerning Use of Revenues obligations, for a period of 25 years from the start of commercial operations (the "Exemption Request").

On 18th December 2020, the NRAs published a joint consultation document outlining the scope and rationale of the Exemption Request, as well as the supporting evidence provided by Aquind. The consultation was originally planned to close on 29th January 2021. The NRAs issued this consultation in line with our obligations under the applicable legal framework at the time, and with uncertainty as to the future trade and cooperation arrangements between the UK and the EU beyond the end of the transition period.

In light of the new Trade and Cooperation Agreement (the “TCA”) agreed between the UK and the EU on 24th December 2020, following the UK’s departure from the EU, the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request.

Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process.

Ofgem and CRE will continue to cooperate closely in regards to the functioning and the development of interconnections between the UK and France and the implementation of the arrangements envisaged in the TCA.

Coronavirus (COVID-19) information (https://www.ofgem.gov.uk/coronavirus-covid-19)

Network regulation - the RIIO model (https://www.ofgem.gov.uk/regulating-energy-networks/networks-explained)

Energy price cap (https://www.ofgem.gov.uk/energy-price-caps)

Licences, codes and standards (https://www.ofgem.gov.uk/licences-codes-and-standards)

Careers (https://www.ofgem.gov.uk/careers)

BM INSERT

APPENDIX 5

PARAGRAPH 9.2 OF APPENDIX B TO THE APPLICANT'S REP7--075

interest for the land to be acquired. Paragraph 13 of the Guidance identifies the SoS will need to be satisfied that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

8.4 The test as to whether the granting of powers of compulsory acquisition is in the public interest is one which involves balancing the public interest against the private loss, which involves the consideration of the needs for and benefits of the proposed scheme, in addition to taking into account other relevant factors. Whether there is a compelling case in the public interest is not a matter where the lead determinant of that question is whether funding has *already* been secured (itself an incorrect test to be applied in relation to the availability of funding as explained at paragraph 6 above). Hence the guidance advises that there should be a reasonable prospect of the requisite funding for acquisition *becoming* available.

9. WHETHER FUNDING FOR COMPULSORY ACQUISITION COSTS IS ALREADY SECURED

9.1 Paragraphs 12 to 22 Section E of the Note discuss publicly available information in relation the accounts of AQUIND Limited, with a view to determining whether the monies held in those accounts are sufficient to cover the cost of exercising the compulsory acquisition powers in the dDCO, and with the conclusion of the exercise at paragraph 22 being "*Based on this, we can only conclude that the Applicant limited company must be looking to secure funding to cover the costs of its estimated compulsory acquisition costs from future financing*".

9.2 The Applicant has already confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition, specifically at paragraph 5.8 of the Applicant's Transcript of Oral Submissions for Compulsory Acquisition Hearing 1 (REP5-034) which confirms "*Financing for the Project secured following any grant of the DCO will be used to fund the capital costs of the construction stage, which includes the costs associated with compulsory acquisition*". These paragraphs of the Note are therefore considered to be of no relevance to the examination of the Application.

10. PROVISION OF THE KPMG REPORT

10.1 The Applicant notes that at paragraph 24 of Section E of the Note, the AP raises the invitation by the ExA for the Applicant to consider whether it was able to submit a copy of the KPMG Report referred to on a confidential basis. Following CAH1, the Applicant did discuss this matter further with the case team at PINS, however it was determined that there is no procedure for submitting a document of this nature to the ExA on a confidential, strictly non-disclosure basis. The KPMG Report has therefore not been and will not be submitted to the ExA.

10.2 At paragraph 25 the AP seeks to suggest that because its land is proposed to be subject to compulsory acquisition, the AP should be provided with a full unredacted copy of the KPMG Report, and that to not do so would breach the AP's right to a fair hearing under Article 6 of the ECHR. It further suggests that this is the basis on which viability reports are required to be provided on an open basis in relation to the determination of planning applications pursuant to the Town and Country Planning Act 1990. Lastly, the AP suggests that the Data Protection 2018 may be relied on to require the release of the information in the context of court proceedings, and that the examination is itself the same as an administrative court hearing, and therefore the information could be compelled to be submitted into it.

10.3 The Applicant only notes the above to identify that there is no merit or foundation in law for any of the points made. They have cast the net wide in an endeavour to argue a point of prejudice where confidential commercial information is not provided to them personally or into the examination more generally, but none of the points made have any substance.

APPENDIX 10

NOTE ON THE EFFECT OF THE ANNOUNCEMENT OF OFGEM AND CRE ON 28 JANUARY 2021

A review of the Trade and Cooperation Agreement 2020 ("TCA") exemption regime for electricity interconnectors

1. EXECUTIVE SUMMARY

a. The TCA does implement some form of the exemption regime contained in the *Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance) (Retained EU Legislation)* (the **"Regulation"**);

b. The TCA exemption regime does not implement provisions which the Applicant previously sought to rely on, in relation to *Articles 19(2) and 19(3)* of the Regulation;

c. The TCA offers no exemption for provisions around congestion management;

d. The TCA contains provisions for amending and adding to the regime but the implementation of these additions could take up to 15 months from the date of the TCA, if other timeframes give any indication[2];

e. Whilst the TCA does implement an exemption regime similar to that of the Regulation, it does not implement a regime that the Applicant can in any way *currently* benefit from in relation to its goals from its previous submission (exemption from *Article 19(2) and 19(3)* of the Regulation); and in addition

f. It is not clear whether any benefit for the Applicant might make itself manifest at all, and even if one does appear there is no indication as to when the Applicant might benefit from it.

1. APPLICANT'S CURRENT EXEMPTION REQUEST

a. The Applicant on the 2 June 2020, sought to obtain partial exemptions for the Aquind Interconnector *from Articles 19(2) and 19(3)* of the Regulation regarding *use of revenues* obligations in France from the relevant national regulation authorities. Article 19 of the Regulation is to do with *congestion management procedures.*

[2] See TCA, ANNEX ENER-4

b. The disapplication of *Articles 19(2) and 19(3)* of the Regulation, is permitted through Article 63 of the Regulation. The disapplication of *Articles 19(2) and 19(3)* would mean that the Applicant would have greater freedoms over how revenue resulting from the allocation of the interconnector may be used.

2. **REMOVAL OF CURRENT EXEMPTION REGIME FROM APPLICANT**

a. A recent decision from Ofgem has indicated the Applicant is no longer access the process under the Regulation to benefit from the exemption regime due to the UK's departure from the EU.[3]

3. **Trade and Cooperation Agreement 2020**

a. The Applicant has put forward at REP7-038, that:

"The Trade and Cooperation agreements (TCA) agreed on December 24, 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the ongoing Exemption Request. Following discussions with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND expects that the NRAs will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request."

b. In the first instance it does seem that further general guidance will be issued by Ofgem in relation to the TCA, however, it is not clear when this will be released. **The Department of Business Energy & Industrial Strategy has indicated that additional guidance will be released in January 2021[4], however, a review of Ofgem's website indicates that this guidance is still awaited.**

4. **IMPLICATIONS OF TCA ON APPLICANT**

a. Regarding the replacement regulatory framework included in the TCA, there remains some ambiguity and unknowns around the full nature of the regime, as the regime is not complete, and is not intended to be complete, for some time. For example, those provisions in relation to

[3] See Note on Exemption.
[4] Policy paper **Trading electricity with the EU** (BEIS, Updated 3 February 2021) https://www.gov.uk/government/publications/trading-electricity-with-the-eu/trading-electricity-with-the-eu

new procedures for the allocation of capacity on electricity interconnectors at the day-ahead market timeframe have a implementation timeframe of 15 months.[5] Currently, it cannot be said that the regime set out in the TCA is an exact replication of that which was laid out in the Regulation.

b. The substantive areas of the new regime included in the TCA for this matter, and those articles relied on in this note, are reproduced at Schedule 1 of this note.

c. Firstly, for those interconnectors already benefiting from exemption arrangements under the Regulation, there are provisions[6] that enable the terms of any pre-existing arrangement to extend past the transition period. However, as the Applicant failed to secure confirmation from Ofgem that they are able to benefit from the exemption period before the end of the transition period, this provision does not apply to the Applicant. The Applicant, then, must operate within the regime of the TCA and not the previous regime under the Regulations

d. In order to break down the provisions of the TCA it is important to look at the pre-existing exemption regime. Whilst the Applicant applied to be exempt from those provisions relating to the *use of revenues*, there were two additional areas which interconnectors are able to be exempt. These are:

   i. the provision of third-party access to an interconnector[7]; and

   ii. tariffs or charging methodologies for such access[8];

e. When an interconnector is made exempt from these three provisions, in practice, what this involves is that conditions 9, 10, and 11 their licence granted to them under the Electricity Act 1989[9] are dis-applied[10]. Condition 9, governs the use of revenues; Condition 10: charging methodology to apply to third party access; and Condition 11: requirement to offer terms for access to the licensee's interconnector. An extract of these is reproduced at Schedule 2 of this note.

f. We can see from the above, that in the current regime, the expectations and requirements of the regulated regime are set up first, which creates the obligations that *Article 63(4A)* discusses

[5] TCA, ANNEX ENER-4: allocation of electricity interconnector capacity at the day-ahead market timeframe, Part 2(c)
[6] TCA, Article ENER.11: Existing exemptions for interconnectors
[7] Article 63(4A)(a), Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance) (Retained EU Legislation)
[8] ibid, Article 63(4A)(b)
[9] s6(1)(e) Electricity Act 1989
[10] Condition 12, Electricity Interconnector Licence: Standard Conditions - Consolidated to 25 February 2020

– but then these can be dropped if a company wishes to enter into the exempt regime. There are a number of requirements that need to be satisfied before a regulatory authority, in the UK Ofgem, can grant exemption but the principle is there.

g. Turning to the TCA, the regime exists is one of a similar functioning body of regulations – with differences. Focusing on the particular triad of rules above, we can see that those rules expressing and governing third party access and what charges and tariffs should be applied can be found at *Article ENER.8* of the TCA. Crucially, the wording in the TCA does not amount to a full regulatory regime with all details on how third party access rights and their charges should be governed, more, the TCA instead states that 'each Party shall ensure the implementation of a system of third party access'[11] and '[e]ach Party shall ensure publication of the terms, conditions, tariffs and all such information that may be necessary for the effective exercise of the right of access to, and use of transmission and distribution systems.'[12]

h. The rules around use of funds, and in particular – reflecting the wording on Article 19 of the Regulation – congestion management, is included in *Article ENER.13(1): Efficient use of electricity interconnectors* and states that the '[p]arties will ensure that capacity allocation and congestion management across electricity interconnectors is coordinated between concerned Union transmission system operators and United Kingdom transmission system operators; this coordination shall involve the development of arrangement to deliver robust and efficient outcomes for all relevant timeframes.[13] Clearly, then there remains to be had not only refinement but also substantive agreement between the UK and the EU member states relating to congestion management.

i. It is perhaps for this reason that the exemption regime, set out in *Article ENER.10*, only includes exemption from *Articles ENER.8 Articles ENER.8 [Third-party access to transmission and distribution networks] and ENER.9 [System operation and unbundling of transmission network operators*. For those articles, exemption may be granted for emergent or isolated markets or systems, or infrastructure that meets the conditions in *Annex ENER-3* where necessary to 'fulfil a legitimate public policy objective and based on objective criteria.'[14]

j. *Annex ENER-3* states that new infrastructure or significant expansion of existing infrastructure is applicable where:

   i. the risk attached to the investment in the infrastructure is such that the investment would nottake place unless an exemption is granted; (Annex ENER-3(a))

[11] TCA, Article ENER.8(1): Third party access to transmission and distribution networks
[12]TCA, Article ENER.8(3): Third party access to transmission and distribution networks

[13] TCA, Article ENER.13(1)(f): Efficient use of electricity interconnectors
[14] TCA, Article ENER.10(1): Public policy objectives for third-party access and ownership unbundling

ii. the investment enhances competition or security of supply; (Annex ENER-3(b))

iii. the infrastructure is owned by a natural or legal person separate, at least in terms of its legal form, from the system operators in whose systems it was or is to be built; (Annex ENER-3(c))

iv. before granting the exemption, the Party has decided on the rules and mechanisms for management and allocation of capacity.[15] (Annex ENER-3(d))

k. This imitates existing conditions for exemption in *Article 63* of the Regulations, where *Annex ENER-3(a)* reproduces *Article 63(1)(b), Annex ENER-3(b)* reproduces *Article 63(1)(a),* and *Annex ENER-3(c)* reproduces *Article 63(1)(c). Annex ENER-3(d)* reflects the need for additional agreement between the parties and as such *Articles 63(d,e, and f)* are not reproduced in *Annex ENER-3*.

l. It is noted that *Annex ENER-3* is able to be amended as necessary[16] but it remains so that currently, the requirements surrounding congestion management are not included in the exemption regime of the TCA.

m. As to when any additional agreement could be arrived at, which is required under *Article ENER.13*, this is not entirely clear – it has been said that 'the exact scope of these cooperation arrangements is unclear, as is the detail of their implementation'[17] The TCA states that parties shall ensure 'that transmission system operators develop working arrangements that are efficient and inclusive in order to support the planning and operational tasks associated with meeting the objectives of this Title, including, when recommended by the Specialised Committee'[18] on Energy which is one of the many committees set up by the TCA.

n. *Article ENER.19* states that these working arrangement should include 'include frameworks for cooperation between the European Network of Transmission System Operators for Electricity established in accordance with [the Regulation] and the European Network of Transmission System Operators for Gas established in accordance with Regulation (EC) No 715/2009 of the European Parliament and of the Council ("ENTSOG"), on the one side, and

[15] TCA, Annex ENER-3(a-d): non-application of third-party access and ownership unbundling to infrastructure
[16] TCA, Article ENER.31
[17] Herbert Smith Freehills: Key TCA issues for the energy sector (Legal Briefings, 19 January 2021) https://www.herbertsmithfreehills.com/latest-thinking/key-tca-issues-for-the-energy-sector#:~:text=With%20the%20aim%20of%20ensuring%20that%20the%20objectives,and%20gas%20interconnectors%2C%20and%20gas%20quality%20and%20decarbonisation. [date last accessed: 13 February 2021]
[18] TCA, Article ENER.19(1)(a): Cooperation between transmission system operators

the transmission system operators for electricity and gas in the United Kingdom, on the other.'[19] and that these arrangement should be agreed *as soon as practicable.* However, it is evident from the construction of *Article ENER.14* and *Article ENER.19* that there are a number of stages before such agreements and working arrangements can be formalised.

5. APPLICATION OF TCA EXEMPTION REGIME TO APPLICANT

a. As such, originally the Applicant applied to Ofgem and CRE for exemption from Regulation 19(2) and 19(3) of the Regulation. This provisions governed restrictions around use of revenues, in particular around congestion management.

b. The Applicant has put forward in its Deadline 7 submissions [REP7-038] that:

the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the ongoing Exemption Request. Following discussions with the Energy Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND expects that the [[national regulatory authorities] will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request [added emphasis]

c. It is apparent from the TCA, however, that whilst the exemption regime contained in the TCA does draw on the established principles and rules of the Regulation, it does not implement any exemption that reflects what the Applicant was wishing to be exempt from in its application to Ofgem and the CRE.

d. There remains the option for further amendment to the regime set out in the TCA, however it is not known when any amendment might be transposed into a binding law which the Applicant might benefit under.

e. Whilst the Applicant might expect a published decision which will detail how the TCA impacts on exemption requests – it seems to be a moot point in regards to the Exemption Request as Ofgem and CRE have already released their decision in regards to this – that the Exemption Request be discontinued. To be of any relevance to this DCO process, any further decision or guidance from Ofgem and the CRE will therefore need to discuss the exemption regime regarding congestion management and have this released and implemented before the end of the process of this DCO application. This does not seem likely.

[19] TCA, Article 19(1)

6. **CONCLUSIONS**

a. As it stands, it is not clear when substantive arrangements will be created and agreed which might govern the provisions around congestion management in interconnectors, currently there is no mechanism for the exemption of any such provisions – and even if there were to be such agreements at some point in the future no party can say with any certainty what the terms of those agreements might say. It stands to reason that whilst the TCA does implement an exemption regime similar to that of the Regulation, it does not implement a regime that the Applicant can in any way *currently* benefit from in relation to its goals from its previous submission (exemption from Article 19(2) and 19(3) of the Regulation) and in addition – it is not clear when any benefit for the Applicant might make itself manifest

Schedule 1

Extracts of Trade and Cooperation Agreement

(ii) assisting specialised committees, joint working groups and contact points established by this Agreement in considering matters of relevance to small and medium-sized enterprises;

(e) report periodically on their activities, jointly or individually, to the Partnership Council for its consideration; and

(f) consider any other matter arising under this Agreement pertaining to small and medium-sized enterprises as the Parties may agree.

3. The small and medium-sized enterprises contact points of the Parties shall carry out their work through the communication channels decided by the Parties, which may include electronic mail, videoconferencing or other means. They may also meet, as appropriate.

4. Small and medium-sized enterprises contact points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

Article SME.4: Relation with Part Six

Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions] does not apply to this Title.

TITLE VIII: ENERGY

Chapter 1: General provisions

Article ENER.1: Objectives

The objectives of this Title are to facilitate trade and investment between the Parties in the areas of energy and raw materials, and to support security of supply and environmental sustainability, notably in contributing to the fight against climate change in those areas.

Article ENER.2: Definitions

1. For the purposes of this Title, the following definitions apply:

(a) "Agency for the Cooperation of Energy Regulators" means the Agency established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators[42];

(b) "authorisation" means the permission, licence, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory;

(c) "balancing" means:

[42] OJ EU L 158, 14.6.2019, p. 22.

(i) for electricity systems, all actions and processes, in all timelines, through which electricity transmission system operators ensure, in an ongoing manner, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(ii) for gas systems, actions undertaken by gas transmission system operators to change the gas flows onto or off the transmission network, excluding those actions related to gas unaccounted for as off-taken from the system and gas used by the transmission system operator for the operation of the system;

(d) "distribution" means:

(i) in relation to electricity, the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;

(ii) in relation to gas, the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but does not include supply;

(e) "distribution system operator" means a natural or legal person who is responsible for operating, ensuring the maintenance of, and, if necessary, developing the electricity or gas distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity or gas;

(f) "electricity interconnector" means a transmission line:

(i) between the Parties, excluding any such line wholly within the single electricity market in Ireland and Northern Ireland;

(ii) between Great Britain and the single electricity market in Ireland and Northern Ireland that is outside the scope of point (i);

(g) "energy goods" means the goods from which energy is generated, listed by the corresponding Harmonised System (HS) code in Annex ENER-1;

(h) "entity" means any natural person, legal person or enterprise or group thereof;

(i) "gas interconnector" means a transmission line which crosses or spans the border between the Parties;

(j) "generation" means the production of electricity;

(k) "hydrocarbons" means the goods listed by the corresponding HS code in Annex ENER-1;

(l) "interconnection point" means, in relation to gas, a physical or virtual point connecting Union and United Kingdom entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;

(m) "raw materials" means the goods listed by the corresponding HS chapter in Annex ENER-1;

(n) “renewable energy" means a type of energy, including electrical energy, produced from renewable non-fossil sources;

(o) “standard capacity product” means, in relation to gas, a certain amount of transport capacity over a given period of time, at a specific interconnection point;

(p) “transmission” means:

(i) in relation to electricity, the transport of electricity on the extra high-voltage and high-voltage system with a view to its delivery to customers or to distributors, but does not include supply;

(ii) in relation to gas, the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;

(q) “transmission system operator” means a natural or legal person who carries out the function of transmission or is responsible for operating, ensuring the maintenance of, and, if necessary, developing the electricity or gas transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas or electricity, as the case may be;

(r) “upstream pipeline network” means any pipeline or network of pipelines operated or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal.

2. For the purposes of this Title, references to “non-discriminatory” and “non-discrimination” mean most-favoured-nation treatment as defined in Articles SERVIN.2.4 [Most Favoured Nation Treatment] and 3.5[Most Favoured Nation Treatment] and national treatment as defined in Articles SERVIN. 2.3 [National Treatment] and 3.4 [National Treatment], as well as treatment under terms and conditions no less favourable than that accorded to any other like entity in like situations.

Article ENER.3: Relationship with other Titles

1. Chapters 2 [Investment liberalisation] and 3 [Cross-border trade in services] of Title II apply to energy and raw materials. In the event of any inconsistency between this Title and Title II [Services and investment] and the Annexes SERVIN-1 to SERVIN-6, Title II [Services and investment] and the Annexes SERVIN-1 to SERVIN-6 shall prevail.

2. For the purposes of Article GOODS.4A [Freedom of transit], where a Party maintains or implements a system of virtual trading of natural gas or electricity using pipelines or electricity grids, meaning a system which does not require physical identification of the transited natural gas or electricity but is based on a system of netting inputs and outputs, the routes most convenient for international transit as referred to in that Article shall be deemed to include such virtual trading.

3. When applying Chapter 3 [Subsidy control] of Title XI [Level playing field for open and fair competition and sustainable development], Annex ENER-2 also applies. Chapter 3 [Subsidy control] of Title XI [Level playing field for open and fair competition and sustainable development] applies to Annex ENER-2. Article 3.13 [Dispute settlement] of Chapter 3 of Title XI [Level playing field for open

and fair competition and sustainable development] applies to disputes arising between the Parties concerning the interpretation and application of Annex ENER-2.

Article ENER.4: Principles

Each Party preserves the right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods and raw materials, protecting society, the environment, including fighting against climate change, public health and consumers and promoting security and safety, consistent with the provisions of this Agreement.

Chapter 2: Electricity and gas

Section 1: Competition in electricity and gas markets

Article ENER.5: Competition in markets and non-discrimination

1. With the objective of ensuring fair competition, each Party shall ensure that its regulatory framework for the production, generation, transmission, distribution or supply of electricity or natural gas is non-discriminatory with regard to rules, fees and treatment.

2. Each Party shall ensure that customers are free to choose, or switch to, the electricity or natural gas supplier of their choice within their respective retail markets in accordance with the applicable laws and regulations.

3. Without prejudice to the right of each Party to define quality requirements, the provisions in this Chapter related to natural gas also apply to biogas and gas from biomass or other types of gas in so far as such gas can technically and safely be injected into, and transported through, the natural gas system.

4. This Article does not apply to cross-border trade and is without prejudice to each Party's right to regulate in order to achieve legitimate public policy goals based on objective and non-discriminatory criteria.

Article ENER.6: Provisions relating to wholesale electricity and gas markets

1. Each Party shall ensure that wholesale electricity and natural gas prices reflect actual supply and demand. To this end, each Party shall ensure that wholesale electricity and natural gas market rules:

(a) encourage free price formation;

(b) do not set any technical limits on pricing that restrict trade;

(c) enable the efficient dispatch of electricity generation assets, energy storage and demand response and the efficient use of the electricity system;

(d) enable the efficient use of the natural gas system; and

(e) enable the integration of electricity from renewable energy sources, and ensure the efficient and secure operation and development of the electricity system.

2. Each Party shall ensure that balancing markets are organised in such a way as to ensure:

(a) non-discrimination between participants and non-discriminatory access to participants;

(b) that services are defined in a transparent manner;

(c) that services are procured in a transparent, market-based manner, taking account of the advent of new technologies; and

(d) that producers of renewable energy are accorded reasonable and non-discriminatory terms when procuring products and services.

A Party may decide not to apply point (c) if there is a lack of competition in the market for balancing services.

3. Each Party shall ensure that any capacity mechanism in electricity markets is clearly defined, transparent, proportionate and non-discriminatory. Neither Party is required to permit capacity situated in the territory of the other Party to participate in any capacity mechanism in its electricity markets.

4. Each Party shall assess the necessary actions to facilitate the integration of gas from renewable sources.

5. This Article is without prejudice to each Party's right to regulate in order to achieve legitimate public policy goals based on objective and non-discriminatory criteria.

Article ENER.7: Prohibition of market abuse on wholesale electricity and gas markets

1. Each Party shall prohibit market manipulation and insider trading on wholesale electricity and natural gas markets, including over-the-counter markets, electricity and natural gas exchanges and markets for the trading of electricity and natural gas, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets.

2. Each Party shall monitor trading activity on these markets with a view to detecting and preventing trading based on inside information and market manipulation.

3. The Parties shall cooperate, including in accordance with Article ENER.20 [Cooperation between regulatory authorities], with a view to detecting and preventing trading based on inside information and market manipulation and, where appropriate, may exchange information including on market monitoring and enforcement activities.

Article ENER.8: Third-party access to transmission and distribution networks

1. Each Party shall ensure the implementation of a system of third-party access to their transmission and distribution networks based on published tariffs that are applied objectively and in a non-discriminatory manner.

2. Without prejudice to Article ENER.4 [Principles], each Party shall ensure that transmission and distribution system operators in its territory grant access to their transmission or distribution systems to entities in that Party's market within a reasonable period of time from the date of the request for access.

Each Party shall ensure that transmission system operators treat producers of renewable energy on reasonable and non-discriminatory terms regarding connection to, and use of, the electricity network.

The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons shall be given for any such refusal.

3. Without prejudice to legitimate public policy objectives, each Party shall ensure that charges applied to entities in that Party's market by transmission and distribution system operators for access to, connection to or the use of networks, and, where applicable, charges for related network reinforcements, are appropriately cost-reflective and transparent. Each Party shall ensure publication of the terms, conditions, tariffs and all such information that may be necessary for the effective exercise of the right of access to, and use of, transmission and distribution systems.

4. Each Party shall ensure that the tariffs and charges referred to in paragraphs 1 and 3 are applied in a non-discriminatory manner with respect to entities in that Party's market.

Article ENER.9: System operation and unbundling of transmission network operators

1. Each Party shall ensure that transmission system operators carry out their functions in a transparent, non-discriminatory way.

2. Each Party shall implement arrangements for transmission system operators which are effective in removing any conflicts of interest arising as a result of the same person exercising control over a transmission system operator and a producer or supplier.

Article ENER.10: Public policy objectives for third-party access and ownership unbundling

1. Where necessary to fulfil a legitimate public policy objective and based on objective criteria, a Party may decide not to apply Articles ENER.8 [Third-party access to transmission and distribution networks] and ENER.9 [System operation and unbundling of transmission network operators] to the following:

(a) emergent or isolated markets or systems;

(b) infrastructure which meets the conditions set out in Annex ENER-3.

2. Where necessary to fulfil a legitimate public policy objective and based on objective criteria, a Party may decide not to apply Articles ENER.5 [Competition in markets and non-discrimination] and ENER.6 [Provisions relating to wholesale electricity and gas markets] to:

(a) small or isolated electricity markets or systems;

(b) small, emergent or isolated natural gas markets or systems.

Article ENER.11: Existing exemptions for interconnectors

Each Party shall ensure that exemptions granted to interconnections between the Union and the United Kingdom under Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council[43] and under the law transposing Article 36 of the Directive 2009/73/EC of the European Parliament and of the Council[44] in their respective jurisdictions, the terms of which extend beyond the transition period, continue to apply in accordance with the laws of their respective jurisdictions and the terms applicable.

Article ENER.12: Independent regulatory authority

1. Each Party shall ensure the designation and maintenance of an operationally independent regulatory authority or authorities for electricity and gas with the following powers and duties:

(a) fixing or approving the tariffs, charges and conditions for access to networks referred to in Article ENER.8 [Third-party access to transmission and distribution networks], and the methodologies underlying them;

(b) ensuring compliance with the arrangements referred to in Articles ENER.9 [System operation and unbundling of transmission network operators] and ENER.10 [Public policy objectives and third-party access and ownership unbundling];

(c) issuing binding decisions at least in relation to points (a) and (b);

(d) imposing effective remedies.

2. In performing those duties and exercising those powers, the independent regulatory authority or authorities shall act impartially and transparently.

Section 2: Trading over interconnectors

[43] Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ EU L 158, 14.6.2019, p. 54).

[44] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas (OJ EU L 211, 14.8.2009, p. 94).

Article ENER.13: Efficient use of electricity interconnectors

1. With the aim of ensuring the efficient use of electricity interconnectors and reducing barriers to trade between the Union and the United Kingdom, each Party shall ensure that:

(a) capacity allocation and congestion management on electricity interconnectors is market based, transparent and non-discriminatory;

(b) the maximum level of capacity of electricity interconnectors is made available, respecting the:

(i) need to ensure secure system operation; and

(ii) most efficient use of systems;

(c) electricity interconnector capacity may only be curtailed in emergency situations and any such curtailment takes place in a non-discriminatory manner;

(d) information on capacity calculation is published to support the objectives of this Article;

(e) there are no network charges on individual transactions on, and no reserve prices for the use of, electricity interconnectors;

(f) capacity allocation and congestion management across electricity interconnectors is coordinated between concerned Union transmission system operators and United Kingdom transmission system operators; this coordination shall involve the development of arrangements to deliver robust and efficient outcomes for all relevant timeframes, being forward, day-ahead, intraday and balancing; and

(g) capacity allocation and congestion management arrangements contribute to supportive conditions for the development of, and investment in, economically efficient electricity interconnection.

2. The coordination and arrangements referred to in point (f) of paragraph 1 shall not involve or imply participation by United Kingdom transmission system operators in Union procedures for capacity allocation and congestion management.

3. Each Party shall take the necessary steps to ensure the conclusion as soon as possible of a multi-party agreement relating to the compensation for the costs of hosting cross-border flows of electricity between:

(a) transmission system operators participating in the inter-transmission system operator compensation mechanism established by Commission Regulation (EU) No 838/2010[45]; and

[45] Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging (OJ EU L 250, 24.9.2010, p. 5).

(b) United Kingdom transmission system operators.

4. The multi-party agreement referred to in paragraph 3 shall aim to ensure:

(a) that United Kingdom transmission system operators are treated on an equivalent basis to a transmission system operator in a country participating in the inter-transmission system operator compensation mechanism; and

(b) the treatment of United Kingdom transmission system operators is not more favourable in comparison to that which would apply to a transmission system operator participating in the inter-transmission system operator compensation mechanism.

5. Notwithstanding point (e) of paragraph 1, until such time as the multi-party agreement referred to in paragraph 3 has been concluded, a transmission system use fee may be levied on scheduled imports and exports between the Union and the United Kingdom.

Article 14: Electricity trading arrangements at all timeframes

1. For capacity allocation and congestion management at the day ahead stage, the Specialised Committee on Energy, as a matter of priority, shall take the necessary steps in accordance with Article ENER.19 [Cooperation between transmission system operators] to ensure that transmission system operators develop arrangements setting out technical procedures in accordance with Annex ENER-4 within a specific timeline.

2. If the Specialised Committee on Energy does not recommend that the Parties implement such technical procedures in accordance with Article ENER.19(4) [Cooperation between transmission system operators], it shall take decisions and make recommendations as necessary for electricity interconnector capacity to be allocated at the day-ahead market timeframe in accordance with Annex ENER-4.

3. The Specialised Committee on Energy shall keep under review the arrangements for all timeframes, and for balancing and intraday timeframes in particular, and may recommend that each Party requests its transmission system operators to prepare technical procedures in accordance with Article ENER.19 [Cooperation between transmission system operators] to improve arrangements for a particular timeframe.

4. The Specialised Committee on Energy shall keep under review whether the technical procedures developed in accordance with paragraph 1 continue to meet the requirements of Annex ENER-4, and shall promptly address any issues that are identified.

Article ENER.15: Efficient use of gas interconnectors

1. With the aim of ensuring the efficient use of gas interconnectors and reducing barriers to trade between the Union and the United Kingdom, each Party shall ensure that:

(a) the maximum level of capacity of gas interconnectors is made available, respecting the principle of non-discrimination and taking account of:

(i) the need to ensure secure system operation; and

(ii) the most efficient use of systems;

(b) capacity allocation mechanisms and congestion management procedures for gas interconnectors are market-based, transparent and non-discriminatory, and that auctions are generally used for the allocation of capacity at interconnection points.

2. Each Party shall take the necessary steps to ensure that:

(a) transmission system operators endeavour to offer jointly standard capacity products which consist of corresponding entry and exit capacity at both sides of an interconnection point;

(b) transmission system operators coordinate procedures relating to the use of gas interconnectors between Union transmission system operators and United Kingdom transmission system operators concerned.

3. The coordination referred to in point (b) of paragraph 2 shall not involve or imply participation by United Kingdom transmission system operators in Union procedures relating to the use of gas interconnectors.

Section 3: Network development and security of supply

Article ENER.16: Network development

1. The Parties shall cooperate to facilitate the timely development and interoperability of energy infrastructure connecting their territories.

2. Each Party shall ensure that network development plans for electricity and gas transmission systems are drawn up, published and regularly updated.

Article ENER.17: Cooperation on security of supply

1. The Parties shall cooperate with respect to the security of supply of electricity and natural gas.

2. The Parties shall exchange information on any risks identified pursuant to Article ENER.18 [Risk preparedness and emergency plans] in a timely manner.

3. The Parties shall share the plans referred to in Article ENER.18 [Risk preparedness and emergency plans]. For the Union, these plans may be at Member State or regional level.

4. The Parties shall inform each other without undue delay where there is reliable information that a disruption or other crisis relating to the supply of electricity or natural gas may occur and on measures planned or taken.

5. The Parties shall immediately inform each other in the event of an actual disruption or other crisis, in view of possible coordinated mitigation and restoration measures.

6. The Parties shall share best practices regarding short-term and seasonal adequacy assessments.

7. The Parties shall develop appropriate frameworks for cooperation with respect to the security of supply of electricity and natural gas.

Article ENER.18: Risk preparedness and emergency plans

1. Each Party shall assess risks affecting the security of supply of electricity or natural gas, including the likelihood and impact of such risks, and including cross-border risks.

2. Each Party shall establish and regularly update plans to address identified risks affecting the security of supply of electricity or natural gas. Such plans shall contain the measures needed to remove or mitigate the likelihood and impact of any risk identified under paragraph 1 and the measures needed to prepare for, and mitigate the impact of, an electricity or natural gas crisis.

3. The measures contained in the plans referred to in paragraph 2 shall:

(a) be clearly defined, transparent, proportionate, non-discriminatory and verifiable;

(b) not significantly distort trade between the Parties; and

(c) not endanger the security of supply of electricity or natural gas of the other Party.

In the event of a crisis, the Parties shall only activate non-market based measures as a last resort.

Section 4: Technical cooperation

Article ENER.19: Cooperation between transmission system operators

1. Each Party shall ensure that transmission system operators develop working arrangements that are efficient and inclusive in order to support the planning and operational tasks associated with meeting the objectives of this Title, including, when recommended by the Specialised Committee on Energy, the preparation of technical procedures to implement effectively the provisions of:

(a) Article ENER.13 [Efficient use of electricity interconnectors];

(b) Article ENER.14 [Electricity trading arrangements at all timeframes];

(c) Article ENER.15 [Efficient use of gas interconnectors];

(d) Article ENER.16 [Network development]; and

(e) Article ENER.17 [Cooperation on security of supply].

The working arrangements referred to in the first subparagraph shall include frameworks for cooperation between the European Network of Transmission System Operators for Electricity established in accordance with Regulation (EU) 2019/943 (“ENTSO-E”) and the European Network of Transmission System Operators for Gas established in accordance with Regulation (EC) No 715/2009

of the European Parliament and of the Council[46] ("ENTSOG"), on the one side, and the transmission system operators for electricity and gas in the United Kingdom, on the other. Those frameworks shall cover at least the following areas:

(a) electricity and gas markets;

(b) access to networks;

(c) the security of electricity and gas supply;

(d) offshore energy;

(e) infrastructure planning;

(f) the efficient use of electricity and gas interconnectors; and

(g) gas decarbonisation and gas quality.

The Specialised Committee on Energy shall agree on guidance on the working arrangements and frameworks for cooperation for dissemination to transmission system operators as soon as practicable.

The frameworks for cooperation mentioned in the second subparagraph shall not involve, or confer a status comparable to, membership in ENTSO-E or ENTSOG by United Kingdom transmission system operators.

2. The Specialised Committee on Energy may recommend that each Party requests its transmission system operators to prepare the technical procedures as referred to in the first subparagraph of paragraph 1.

3. Each Party shall ensure that its respective transmission system operators request the opinions of the Agency for the Cooperation of Energy Regulators and the regulatory authority in the United Kingdom designated in accordance with Article ENER.12 [Independent regulatory authority] on the technical procedures, respectively, in the event of a disagreement and in any event before the finalisation of those technical procedures. The Parties' respective transmission system operators shall submit those opinions together with the draft technical procedures to the Specialised Committee on Energy.

4. The Specialised Committee on Energy shall review the draft technical procedures, and may recommend that the Parties implement such procedures in their respective domestic arrangements, taking due account of the opinions of the Agency for the Cooperation of Energy Regulators and the regulatory authority in the United Kingdom designated in accordance with Article ENER.12

[46] Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ EU L 211, 14.8.2009, p. 36).

[Independent regulatory authority]. The Specialised Committee on Energy shall monitor the effective operation of such technical procedures and may recommend that they be updated.

Article ENER.20: Cooperation between regulatory authorities

1. The Parties shall ensure that the Agency for the Cooperation of Energy Regulators and the regulatory authority in the United Kingdom designated in accordance with Article ENER.12 [Independent regulatory authority] develop contacts and enter into administrative arrangements as soon as possible in order to facilitate meeting the objectives of this Agreement. The contacts and administrative arrangements shall cover at least the following areas:

(a) electricity and gas markets;

(b) access to networks;

(c) the prevention of market abuse on wholesale electricity and gas markets;

(d) the security of electricity and gas supply;

(e) infrastructure planning;

(f) offshore energy;

(g) the efficient use of electricity and gas interconnectors;

(h) cooperation between transmission system operators; and

(i) gas decarbonisation and gas quality.

The Specialised Committee on Energy shall agree on guidance on the administrative arrangements for such cooperation for dissemination to regulatory authorities as soon as practicable.

2. The administrative arrangements referred to in paragraph 1 shall not involve, or confer a status comparable to, participation in the Agency for the Cooperation of Energy Regulators by the regulatory authority in the United Kingdom designated in accordance with Article ENER.12 [Independent regulatory authority].

Chapter 3: Safe and sustainable energy

Article ENER.21: Renewable energy and energy efficiency

1. Each Party shall promote energy efficiency and the use of energy from renewable sources.

Each Party shall ensure that its rules that apply to licencing or equivalent measures applicable to energy from renewable sources are necessary and proportionate.

ANNEX ENER-3: NON-APPLICATION OF THIRD-PARTY ACCESS AND OWNERSHIP UNBUNDLING TO INFRASTRUCTURE

A Party may decide not to apply Article ENER.8 [Third-party access to transmission and distribution networks] and Article ENER.9 [System operation and unbundling of transmission network operators] to new infrastructure or to a significant expansion of existing infrastructure where:

(a) the risk attached to the investment in the infrastructure is such that the investment would not take place unless an exemption is granted;

(b) the investment enhances competition or security of supply;

(c) the infrastructure is owned by a natural or legal person separate, at least in terms of its legal form, from the system operators in whose systems it was or is to be built;

(d) before granting the exemption, the Party has decided on the rules and mechanisms for management and allocation of capacity.

ANNEX ENER-4: ALLOCATION OF ELECTRICITY INTERCONNECTOR CAPACITY AT THE DAY-AHEAD MARKET TIMEFRAME

Part 1

1. The new procedure for the allocation of capacity on electricity interconnectors at the day-ahead market timeframe shall be based on the concept of "Multi-region loose volume coupling".

   The overall objective of the new procedure shall be to maximise the benefits of trade.

   As the first step in developing the new procedure, the Parties shall ensure that transmission system operators prepare outline proposals and a cost-benefit analysis.

2. Multi-region loose volume coupling shall involve the development of a market coupling function to determine the net energy positions (implicit allocation) between:

   (a) bidding zones established in accordance with Regulation (EU) 2019/943, which are directly connected to the United Kingdom by an electricity interconnector; and

   (b) the United Kingdom.

3. The net energy positions over electricity interconnectors shall be calculated via an implicit allocation process by applying a specific algorithm to:

   (a) commercial bids and offers for the day-ahead market timeframe from the bidding zones established in accordance with Regulation (EU) 2019/943 which are directly connected to the United Kingdom by an electricity interconnector;

   (b) commercial bids and offers for the day-ahead market timeframe from relevant day-ahead markets in the United Kingdom;

   (c) network capacity data and system capabilities determined in accordance with the procedures agreed between transmission system operators; and

   (d) data on expected commercial flows of electricity interconnections between bidding zones connected to the United Kingdom and other bidding zones in the Union, as determined by Union transmission system operators using robust methodologies.

   This process shall be compatible with the specific characteristics of direct current electricity interconnectors, including losses and ramping requirements.

4. The market coupling function shall:

   (a) produce results sufficiently in advance of the operation of the Parties' respective day-ahead markets (for the Union this is single day-ahead coupling established in accordance with

Commission Regulation (EU) 2015/1222[135]) in order that such results may be used as inputs into the processes which determine the results in those markets;

(b) produce results which are reliable and repeatable;

(c) be a specific process to link the distinct and separate day-ahead markets in the Union and the United Kingdom; in particular, this means that the specific algorithm shall be distinct and separate from that used in single day-ahead coupling established in accordance with Regulation (EU) 2015/1222 and, in respect of commercial bids and offers of the Union, only have access to those from bidding zones which are directly connected to the United Kingdom by an electricity interconnector.

5. The calculated net energy positions shall be published following validation and verification. If the market coupling function is unable either to operate or to produce a result, electricity interconnector capacity shall be allocated by a fall-back process, and market participants shall be notified that the fall-back process will apply.

6. The costs of developing and implementing the technical procedures shall be equally shared between the relevant United Kingdom transmission system operators or other entities, on the one side, and relevant Union transmission system operators or other entities, on the other side, unless the Specialised Committee on Energy decides otherwise.

Part 2

The timeline for the implementation of this Annex shall be from the entry into force of this Agreement, as follows:

(a) within 3 months – cost benefit analysis and outline of proposals for technical procedures;

(b) within 10 months – proposal for technical procedures;

(c) within 15 months – entry into operation of technical procedures.

[135] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ EU L 197, 25.7.2015, p. 24).

Schedule 2

Extracts of Standard Conditions of an Interconnector Licence

PART II – SECTION C: REVENUE

Condition 9. Use of revenues

Part A: Purpose

1. The purpose of this licence condition is to ensure appropriate use of revenues and to secure collection of specific accounting information to an appropriate degree of accuracy by the licensee to enable the Authority to review and approve the use of revenue resulting from the allocation of interconnector capacity.

Part B: Use of Revenues

2. The licensee shall use any revenues which it receives from the allocation of interconnector capacity in accordance with Article 19(2) and (3) of the Regulation.

Part C: Use of Revenues Statement

3. The licensee shall prepare and submit to the Authority a use of revenues statement, in such form as the Authority may from time to time direct.

    (a) guaranteeing the actual availability of the allocated capacity, either on a physical or contractual basis;

    (b) network investment in maintaining or increasing interconnection capacities at an efficient level;

    (c) an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

4. The first use of revenues statement submitted under this licence condition shall be submitted no later than 15 July 2011 and thereafter annually by 15 July.

5. The use of revenues statement must set out, in respect of the year ending on 30 June:

    (a) the total amount of revenues the licensee has received from the allocation of interconnector capacity during that period;

    (b) the use made of those revenues during that period;

(c) a statement verifying that, in the licensee's view, the actual use of revenues is in accordance with Article 19(2) and (3) of the Regulation, and giving reasons for that view; and

(d) any changes in approach or categorisation since the last submitted use of revenues statement.

Part D: Approval of Use of Revenues Statement

6. The use of revenues statement shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the use of revenues statement, such direction to be issued without undue delay and in any event within 3 months of receipt of the use of revenues statement from the licensee, unless, prior to the expiry of that period, the Authority directs that the use of revenues statement is not approved. In the absence of any direction within 3 months of receipt of the use of revenues statement from the licensee, the use of revenues shall be deemed to be approved.

PART II – SECTION D: THIRD PARTY ACCESS

Condition 10. Charging methodology to apply to third party access to the licensee's interconnector

1. Unless otherwise determined by the Authority, the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority.

Initial approval of charging methodology

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee's interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.

3. The charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made for access to (including use of), the interconnector, including:

    (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:

        (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and

        (ii) any charges for the provision (including the provision to any relevant system operator) of ancillary services, including but not limited to balancing services;

    (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and

    (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.

4. The charges and the application of the underlying charging methodology shall be objective, transparent, non-discriminatory and compliant with the Regulation and

any relevant legally binding decision of the European Commission and/or the Agency (collectively, the 'relevant charging methodology objectives').

5. Prior to submitting the charging methodology to the Authority for approval the licensee shall:

   (a) take all reasonable steps to ensure that all persons including those in other Member States who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and

   (b) furnish to the Authority a report setting out:

      (i) the terms originally proposed in the charging methodology;

      (ii) the representations, if any, made by interested persons; and

      (iii) any change in the terms of the methodology intended as a consequence of such representations.

6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) it's charging methodology to the Authority for approval, and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

Provisional Charging Methodology

8. If the Authority does not approve the charging methodology submitted by the licensee, or the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.

Review of the charging methodology by the licensee

9. The licensee shall review its charging methodology at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of ensuring that the charging methodology better achieves the relevant charging methodology objectives.

10. The licensee shall also review its charging methodology where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's charging methodology. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives.

Modification of charging methodology

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:

    (a) taken all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and

    (b) furnished the Authority with a report setting out:

(i) the terms originally proposed for the modification;

(ii) the representations, if any, made by interested persons to the licensee;

(iii) any change in the terms of the modification intended in consequence of such representations;

(iv) how the intended modification better achieves the relevant charging methodology objectives; and

(v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.

12. The licensee shall not propose a modification to the charging methodology more than once a year unless the Authority consents otherwise.

13. The licensee shall comply with any direction from the Authority to amend its proposed modification charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified

charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.

Publication of charging methodology statement

15. The licensee shall publish (at least on its website) a charging methodology statement that sets out the prevailing charges for access to the licensee's interconnector and how the charges have been derived in accordance with its charging methodology, as soon as practicable after the charging methodology has been approved by the Authority, or, where the charging methodology has been modified, in accordance with any modified charging methodology. Unless the Authority directs otherwise, the charging methodology statement shall be published 28 days prior to it coming into effect.

Provision of charging methodology or charging methodology statement to any person

16. The licensee shall send a copy of its: charging methodology; charging methodology statement; and/or any proposed modification to the charging methodology proposed under paragraph 11, to any person who requests such charging methodology, charging methodology statement or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of a charging methodology, charging methodology statement or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

Where tariffs, and/or a tariff or charging methodology has been established or approved by a regulatory authority other than the Authority

17. Where the licensee's interconnector either:

    (a) forms part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives; or

(b) does not form part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives,

the Authority may issue a notice to the licensee that the establishment or approval by that regulatory authority meets the requirements of this licence condition. Such notice will constitute approval of a charging methodology for the purposes of this licence condition.

18. A notice issued under paragraph 17 will expire on the earlier of:

(a) the date, if any, provided for expiry in the notice, or

(b) the withdrawal of the notice by the Authority, such withdrawal being effective from the date specified by the Authority, such date being not less than four months after the Authority has informed the licensee that the notice will be withdrawn.

19. Where the Authority has issued a notice to the licensee under paragraph 17 and the tariffs, and/or tariff or charging methodology that have or has been established or approved by the regulatory authority have or has been modified, or is or are to be modified, the licensee shall furnish the Authority with a report setting out:

(a) the terms originally proposed for the modification;

(b) the representations, if any, made by any interested person to the licensee;

(c) any change in the terms of the modification intended in consequence of the representations;

(d) how the intended modification better achieves the relevant charging methodology objectives; and

(e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.

20. Where the Authority has issued a notice to the licensee under paragraph 17, until that notice expires or is withdrawn by the Authority, paragraphs 2 and 5 to 15 of this condition do not apply to the licensee.

Agreements entered into before 1 July 2004 on the basis of a charging methodology that was approved by either the Authority or the European Commission

21. Paragraphs 2 and 5 to 15 of this licence condition do not apply to a contract for access to the licensee's interconnector that was entered into before 1 July 2004 and which:

    (a) was entered into on the basis of a charging methodology that had been approved by either the Authority or the European Commission; and

    (b) subject to paragraph 24, the Authority has given notice to the licensee that paragraphs 2 and 5 to 15 of this licence condition do not apply to such contract.

22. The licensee shall inform the Authority in writing of any proposed material changes to a contract which is the subject of a notice given under sub-paragraph 21(b). This information shall be furnished to the Authority at least 28 days before the proposed contractual variation becomes effective.

23. A notice given under sub-paragraph 21(b) may be given unconditionally or subject to such conditions as the Authority considers appropriate.

24. A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:

    (a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the licensee's interconnector is connected;

    (b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;

    (c) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;

    (d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;

(e) there is a material change to the contract terms which has not be approved by the Authority;

(f) the contract is extended beyond its initial term;

(g) the licensee:

(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or

(ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.

Provision of information to Authority in relation to the charging methodology

25. The licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as is reasonably practicable, the methods by which, and the principles upon which, its charging methodology has been derived.

Condition 11. Requirement to offer terms for access to the licensee's interconnector

1. On the application of any person for access to the licensee's interconnector the licensee shall offer to enter into an agreement with such person for access to the licensee's interconnector.

2. The licensee shall not be in breach of this condition where there is a lack of capacity in respect of which to grant access to the licensee's interconnector.

3. Where the licensee refuses access on the grounds that it lacks the necessary capacity, duly substantiated reasons for such refusal, demonstrating that it is either not economic or not technically feasible to provide the capacity, must be given to both the person seeking access and to the Authority within 28 days of a refusal.

4. Where the licensee refuses access on the grounds that it lacks the necessary capacity and the person seeking access so requests, the licensee shall provide relevant information on measures that would be required to reinforce the network in order to provide that capacity. The licensee may impose a reasonable charge upon a person who requests such information. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any direction issued by the Authority for the purposes of this condition.

5. Where the licensee considers that for reasons of confidentiality the licensee should not have to provide particular items of information to the person seeking access under paragraphs 3 or 4, the licensee may seek the consent of the Authority to limit the provision of information to that person.

6. A dispute arising from refusal of access on the grounds of lack of necessary capacity will be resolved in accordance with condition 14.

7. The licensee shall keep and maintain records for at least seven years, or the length of any concluded contract plus seven years (whichever is the longer in each case), detailing all access terms and conditions offered to any person (whether or not access is in fact granted or utilised) including details of the charges or tariffs and non-price terms and conditions of access offered.

Condition 12. Application of licence conditions 9, 10 and 11: Exemption orders

1. In accordance with this licence condition, licence conditions 9, 10 and 11 ('the relevant conditions') may:

    (a) not have effect in this licence;

    (b) be suspended from operation in this licence;

    (c) be brought into, (where the licence condition did not have effect) or back into operation (where the licence condition was suspended from operation), in this licence.

2. On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same time, or after this licence has been granted to the licensee) issue an exemption order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that it has complied with the requirements placed on the Authority by Article 63 of the Regulation and in the issuing of the exemption order is otherwise compliant with that Article.

3. A licensee may make a request in writing to the Authority for the Authority to issue an exemption order such that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Authority to determine whether such an exemption order should be issued given the matters of which the Authority must be satisfied before issuing an exemption order, as set out in paragraph 1 of Article 63 of the Regulation. The request shall include the Access Rules for approval by the Authority in accordance with paragraph 9 below, which Access Rules shall comply with paragraphs 3 and 4 of licence condition 11A, and prior to submitting the Access Rules for approval, the licensee shall comply with paragraph 5 of licence condition 11A.

4. An exemption order shall be in writing and may be expressed:

    (a) so as to have effect or for a period specified in, or determined under the exemption;

(b) subject to such conditions as the Authority considers appropriate including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates;

(c) so as to have effect in relation to the whole or any part of, as the case may be:

(i) the capacity of the new interconnector;

(ii) the significant increase in the capacity of the licensee's interconnector.

5. An exemption order issued under paragraph 2 may be revoked in accordance with its provisions, and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 63 of the Regulation.

6. An application made under paragraph 3 may relate to a new interconnector or to a part of an interconnector in so far as that part represents a significant increase of capacity to that interconnector.

7. An exemption order will not be made until the Authority has approved the Access Rules.

8. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any even within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 9 shall apply.

9. The Access Rules shall not be approved for the purposes of paragraph 7 unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless,

prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

10. The requirements of this paragraph are that the Authority considers that the Access Rules:

    (a) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;

    (b) will not restrict reselling of rights to have electricity transmitted through the exempt infrastructure.

11. In this licence condition:

"new interconnector"	means an interconnector not completed by 4 August 2003

APPENDIX 11

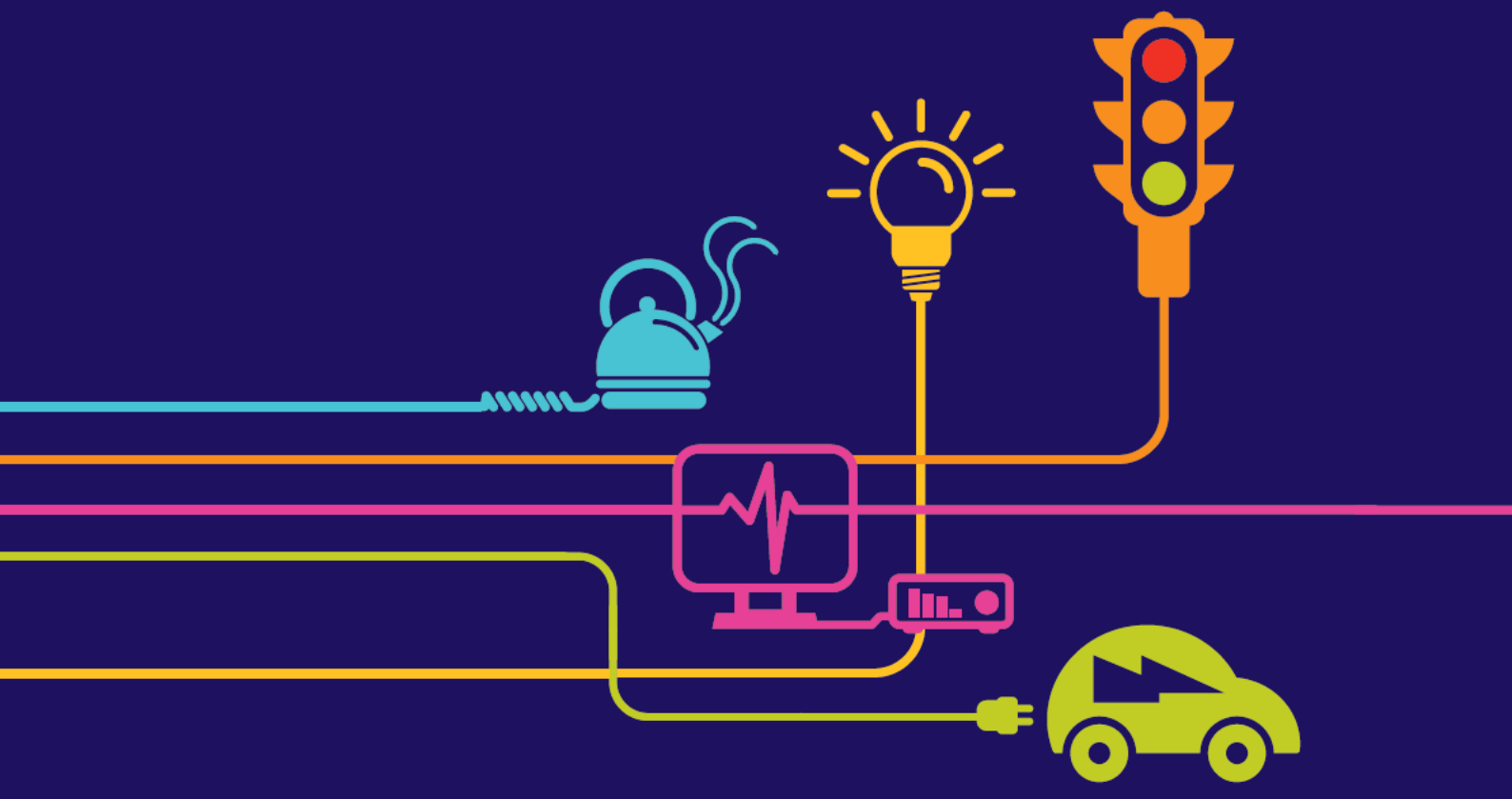
EXAMPLE LETTERS OF NO IMPEDIMENT PRODUCED FOR THE HINKLEY POINT C NUCLEAR STATION DCO

Document 8.24.5

nationalgrid

Biodiversity and HRA Matters Letters of No Impediment

Hinkley Point C Connection Project



Application Reference EN020001

June 2015

Date: 05 March 2015
Our ref: 2014-5542-EPS-NSIP1
(NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT)

Mr P Bryant
Senior Project Manager
National Grid

Sent by e-mail only

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Dear Mr Bryant

DRAFT EPS MITIGATION LICENCE APPLICATION STATUS: SUBSEQUENT DRAFT APPLICATION
LEGISLATION: CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (as amended)
NSIP: HINCKLEY POINT C CONNECTION PROJECT, BRIDGWATER TO SEABANK CORRIDOR
EUROPEAN PROTECTED SPECIES: Great Crested Newt (*Triturus cristatus*)

Thank you for your subsequent draft great crested newt mitigation licence application, in association with the above NSIP site, which was received in this office on the 27th February 2015. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals. As you will be aware there are three licensing tests which must be met in principle before a letter of no impediment can be issued.

Assessment

Following our assessment of the resubmitted documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued should the DCO be granted.

Please, however, note that:

- An updated survey will be required to inform later phases of the scheme and therefore, should the DCO be granted, please contact Natural England to discuss the survey update requirements in sufficient time to allow for the appropriate surveys to be undertaken.
- In relation to the formal great crested newt licence application, we recommend that applications are submitted individually (or grouped where appropriate) in accordance with the development of each separate element of the project as opposed to one collective application.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

http://webarchive.nationalarchives.gov.uk/20140605090108/http://naturalengland.org.uk/Images/wml-g36_tcm6-28566.pdf

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

Yours sincerely

John Gordon
EPS Mitigation Licensing Group-Coordinator
Tel: 0300 060 1442
E-mail: John.Gordon@naturalengland.org.uk

Annex - Guidance for providing further information or formally submitting the licence application.

Important note: when submitting your formal application please mark all correspondence 'NSIP 2014-5542-EPS-NSIP1 HINCKLEY POINT C CONNECTION PROJECT, BRIDGWATER TO SEABANK CORRIDOR (GCN) for the attention of Kathryn Murray and John Gordon'.

Submitting Documents.

Documents must be sent to the Customer Services Wildlife Licensing (postal and email address at the top of this letter).

Changes to Documents – Reasoned Statement and/or Method Statement.

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

Reasoned Statement

Imperative Reasons of Overriding Public Interest or Public Health and Safety and/or No Satisfactory Alternative.

When submitting a revised Reasoned Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively one paper copy of the complete, revised document. Please do not send the amended sections in isolation.

Method Statement

Favourable Conservation Status.

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. This document forms part of the licence; please do not send the amended sections in isolation. For NSIP schemes if you are sending us a copy by email or on CD, please also send us at least one paper copy of all figures and maps which greatly assists the assessment process.

Customer Feedback – EPS Mitigation Licensing

To help us improve our service please complete the following questionnaire and return to:

Customer Services, Natural England, First Floor, Temple Quay House, 2 The Square, Bristol, BS1 6EB.

Fax: 0845 6013438 or email to wildlife@naturalengland.org.uk

http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx

Natural England Reference Number (optional):	Please tick to indicate your role:	Consultant Developer (Applicant/Licensee)	☐ ☐

1. How easy was it to get in contact with the Wildlife Management & Licensing team of Natural England?

Difficult (1) ☐ *OK (2)* ☐ *Easy (3)* ☐ *Very Easy (4)* ☐

If 1 please specify who you initially contacted in relation to your issue/enquiry?

2. Please tell us how aware you were (BEFORE you contacted us) of wildlife legislation and what it does/does not permit in relation to your enquiry?

Unaware (1) ☐ *Very Limited Awareness (2)* ☐ *Partially Aware (3)* ☐ *Fully Aware (4)* ☐

3. How would you rate the service provided by Natural England?

	Poor 1	*Fair* 2	*Good* 3	*Excellent* 4	*Not applicable*
Ease of completion of application	☐	☐	☐	☐	☐
Advice provided by telephone (if applicable)	☐	☐	☐	☐	☐
Our web site (if applicable)	☐	☐	☐	☐	☐
Clarity and usefulness of published guidance	☐	☐	☐	☐	☐
Helpfulness and politeness of staff	☐	☐	☐	☐	
Advice and clarity of explanations provided during Method Statement assessment	☐	☐	☐	☐	☐
Advice and clarity of explanations provided during Reasoned Statement assessment	☐	☐	☐	☐	☐
Speed of process	☐	☐	☐	☐	
Overall service	☐	☐	☐	☐	

If 1 or 2 to any of the above please specify why:

4. Was your issue/enquiry resolved by the activity authorised under licence or advice provided by us?

Fully ☐ *Partially* ☐ *Unresolved* ☐

If not fully resolved please state what you think could have been done instead (note legislation affects which actions can be licensed):

5. Was there a public reaction to any action taken under the licence or as a result of our advice?

Positive support ☐ *No reaction* ☐ *Negative reaction* ☐

6. Would you use a fully online licensing service if it could be made available in the future?

Definitely ☐ *Possibly* ☐ *Unlikely* ☐ *No* ☐

7. Do you have any further comments to make or suggestions for improving our service, if yes please specify (continue comments on an additional sheet if necessary). *If you are happy to be contacted at a later date to explore possible improvement options, please tick this box* ☐ *and ensure your Natural England reference number is at the top of this page.*

Date: 07 January 2015
Our ref: 2014-5512-SPM
(NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT)

Mr P Bryant
Senior Project Manager
National Grid

peter.bryant@uk.ngrid.com

Sent by e-mail only

Customer Services
Wildlife Licensing
Natural England
First Floor
Temple Quay House
2 The Square
Bristol, BS1 6EB

T 0845 6014523
F 0845 6013438
E eps.mitigation@naturalengland.org.uk

Dear Mr Bryant

DRAFT BADGER DEVELOPMENT LICENCE APPLICATION STATUS: SUBSEQUENT DRAFT APPLICATION
LEGISLATION: PROTECTION OF BADGERS ACT 1992
NSIP: HINCKLEY POINT C CONNECTION PROJECT, BRIDGWATER TO SEABANK CORRIDOR
PROTECTED SPECIES: BADGERS *(Meles meles)*

Thank you for your subsequent draft badger development licence application in association with the above site, which was received in this office on the 20th November 2014. This application relates to a Nationally Significant Infrastructure Project which Natural England agreed to review to help ensure the proposals meet protected species licensing requirements. As you will be aware, no final licensing decisions can be made, or any licence issued, unless the development obtains all necessary consents in order to proceed, with any conditions relevant to wildlife discharged. Accordingly we cannot issue a licence unless the Secretary of State grants the Development Consent Order (DCO) in relation to these proposals.

Assessment

Following our assessment of the resubmitted documents, I can now confirm that, on the basis of the information and proposals provided to date, Natural England remains satisfied that no outstanding issues remain which would prevent the licence being granted in respect of this application should the DCO be granted.

As stated in our previous Letter of No Impediment that was issued on 18th February 2014 in response to the initial draft badger application, please note that the following points must be accounted for within the Method Statement at the formal application stage, should the DCO be granted:

- Provision must be made to enable any badger falling into a trench or other excavation during night-time to escape
- Any pipes with an internal bore greater than 20cms (8") must be capped-off if there is any risk that a badger could enter the pipe and become trapped.
- The retained floor of the building under which sett no. 19 has been excavated must be as weatherproof as the original structure.

- Consideration should be given to possible future problems caused by badgers excavating in the vicinity of underground high-voltage cables, particularly where these lie adjacent to existing setts.
- Confirmation must be given that no setts lie within designated sites such as SSSI's.
- Any future licence application must include the names of any additional authorised persons required to be named on the licence.

If there is any aspect of the above that that is not clear to you and you wish to discuss it with the wildlife adviser who assessed the method statement, please contact Alan Britton on 0300 060 1333 or by email at Alan.Britton@naturalengland.org.uk.

An email identifying issues in advance is helpful as it will enable Alan to review your queries in the context of the case before discussing them with you. Like all Wildlife Advisers, Alan does not spend all of his time in the office so there may be a short delay before he can respond to you.

Next steps

As previously stated, the issues as identified above must be addressed in the Method Statement at the formal application stage, should the DCO be granted. If other minor changes to the application are subsequently necessary, e.g. regarding updated surveys, amendments to the timetable, then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. Please be aware that if changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-g36_tcm6-28566.pdf

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence

I hope that the information detailed within this letter has been helpful. However, should you have any queries then please do not hesitate to contact me or Kathryn Murray.

John Gordon
EPS Mitigation Licensing Group-Coordinator
Tel: 0300 060 1442
E-mail: John.Gordon@naturalengland.org.uk

Annex - Guidance for providing further information or formally submitting the licence application.

Important note: when submitting your formal application please mark all correspondence 'NSIP 2014-5512-SPM - Hinkley Point C Connection Project, Bridgwater to Seabank Corridor - Badgers) for the attention of Kathryn Murray and John Gordon'.

Submitting Documents.

Documents must be sent to the Customer Services Wildlife Licensing (postal and email address at the top of this letter).

Changes to Documents –Method Statement.

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

Method Statement

Favourable Conservation Status.

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. This document forms part of the licence; please do not send the amended sections in isolation. For NSIP schemes if you are sending us a copy by email or on CD, please also send us at least one paper copy of all figures and maps which greatly assists the assessment process.

Customer Feedback – Wildlife Licensing

To help us improve our service please complete the following questionnaire and return to:

Customer Services, Natural England, First Floor, Temple Quay House, 2 The Square, Bristol, BS1 6EB.

Fax: 0845 6013438 or email to wildlife@naturalengland.org.uk

http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx

Natural England Reference Number (optional):	Please tick to indicate your role:	Consultant Developer (Applicant/Licensee)	☐ ☐

1. How easy was it to get in contact with the Wildlife Management & Licensing team of Natural England?

Difficult (1) ☐ *OK (2)* ☐ *Easy (3)* ☐ *Very Easy (4)* ☐

If 1 please specify who you initially contacted in relation to your issue/enquiry?

2. Please tell us how aware you were (BEFORE you contacted us) of wildlife legislation and what it does/does not permit in relation to your enquiry?

Unaware (1) ☐ *Very Limited Awareness (2)* ☐ *Partially Aware (3)* ☐ *Fully Aware (4)* ☐

3. How would you rate the service provided by Natural England?

	Poor 1	*Fair* 2	*Good* 3	*Excellent* 4	*Not applicable*
Ease of completion of application	☐	☐	☐	☐	☐
Advice provided by telephone (if applicable)	☐	☐	☐	☐	☐
Our web site (if applicable)	☐	☐	☐	☐	☐
Clarity and usefulness of published guidance	☐	☐	☐	☐	☐
Helpfulness and politeness of staff	☐	☐	☐	☐	
Advice and clarity of explanations provided during Method Statement assessment	☐	☐	☐	☐	☐
Advice and clarity of explanations provided during Reasoned Statement assessment	☐	☐	☐	☐	☐
Speed of process	☐	☐	☐	☐	
Overall service	☐	☐	☐	☐	

If 1 or 2 to any of the above please specify why:

4. Was your issue/enquiry resolved by the activity authorised under licence or advice provided by us?

Fully ☐ *Partially* ☐ *Unresolved* ☐

If not fully resolved please state what you think could have been done instead (note legislation affects which actions can be licensed):

5. Was there a public reaction to any action taken under the licence or as a result of our advice?

Positive support ☐ *No reaction* ☐ *Negative reaction* ☐

6. Would you use a fully online licensing service if it could be made available in the future?

Definitely ☐ *Possibly* ☐ *Unlikely* ☐ *No* ☐

7. Do you have any further comments to make or suggestions for improving our service, if yes please specify (continue comments on an additional sheet if necessary). *If you are happy to be contacted at a later date to explore possible improvement options, please tick this box* ☐ *and ensure your Natural England reference number is at the top of this page.*

Date: 16 December 2014
Our ref: 2014-5521-EPS-NSIP1 (DN)
(NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT)

Mr P Bryant
Senior Project Manager
National Grid

Sent by e-mail only

Customer Services
Sustainable Development
Natural England
First Floor
Temple Quay House
2 The Square
Bristol, BS1 6EB

T 0845 6014523
F 0845 6013438
E eps.mitigation@naturalengland.org.uk

Dear Mr Bryant

DRAFT EPS MITIGATION LICENCE APPLICATION STATUS: SUBSEQUENT DRAFT APPLICATION
LEGISLATION: CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (as amended)
NSIP: HINCKLEY POINT C CONNECTION PROJECT, BRIDGWATER TO SEABANK CORRIDOR
EUROPEAN PROTECTED SPECIES: Common Pipistrelle Bat *(Pipistrellus pipistrellus)*; Soprano Pipistrelle *(Pipistrellus pygmaeus);* and Natterer's Bat *(Myotis nattereri).*

Thank you for your subsequent draft bat mitigation licence application, in association with the above NSIP site, which was received in this office on the 21st November 2014. This application relates to a Nationally Significant Infrastructure Project which Natural England agreed to review to help ensure the proposals meet protected species licensing requirements. As you will be aware, no final licensing decisions can be made, or any licence issued, unless the development obtains all necessary consents in order to proceed, with any conditions relevant to wildlife discharged. Accordingly we cannot issue a licence unless the Secretary of State grants the Development Consent Order (DCO) in relation to these proposals.

Assessment

Following our assessment of the resubmitted documents, I can now confirm that, on the basis of the information and proposals provided to date, Natural England is satisfied that no outstanding issues remain which would prevent the licence being granted in respect of this application should the DCO be granted

General advice and next steps

Should the DCO be granted and you are in a position to formally submit your bat licence application, please be mindful that we will only issue a licence within 12 weeks of the first licensable activities.

Please also note that, whilst not compulsory, we would advise that any formal licence application is submitted in the 'Annexed licence' format which will enable minor issues in the method statement to be dealt with outside of the formal Further Information Request (FIR) process. It will also simplify the process for modifying the licence as you would only need to submit the information which requires amendment and not the method statement and accompanying documents – unless there are major changes (e.g. site layout or impacts have

changed). Further details can be found in our Annexed Licensing Guidance document at the following website link:

http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/annexed-licence-faq_tcm6-35786.pdf

If minor changes to the application are subsequently necessary, e.g. regarding updated surveys or amendments to the work schedule then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. Please be aware that if changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

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As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope that the information detailed within this letter has been helpful. However, should you have any queries then please do not hesitate to contact me or Kathryn Murray.

Yours sincerely

John Gordon
EPS Mitigation Licensing Group-Coordinator
Tel: 0300 060 1442
E-mail: John.Gordon@naturalengland.org.uk

Annex - Guidance for providing further information or formally submitting the licence application.

Important note: when submitting your draft application please mark all correspondence 'NSIP - Hinkley Point C Connection Project, Bridgwater to Seabank Corridor - Bats) for the attention of Kathryn Murray and John Gordon'.

Submitting Documents.

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Imperative Reasons of Overriding Public Interest or Public Health and Safety and/or No Satisfactory Alternative.

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http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx

Natural England Reference Number (optional):	Please tick to indicate your role:	Consultant Developer (Applicant/Licensee)	☐ ☐

1. How easy was it to get in contact with the Wildlife Management & Licensing team of Natural England?

Difficult (1) ☐ *OK (2)* ☐ *Easy (3)* ☐ *Very Easy (4)* ☐

If 1 please specify who you initially contacted in relation to your issue/enquiry?

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3. How would you rate the service provided by Natural England?

	Poor 1	*Fair* 2	*Good* 3	*Excellent* 4	*Not applicable*
Ease of completion of application	☐	☐	☐	☐	☐
Advice provided by telephone (if applicable)	☐	☐	☐	☐	☐
Our web site (if applicable)	☐	☐	☐	☐	☐
Clarity and usefulness of published guidance	☐	☐	☐	☐	☐
Helpfulness and politeness of staff	☐	☐	☐	☐	
Advice and clarity of explanations provided during Method Statement assessment	☐	☐	☐	☐	☐
Advice and clarity of explanations provided during Reasoned Statement assessment	☐	☐	☐	☐	☐
Speed of process	☐	☐	☐	☐	
Overall service	☐	☐	☐	☐	

If 1 or 2 to any of the above please specify why:

4. Was your issue/enquiry resolved by the activity authorised under licence or advice provided by us?

Fully ☐ *Partially* ☐ *Unresolved* ☐

If not fully resolved please state what you think could have been done instead (note legislation affects which actions can be licensed):

5. Was there a public reaction to any action taken under the licence or as a result of our advice?

Positive support ☐ *No reaction* ☐ *Negative reaction* ☐

6. Would you use a fully online licensing service if it could be made available in the future?

Definitely ☐ *Possibly* ☐ *Unlikely* ☐ *No* ☐

7. Do you have any further comments to make or suggestions for improving our service, if yes please specify (continue comments on an additional sheet if necessary). *If you are happy to be contacted at a later date to explore possible improvement options, please tick this box* ☐ *and ensure your Natural England reference number is at the top of this page.*