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Your reference: EN020022
Our reference:
DCO/2018/00016

aquind@planninginspectorate.gov.uk

[by Email only]

01 March 2021

Dear Mr Mahon,

The Planning Act 2008, AQUIND Limited, proposed AQUIND Interconnector Project – Comments on ExA's Proposed Schedule of Changes to The dDCO

On 6 January 2020, the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “2008 Act”) that the Planning Inspectorate (“PINS”) had accepted an application made by AQUIND Limited (the “Applicant”) for a development consent order (the “DCO Application”) (MMO ref: DCO/2018/00016; PINS ref: EN020022).

The DCO Application seeks authorisation to construct and operate an electricity interconnector with a net transmission capacity of 2000 megawatts between France and the UK (the “Project”).

The MMO is an interested party for the examination of the DCO Applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the Project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML).

This document comprises the MMO’s comments on ExA’s proposed schedule of changes to the dDCO. Please see Annex 1 of this document.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely,



Daniel Walker
Marine Licensing Case Officer

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Annex 1

Ref	ExA's Suggested Changes	MMO Comments
Articles		
45	<p>45.—(1) Subject to article 49 (saving provisions for Trinity House), except where otherwise expressly provided for in this Order, any difference under any provision of this Order shall be referred to and settled in arbitration in accordance with the rules at Schedule 17 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p> <p>(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.</p>	<p>The MMO notes the proposed wording explicitly excluding the MMO for arbitration provisions and welcomes this change. The MMO has made it clear throughout the Examination period that we strongly object to being subject to arbitration, and the MMO are in agreement with the ExA's changes.</p>
46	<p>Procedure in relation to certain approvals, etc.</p> <p>Subject to paragraph (2), Schedule 3 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.</p> <p>(2) Schedule 3 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 (protective To address concerns over an inadequate allowance of time by the local planning authorities, and to bring this into line with the corresponding arrangements set out in recently made Orders and agreed by the Secretary of State. AQUIND ExA's schedule of changes to the dDCO 4 Ref ExA's suggested changes ExA's comments provisions) or any dispute under article 18(6) (protective work to buildings) to which the following paragraph applies.</p> <p>(3) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 13 or article 18(6) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p>	<p>The MMO are concerned that it is not clear whether the MMO is included in Schedule 3. The ExA's proposed wording of "Provisions" rather than "Requirements" widens the use of the procedure in Art 46 beyond those approvals set out in Schedule 2 and applies it arguably to any approval required under any provision of the order, including approvals under the DML. The MMO feels strongly that approvals under the DML should not be part of Schedule 3. If the MMO are included within Schedule 3 then the MMO may be subject to two different appeals processes, the procedure in schedule 3 and the appeals process applied by Schedule 16. The MMO strongly objects to Schedule 16.</p> <p>Therefore, the MMO requests that Article 46(2) is amended to expressly exclude consents, agreements or approvals contemplated by the provisions of Schedule 15. The MMO's proposed wording is "Schedule 3</p>

		does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15".
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