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Rosie Sutherland
RSPB
By email only

Our Ref: TR030001

Date: 4 October 2012

Dear Ms. Sutherland,

Re: Able Marine Energy Park - Planning Inspectorate Ref: TR030001. The RSPB Registration Identification Ref – 10015550. Notification of New Hearings and Change to Examination Timetable

Thank you for your letter of 26 September.

You will appreciate, I hope, the great difficulty of managing the examination timetable for a case as complex as this. The Panel's over-riding concern and duty is to ensure a rigorous and even-handed process, in which the applicant has the opportunity to set out its case and the interested and affected parties have a matching opportunity to respond to that case.

The Panel reviewed the examination timetable shortly after the close of the previous Specific Issue hearings on the compensation proposals, and specifically the implications of the further work announced at those hearings by the applicant. We decided that we should allow for the supplementary material to be considered as fully as possible by all parties; and that we should then hold further hearings on the subject, in accordance with s.91 of PA2008, both to ensure adequate examination of the issue and that interested parties had a fair chance to put their case.

You should by now have seen the letter of 28 September 2012 from Bircham Dyson Bell on behalf of the applicant responding to the Panel's Rule 17 question of 24 September about the timetable for the production of further material and any consultation arrangements that the applicant proposed.

In that letter Bircham Dyson Bell state that –

The applicant is publishing newspaper notices on 4, 5 and 11 October to announce the publication of the supplementary material on 12 October. This mirrors the requirements of Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, although the information is being provided voluntarily and is not 'further information' under that regulation. Parties will be invited to submit comments to the applicant by 9 November. The applicant would expect to pass these on to the Examining Authority.

The Panel will aim to review the supplementary material as soon as possible after 12 October. We may very well decide to ask the applicant or interested parties for further information relating to this material under Rule 17. We shall also consider the agenda for the hearings.

The Panel will study any and all responses to the applicant's consultation exercise. It would obviously be helpful if these responses were copied to the Panel at the time when they are sent to the applicant. The Panel will study the applicant's report of its consultation exercise and this will be placed on the PINS project website. Any consultation responses which are copied simultaneously to the Panel will also be placed on the PINS project website. Through the combination of these consultation responses and the answers to any Rule 17 questions the Panel considers that the issues arising from the supplementary material will be rehearsed and shared in writing as thoroughly as possible before the hearings.

That the hearing dates should be so close to the date by which the examination must end - no party having sought an extension of time from the Secretary of State under s.98(4) - and in turn require the moving of the final hearings relating to the draft Development Consent Order and the draft Deemed Marine Licence, is clearly a complicating factor. But the Panel is entirely satisfied that these timetable changes are both equitable and necessary to ensure a fair examination.

You will understand, I am sure, that in these circumstances the availability on any particular date of the legal representative of any interested party out of the very large number now apparently engaged in this case cannot be a practicable consideration for the Panel.

I note your statement that 'The RSPB will not be bounced into testing proposals in a short time frame and orally only.' I trust that you will also understand now that this is not a fair or accurate representation of the Panel's intentions.

As to the agenda for the final hearings on the draft DCO and DML, the Panel will similarly consider this after the next version has been submitted to us on 9 October.

Yours sincerely,

Robert Upton

Lead member of the Panel of Examining Inspectors

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.