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Sent: Friday, July 27, 2012 12:01 PM
To: Mike Harris
Cc:
Subject: AMEP: Comments on Answers to ExA Questions

Mike,

Please find attached our comments on the Answers to the Examiners 1st Written Questions. Paper copies will be submitted on Monday.

Kind regards

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Responses to Answers Posed to the Questions Raised by the Examiner

24th July 2012
Revision: 0
Able UK Ltd

	RESPONSES TO ANSWERS POSED TO QUESTIONS RAISED BY THE EXAMINER	JULY 2012
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CONTENTS

1	ANGLIAN WATER	3
2	ASSOCIATED BRITISH PORTS (AS PORT OPERATOR)	3
3	ENVIRONMENT AGENCY	4
4	E.ON UK PLC	6
5	HARBOUR MASTER HUMBER.....	6
6	HIGHWAYS AGENCY.....	7
7	MARINE MANAGEMENT ORGANISATION	7
8	NATIONAL GRID	7
9	NORTH LINCOLNSHIRE COUNCIL.....	8

1 ANGLIAN WATER

1.1 No Comment.

2 ASSOCIATED BRITISH PORTS (AS PORT OPERATOR)

2.1 ABP's response to question 60(a) effectively states that the application is not for a 'nationally significant infrastructure project' because if restricted to wind energy infrastructure, the quay would not handle the required threshold of 5 million tonnes per annum. This point is also made repeatedly in the evidence of Philip Rowell of Adams Hendry Consulting that forms part of ABP's WR (60a).

2.2 The applicant's comments are as follows. First, nowhere in ABP's evidence does it consider the terms of the threshold actually specified in the Planning Act 2008. This is that the harbour facilities 'are expected to be capable of handling the embarkation or disembarkation of at least [5 million tonnes] per year'. ABP elides the question of what it will in practice handle with what it will be capable of handling, which are different concepts (60a).

2.3 In ABP's own evidence it concedes that the quay, at least if unrestricted in type of cargo, would be capable of handling at least 5 million tonnes of cargo per year. At paragraph 8.2.1 and the following Table 4 at page 27 of Chris Geldard's evidence, submitted as part of ABP's WR, he gives figures for bulk cargo that add up to 7.5m tonnes as an example of the cargo types that the quay could handle (60a).

2.4 Secondly, the applicant does not agree that any restriction in the quay affects its capability. Again, these are different concepts. For example, theft is a crime but that does not mean that no-one is capable of it (60a).

2.5 Thirdly, even if the examining authority is not persuaded by the previous point, the quay is still capable of handling above the threshold of marine energy infrastructure alone, even if, as the applicant freely admits, it would not in practice handle above that threshold (60a).

2.6 According to paragraph 4.4.24 of the Environmental Statement, a complete wind turbine, including foundation, weighs 1055-1725 tonnes, and the components are likely to get larger and heavier over time. For the six berths that the quay will consist of to handle 5 million tonnes of cargo per year, between 1.3 and 2.2 turbines would have to be transported per berth per day. The quay is clearly capable of handling that level of throughput (60a).

2.7 ABP's response to question 60(b) is that the onshore component of the Able Marine Energy Park is not capable of being 'associated development' under the Planning Act 2008 (60b).

2.8 First, note that ABP does not address the issue in the question about the comparability of the examples given in the DCLG guidance, which the applicant submits are of an equivalent nature, if not directly cover, the onshore facilities that form part of AMEP (60b).

2.9 Instead, ABP relies on paragraph 10 of the guidance, where it says that 'development should not be treated as associated development if it is actually an integral part of the NSIP'. Note that the guidance is in the

process of being revised, and the current draft has removed the 'necessary' test, although ABP's arguments do not relate to that change (60b).

- 2.10 ABP misunderstands the purpose of the sentence it quotes – if development is an integral part of the NSIP then it should be treated as such and not as associated development, not that it cannot be included in the application. It would not make sense if an integral part of an NSIP could not be part of an application for an NSIP, when NSIPs can only be authorised via the Planning Act 2008. By ABP's logic then such development could never be authorised (60b).
- 2.11 ABP assert that alternatively the onshore facility is unrelated to the quay. It is difficult to see how any objective observer could reach that conclusion, given that the facility will be responsible for the manufacture and assembly of the items that the quay will handle (60b).
- 2.12 ABP's third submission is that the quay is subordinate to the manufacturing facility rather than the other way round. While the manufacturing facility is a substantial and necessary part of the project, the quay is the principal element of the project that gives it its *raison d'être* and viability. In May 2009 DECC issued an 'offshore wind ports prospectus' that identified the AMEP site as the largest land area available for the creation of a marine energy-related port facility. It did not issue an offshore wind manufacturing facility prospectus, because it is the availability of port facilities that is the crucial part of delivering offshore marine energy installations. As the ports prospectus states in its introduction:
- "Ports have an important role to play in supporting the development of our energy mix. Not only do they enable the trade transport of components and fuels but they also provide bases for construction, manufacturing and potential generation."*
- 2.13 It is thus the port that provides the basis for construction and manufacturing, and so the latter is clearly subordinate to the former in the view of DECC, which the applicant shares (60b).
- 2.14 The question and ABP's response are superseded by the applicant's agreement in response to oral and written representations to add a requirement to the DCO that will limit the cargo that the quay will be permitted to handle (60c).
- 2.15 The applicant will comment on this response in its comments on written representations, given that the detail has been provided as part of ABP's written representation (61).

3 ENVIRONMENT AGENCY

- 3.1 The Applicant agrees with the description of the consent process for the Logistics Park but cannot see that the answer describes any relationship between it and the proposed Marine Energy Park (3).
- 3.2 The Applicant notes that the EA has no future proposed programme of dredging for Stone Creek. The Applicant will monitor impacts to ascertain what, if any, mitigation measures may be needed in the future (38c).

- 3.3 The Applicant would comment as follows with regard to the proposal by the EA to have 10-20 hectares of land made available at Cherry Cobb Sands.
- 3.4 Cherry Cobb Sands was identified within the 'Humber Flood Risk Management Strategy' EA (2008) for planned habitat creation within the next 20 years. The same site was also sought for development of compensatory habitat by ABP and, as a result, the landowner - The Crown Estate - undertook a tendering process that involved all 3 parties (ABP, AHPL and EA). The Applicant was selected as the preferred bidder and does not believe that the EA should be unfairly advantaged in this commercial process.
- 3.5 Whilst the EA is required to compensate for the direct loss of habitat due to their flood defence maintenance strategy, direct losses from the strategy are limited to 15 hectares over the next 50 years (CHaMP - table 8.1). The Applicant accepts that this physical loss of estuarine habitat cannot be mitigated and therefore new estuary habitat (compensation) must be created outside of the designated site. However the (very) significant proportion of the EA's requirement for managed realignment sites arises from DEFRA's policy of compensating for the CHANGE in estuarine habitat due to 'coastal squeeze'. Coastal squeeze is caused when rising sea levels give rise to both an increase in both the low and the high tide levels. Within the Humber Estuary the high tide level is very often constrained by flood defences and is thereby fixed in position against the defence wall, whilst the higher low tide means that, as sea levels rise, less of the estuary bed is exposed during the tidal cycle. This reduces the area of intertidal habitat and increases the area of sub-tidal habitat - although the total area of habitat within the estuary remains exactly the same.
- 3.6 Sea level rise is considered to be a 'natural' change with a loss of intertidal habitat due to coastal squeeze still being compensated by the EA because it is still assessed to be an indirect effect of maintaining the flood defences. This is because, if the flood defences were not maintained, they would eventually fail and the high tide level would move inland (albeit in an uncontrolled manner). To account for 5 years of coastal squeeze the EA is planning to provide 600 hectares of managed realignment sites by 2050. However the coastal squeeze does NOT result in a loss of estuarine habitat (the estuary remains the same size) it simply gives rise to habitat CHANGE within the estuary; intertidal habitat becomes sub-tidal habitat. Accordingly it is not clear to the Applicant why the EA must find any realignment sites to compensate for this change. It should consider alternative solutions to maintaining the habitat balance within the estuary by converting shallow sub-tidal habitat into intertidal areas. This would reduce (potentially significantly) the EA's need for managed realignment sites. For example simple groyne structures could, subject to an EIA, be used to create accreting areas within this turbid estuary - just as the development of HIT has done. The groynes would change the sedimentary regimes locally changing sub-habitat to intertidal and would thereby maintain the balance of these two habitat types without needing to increase the estuary size through managed realignment.
- 3.7 The Applicant accepts that it is not possible to compensate for the physical loss of estuary caused by the reclamation works for AMEP but that the EA should not be so constrained in managing habitat change (68).

4 **E.ON UK PLC**

- 4.1 E.ON UK plc were asked about discussions relating to section 127 of the Planning Act 2008. This is the procedure where if a statutory undertaker objects to its land being compulsorily acquired and this is not withdrawn by the end of the examination of the application, then the applicant must obtain a certificate from the Secretary of State to the effect that the land can be taken without serious detriment to the undertaker's undertaking. E.ON have said that no discussions have taken place (98).
- 4.2 The applicant will allow E.ON to continue to have rights to keep its pipeline running across the Order land. It will replace the existing wide easement (up to 140m wide in places) with a narrower one that will allow it to develop the Order land to its full potential. E.ON accepts that the existing easement is too wide, although there is currently a disagreement about how wide the replacement easement should be: the applicant has offered 12.5 metres, and E.ON were seeking 23 metres but have now increased this to 32.5 metres (98).
- 4.3 The applicant is hopeful that it will reach agreement with E.ON on this issue. If, however, it does not, then before the end of the examination of the application it will make an application to the Secretary of State for a certificate under section 127 (98).
- 4.4 The applicant would not wish to cause the examining authority any difficulties in the timing of considering such an application and so if it were more convenient that the applicant made an application under s127 earlier rather than later, despite being of the view that such an application may not in the event be necessary, then it would be happy to do so (98).

5 **HARBOUR MASTER HUMBER**

- 5.1 The Applicant notes the Harbour Master's initial satisfaction in respect of the additional hydrodynamic analysis report submitted on 21st June 2012 (5).
- 5.2 The Applicant notes the concerns expressed in respect of the need to have adequate formal arrangements in place to govern the navigation to/from/in the areas overlapping both the main channel and the Humber Sea Terminal. The Applicant is preparing an appropriate proposal (6).
- 5.3 The Applicant confirms that agreement in principle has been reached with regard to an underlease of the river bed from ABP and the Harbour Master and that agreement in principle has also been reached regarding this replacing the compulsory purchase of the river bed (8).
- 5.4 With regard to the dredging requirement for maintenance the Applicant would draw the reader's attention to previously submitted written representations.
- 5.5 The Applicant notes the proposed restrictions regarding the 'specialist berth' and this will be the subject of further and on-going risk assessment.

6 HIGHWAYS AGENCY

- 6.1 The Applicant notes comments with regard to the framework travel plan and the 'high level of responsibility on end occupiers'. The Applicant would comment (see Department of Transport – [April 2009] Good Practice Guidelines: Delivering Travel Plans through the Planning Process) that the employers themselves are the best placed to incentivise employees in this regard and that this is in any event the best means of dealing with multi-occupier developments (73).
- 6.2 The Applicant, as stated within the ES, will be using the SMART principles (73.2).
- 6.3 The Applicant has accepted that a revised travel plan will be submitted every 3 years (73.3).
- 6.4 The Applicant has accepted that monitoring will take place with respect to sustainable travel methods (73.4).

7 MARINE MANAGEMENT ORGANISATION

- 7.1 The Applicant notes the proposed 'East Inshore Marine Plan' but that consultation will not commence until early 2013 and it would not be adopted until the end of 2013 (8.1 question 69b).
- 7.2 The Applicant notes that the work to be undertaken at North Killingholme Pits, which is outside of the red line boundary, would be the subject of a separate planning application (9.3 question 70a).
- 7.3 The Applicant believes that all marine works have been detailed and covered within the submitted ES (9.3 question 70a).

8 NATIONAL GRID

- 8.1 In response to question 97(c), which concerns amendments to the DCO that would satisfy National Grid, the applicant's comments are as follows (97).
- 8.2 At paragraph 7(a)(v) of its written representation, National Grid wishes an assurance from the local planning authority that it will be consulted on various aspects of landscaping. The applicant is happy to amend requirement 5 (provision of landscaping) to put this on the face of the DCO rather than needing a separate assurance from a third party (97).
- 8.3 Also at paragraph 7(a)(v) of its WR, National Grid wishes to be consulted as part of requirement 7 (trees). The applicant is happy to include such a reference (97).
- 8.4 At annex 4 to the WR, National Grid sets out some protective provisions that it proposes for inclusion in Schedule 9 to the DCO for the gas pipelines and the electric line. The applicant is content with the proposals (97).

- 8.5 As noted by National Grid, the applicant is not seeking to acquire its interest in gas pipelines at Old Little Humber Farm on the north side of the Humber – the existing easements do not need to be altered to allow the development to proceed (98).
- 8.6 An electric line crosses the Order land across parcels 05001, 05005, 05015, 05016 and 05017, and a tower (pylon) stands on parcel 05017. Again the applicant will keep the line *in situ* and is happy to create an easement rather than a wayleave for it to have a legal right to remain, as suggested by National Grid. The comments at paragraphs 4.3 and 4.4 apply equally to this situation (98).

9 NORTH LINCOLNSHIRE COUNCIL

- 9.1 The Applicant notes comments with regard to the framework travel plan and the 'high level of responsibility on end occupiers'. The Applicant would comment (see Department of Transport – [April 2009] Good Practice Guidelines: Delivering Travel Plans through the Planning Process) that the employers themselves are the best placed to incentivise employees in this regard and that this is in any event the best means of dealing with multi-occupier developments (73).
- 9.2 The Applicant, as stated within the ES, will be using the SMART principles (73.2).
- 9.3 The Applicant has accepted that a revised travel plan will be submitted every 3 years (73.3).
- 9.4 The Applicant has accepted that monitoring will take place with respect to sustainable travel methods (73.4).