

PLANNING ACT 2008
AND
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2012
(PINS REFERENCE NUMBER: TR030001)

WRITTEN SUMMARY OF THE ORAL CASE PUT AT THE SPECIFIC ISSUE HEARING
ON THE DRAFT DCO AND DRAFT DEEMED MARINE LICENCE HELD ON 12 JULY 2012

ON BEHALF OF

E.ON UK PLC

Ref No. removed

AND

NATIONAL GRID PLC

Ref No. removed

AND

E.ON CLIMATE & RENEWABLES UK HUMBER WIND LIMITED

Ref No. removed

1 INTRODUCTION

- 1.1 This summary of the oral representations made at the Issue Specific Hearing into the draft DCO and draft Marine Licence is submitted on behalf of E.ON UK Plc (“E.ON”) and National Grid plc (“NG”) and E.ON Climate & Renewables UK Humber Wind Limited (“EC&R”).

2 SECTION 138 PLANNING ACT 2008 AND ARTICLE 41 OF THE DRAFT DCO

- 2.1 Article 41 of the draft DCO states:

“41. The undertaker may –

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.”

- 2.2 Section 138 Planning Act 2008 covers “*Extinguishment of rights, and removal of apparatus, of statutory undertakers etc*” (“Section 138”). Section 138 authorises the inclusion of provisions in the DCO for the extinguishment of rights or removal of relevant apparatus of statutory undertakers. These provisions can only be included if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates and the Secretary of State has consented to the inclusion of the provision and there is in place a representation regarding the application which has not been withdrawn.
- 2.3 It is essential that any consent issued by the Secretary of State pursuant to s.138 should exclude equipment on the Order land which is essential for the statutory undertaking but not required for the AMEP scheme in order to ensure that the power in the DCO is not abused. This would have the effect of limiting the extent of operation of Article 41 as identified in the written representations submitted by our clients.
- 2.4 Section 271 of the Town and Country Planning Act 1990 (upon which s.138 appears to be based) enables a statutory undertaker to object and be heard in circumstances where land has been acquired under a compulsory purchase order and the acquiring authority requires the extinguishment of their rights or removal of their apparatus.

This process, to authorise extinguishment of rights or removal of apparatus is quite separate from the power to acquire statutory undertakers land.

- 2.5 As currently drafted, the Book of Reference does expressly exclude some land interests belonging to E.ON, NG and EC&R. However, Article 41 of the draft DCO and Schedule 1 to the Book of Reference appears to authorise the extinguishment of the rights and/or right to remove the apparatus in relation to all the equipment belonging to our clients within the Order Land. A full list of our clients' apparatus is set out in **Appendix 1** to these representations. Our understanding is that there is no intention to remove any of our clients' equipment, save that there is an issue concerning the outfall pipe from Killingholme Power Station, which the applicant may wish to relocate. As currently drafted, therefore, the DCO confers powers which go beyond those necessary to enable the project to go ahead and are therefore disproportionate.
- 2.6 We acknowledge that Robert Upton, Chair of the Examining Panel, noted that this was a significant point and that he would be liaising with PINS to see what further work would need to be carried out regarding the procedure for dealing with s.138 issues. We look forward to receiving this clarification along with a note regarding the operation of s.127 of the Planning Act 2008 in respect of the AMEP development which is also awaited from PINS.
- 2.7 Angus Walker, for the applicant, noted that Able are aware of what statutory equipment they will need to move to facilitate their development. We note that Angus Walker stated that he would consider this point further in the next draft of the DCO.
- 2.8 We acknowledge that there is currently no guidance on Section 138 consents. We suggest that, given the wording of the section, if the Secretary of State is minded to grant consent under Section 138 he should expressly exclude the equipment set out in **Appendix 1**. Whilst it is acknowledged that some of the equipment lies on land in which the legal interest is not to be acquired, as it is expressly excluded in the Book of Reference, nevertheless given the broad wording of Article 41 it will clarify the position beyond doubt if the equipment is formally excluded if consent is issued.

3 **ARTICLE 12**

- 3.1 We endorse the representations made by others regarding the Secretary of State having to seek the consent of third parties before issuing consent to the undertaker to transfer or lease any or all the benefit of the provisions in the Order.

4 **PROTECTIVE PROVISIONS**

- 4.1 We have no further comments to make, at this stage, regarding the suggested protective provisions which were set out in the written representations submitted on behalf of E.ON, NG & EC&R.

Squire Sanders (UK) LLP
23 July 2012

APPENDIX 1

List of statutory undertakers' equipment referred to in paragraphs 2.5 and 2.8 of these Representations.

E.ON

- 0.7m diameter Glass Reinforced Plastic ("GRP") Cooling Water ("CW") intake pipe.
- 0.9m diameter GRP CW outfall pipe.
- 6.6 kilovolt ("kV") buried cable which provides electrical power to the CW pump house.
- Potable water supply.
- Telephone cable.
- 415v and 240v cable from pump house to a water flow meter.
- Water flow meter.

NG

- 2AJ 400 kV Killingholme substation to Humber Refinery substation line.
- Tower on plot SP5.
- Three high pressure gas pipelines at Old Little Humber Farm.

EC&R

- Electric power cables (whose installation is to commence during Summer 2012), at Old Little Humber Farm.