

Re: Application for development consent for the Able Marine Energy Park by Able Humber Ports Ltd (PINS Ref: TR030001)

CLOSING SUBMISSIONS

made by

ANGLIAN WATER SERVICES LTD
(Unique Reference Number 10015541)

1. Anglian Water Services Limited (“**Anglian Water**”) has responded to this application for development consent in its capacity as a statutory consultee. In its representations, it has consistently sought to ensure that adequate controls are included within the development consent order (“**DCO**”) to protect its existing assets and its ability to perform its statutory duties.
2. On 22 November 2012, Anglian Water received confirmation from the applicant that plots 06001-06004 are no longer sought to be compulsory acquired under the DCO and that the draft will be amended accordingly. This is welcomed by Anglian Water, which had expressed serious concern about how the acquisition of these plots would be consistent with the performance of its statutory duties. In summary, plot 06001, which contains sewage treatment works (Asset 2; Appendix 1 Anglian Water Written Representations) operated by Anglian Water, is owned in its entirety by Anglian Water, and plots 06002-06004 contain pipework (Asset 1 and 3-6; Appendix 1 Anglian Water Written Representations) owned by the company which is connected to those works (Asset 1) or associated with water services (Assets 3-6).
3. This means that Anglian Water can limit its closing submissions to 3 matters.

4. First, it will be recalled that at the specific issue hearing on the DCO on 21 November 2012, Anglian Water advised the examination that it had agreed a new draft of protective provisions with the applicant. This is to replace the version of Part 11 of Schedule 9 to the DCO provided in the most recent draft of the DCO then published. Anglian Water has now submitted this revised agreed draft by email to the case officer at the Inspectorate. The applicant has confirmed these will be replicated within the updated Part 11 requested by the Panel. As explained at the hearing, there are no significant substantive changes in this latest version, but it is considered to be better structured and more succinct than its predecessor. Three changes to note are:
 - (1) Reference is now made to Anglian Water's "apparatus" instead of "assets". "Apparatus" is considered to be a better general term for the infrastructure owned and operated by Anglian Water and is clearly defined within the Water Industry Act 1991.
 - (2) A new section of definitions has been introduced which enables Part 11, as a whole, to be shorter and more precise.
 - (3) The provision made previously in paragraph 86(b) of the DCO for E.On to be consulted on the relocation of the discharge point (Asset 10 and 11; Appendix 1 Anglian Water Written Representations) by Anglian Water has been removed. This was considered unnecessary given that the Environment Agency, as regulator, will consult in any event when deciding whether to grant the permit required to enable this relocation to take place if it materially influences their discharge point. It should be stressed that Anglian Water is not the relevant regulator in this regard and does not make the final decision on the location of discharge points. E.On were made aware of the removal of the previous paragraph 86(b) on 21 November 2012 and confirmed to the Panel on 22 November it does not object to the amendment.

5. The second relates to article 42 of the most recent draft of the DCO. As Anglian Water stated at the hearing on 21 November 2012, it is not satisfied that this provision is necessary and that, in any event, it sits

uneasily with the detailed protective provisions made in Schedule 9. Should the view be taken that article 42 needs to be retained in some form, it should at least make clear that it is to be read in addition to the protective provisions in Schedule 9, and does not in any way take precedence over those provisions.

6. The third matter is that Anglian Water is not satisfied that it would be consistent for the DCO to provide for the compulsory acquisition of the right of access it enjoys by easement to the nitrate and brine pipe (Asset 8 and 9; Appendix 1 Anglian Water Written Representations) crossing the Order land whilst at the same time stating in the protective provisions at Part 11 of Schedule 9 that none of Anglian Water's interests is to be acquired save by agreement with the company. At the very least, the DCO needs to include a provision that makes clear that a process of negotiation and arbitration on the reasonableness of Anglian Water objecting to the acquisition of any of its interests needs to be exhausted first before any resort is had to a process of compulsory acquisition, whether pursuant to a certificate granted under section 138 of the Planning Act 2008 or otherwise. The applicant undertook to include such wording in the draft DCO and this is now inserted at paragraph 87.

GWION LEWIS
Landmark Chambers
London
23 November 2012