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Secretaries of State for Energy and Climate Change, Transport and  
Environment, Food and Rural Affairs  
c/o Mike Harris  
Case Manager  
National Infrastructure Directorate  
The Planning Inspectorate  
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Your Ref  
TR030001  
Our Ref  
ADW/Y059258  
Date  
10 October 2012

Dear Mike

**Able Marine Energy Park  
Applications under s127**

This letter contains further applications for certification under section 127 of the Planning Act 2008.

As you know, Able Humber Ports Ltd has made two applications to date, both to the Secretary of State for Transport, for the acquisition of land owned by ABP (Commercial) and for the acquisition of land owned by Network Rail.

There are further cases where representations have been made by statutory undertakers and have not been withdrawn. The applicant had hoped that the representations would be withdrawn by the end of the examination of the application – indeed, it still hopes that this will be the case – but feels obliged to make the applications now since the trigger for the need for certification (i.e. the representations not having been withdrawn by the end of the examination) occurs after the matter can be considered by the panel. The applications fall into two categories:

- a) land below high water mark leased by the Crown Estate to the harbour master, and
- b) where statutory undertakers have apparatus crossing the Order land and the promoter will not disturb the apparatus but may alter the legal basis on which it is held with the agreement of the statutory undertaker.

**Harbour master, Humber**

This land is land that the quay and pumping station outfall will physically occupy Humber (parts of parcels 08001 and 09001). The harbour master has said that he would prefer that the applicant took a sub-lease of his lease (see paragraph 8 of his written representation), and the applicant has said it would accept that (see paragraph 11.5 of the applicant's comments on the relevant representations).

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Having said that, despite repeated requests, the harbour master has not provided a draft lease for the applicant to agree to enter into upon the granting of the Order. The applicant must therefore maintain its application for compulsory purchase powers until this happens. The applicant remains willing to enter into a sub-lease, even if it is granted the application with compulsory acquisition powers, but cannot do so without having seen it.

Unless and until this happens, the Secretary of State must therefore certify that the land can be taken without serious detriment to the harbour master. The applicant submits that given that the harbour master has openly offered a lease of the land, the harbour master has effectively conceded that the applicant can occupy it without serious detriment to the harbour master's undertaking and the applicant therefore submits that acquisition of the land would not be of serious detriment either.

### **Apparatus crossing the land**

Apparatus belonging to Anglian Water, Centrica, E.ON and National Grid crosses the Order land. In every case, the applicant will not disturb the infrastructure under the DCO, and in every case has inserted a provision in the 9 October version of the DCO that it will not replace any existing rights to keep, inspect and maintain the apparatus without the agreement of the statutory undertaker in question. The relevant provisions are all in Schedule 9: paragraph 70 for National Grid, paragraph 74 for E.ON, paragraph 79 for Centrica and paragraph 86 for Anglian Water.

It is arguable whether section 127 is engaged in some cases, given the nature of the rights to keep the apparatus, but this application is made for all of the infrastructure for completeness and certainty.

The only case where the applicant does intend to replace the existing right with a new one is for E.ON's cooling water intake and outfall, which have a very wide easement currently (up to 130m).

In every case, then, the applicant will only replace any current rights with the agreement of the statutory undertaker (not to be unreasonably withheld or delayed), which in the applicant's submission ensures that the extinguishment of existing rights will be without serious detriment to the undertaking. The applicant submits that this test is met in each case and the Secretary of State can issue a certificate to that effect.

The details of the apparatus in question are given in the following paragraphs.

### **Anglian Water**

A nitrate/brine main and a sludge main cross the site at land plan parcels 04012, 04013, 04014, 04016, 04018 and 04019. The nitrate/brine main currently has an easement, the sludge main does not. Anglian Water also have a right to pass along parcel 03009 (Station Road).

### **Centrica**

Cooling water intake and outfall pipelines cross the order land across parcels 05017, 05018, 05022, 05023, 05029 and 05030. The route of the pipelines is not shown on the land plan because there is no easement in place for them, there is simply a right to keep, inspect, maintain etc. the pipelines that was reserved in the title when it was acquired by Able in 2000. The route of the pipelines can be seen at Appendix 2 of Centrica's written representation (in the name of BNP Paribas) – an extract is



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appended at Plan 1. Centrica has a right of way along parcels 04028, 04030, 05008, 05012, 05013, 05021, 05024, 05031 and 05032 to access its infrastructure. Centrica also has a condensate pipeline crossing parcels 05044 and 06006. Again, this is not shown on the land plans as there is no legal interest such as an easement in place for the pipeline. Along with the other statutory undertakers, Centrica is listed as having rights to keep apparatus on the Order land at the end of the Book of Reference.

#### **E.ON**

Similarly, cooling water intake and outfall pipelines for E.ON's power station cross the order land across parcels 05010, 05012, 05016, 05019, 05027, 05037 and 05040. E.ON's easement is considerably wider and covers parcels 04017, 04018, 04021, 04023, 04024, 04027, 04028, 04029, 05003, 05004, 05005, 05007, 05008, 05009, 05011, 05014, 05026, 05028, 05036, 05038 and 05041 as well. The route of the pipelines is the narrower strip on sheet 5 of the land plans, and the easement is the wider hatched area on sheets 4 and 5. E.ON also has a right of way along parcels 05008, 05012, 05013, 05021, 05024, 05031, 05032 and 05039 to access its infrastructure.

#### **National Grid**

An overhead line crosses the Order land and a single tower is on the land. The line crosses parcels 05001, 05005, 05015, 05016 and 05017 on the land plan. The route is not shown on the plan as it is only held on an 'implied wayleave', but can be seen on the plan at page 25 of National Grid's written representation (an extract is appended). National Grid also has two gas pipelines running down Rosper Road and another crossing parcels 05044, 06002, 06004 and 06006. Again these are not shown in the plan as there are no easements in place for them. National Grid has gas pipelines at Old Little Humber Farm along parcels 14002, 14004 and 14008, but these have been removed from the scope of compulsory purchase.

Yours sincerely

**Angus Walker**  
**Partner**  
**Government and Infrastructure**  
**For and on behalf of Bircham Dyson Bell LLP**

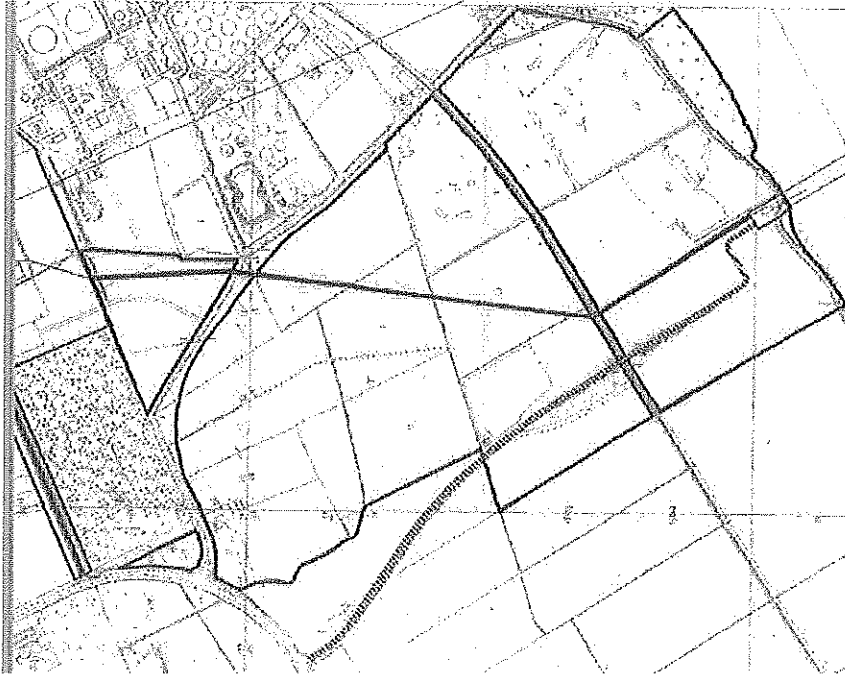
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cc Alison Gorlov, Winckworth Sherwood, for harbour master, Humber  
Philip Maude, Squire Sanders, for E.ON and National Grid  
Kathryn Taylor, Anglian Water  
Henry Church, CBRE, for Centrica



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Plan 1: Centrica cooling water intake/outfall (blue line)



Plan 2: National Grid overhead line and tower (blue line)

