

**NOTE:**

On 14 September 2007 the Gas and Electricity Markets Authority (the “Authority”) published a letter concerning six modification proposals to the Balancing and Settlement Code (BSC) (namely P198, the P198 Alternative, P200, the P200 Alternative, P203 and P204) (the “Proposals”). That letter indicated that the Authority would not be taking its final decisions concerning the Proposals until after 20 September 2007. The Authority’s decision not to take its final decisions concerning the Proposals until after 20 September 2007 is the subject of an application to the High Court for judicial review.

This document contains the detailed grounds of resistance which the Authority submitted to the High Court in the context of the proposed judicial review challenge.

Having considered the nature of the issues raised by the proposed challenge, Ofgem considers that it is appropriate in this case to publish its detailed grounds of resistance, together with Sarah Harrison’s witness statement, on its website until judgment is given. This decision should not, however, be interpreted as indicating that Ofgem would be likely to adopt the same or a similar approach in the context of any subsequent litigation. The Authority would need to assess the relevant circumstances of any subsequent litigation and determine whether or not, in the context of that litigation, such an approach would be appropriate.

Information which is or maybe confidential has been redacted from the detailed grounds of resistance.

**IN THE HIGH COURT OF JUSTICE**

**CO/11010/2007**

**ADMINISTRATIVE COURT**

**B E T W E E N:**

**THE QUEEN  
on the application of**

- (1) TEESSIDE POWER LIMITED**
- (2) IMMINGHAM CHP LLP**
- (3) DRAX POWER LIMITED**
- (4) BRITISH ENERGY GROUP PLC**

**Claimants**

**- and -**

**GAS AND ELECTRICITY MARKETS AUTHORITY**

**Defendant**

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**DEFENDANT’S DETAILED GROUNDS OF RESISTANCE**

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*For ease of reference, these Grounds adopt the definitions used in the Claimants' Detailed Statement of Facts and Grounds.*

## **A INTRODUCTION**

1. The Claimants challenge the Authority's decision of 14 September 2007 to delay reaching a final decision regarding six Modification Proposals ("the Proposals") to the Balancing and Settlement Code ("BSC") until after 20 September 2007. The challenge is founded on the Claimants' contention that the BSC does not give the Authority the power to approve any of the Proposals after this 'Decide-by Date'.
2. However, the Authority's power to approve Proposed Modifications is set out in the transmission licence, and not in the BSC. That power is not subject to compliance with any Decide-by Date. This fundamental flaw in approach is fatal to the Claimants' case.
3. Further and/or alternatively, even if the Authority's powers are set out in the BSC, there is nothing in the BSC to suggest that its power to approve a Proposed Modification can be limited by a Decide-by Date. Such an interpretation of the BSC would in fact be contrary to its wording and purpose.
4. In respect of the two Grounds for Judicial Review, the Defendant responds as follows:

### **Ground I**

5. The Claimants contend that the Authority has no power to approve a Proposed Modification except in accordance with the "Proposed Implementation Timetable", which, "required the Authority to decide whether or not to approve any of the Proposals by 20 September 2007 at the latest (*"the Decide-by Date"*)" (Grounds, para. 5). However, the BSC Panel does not have the power to "require" the Authority to reach a decision by a particular date. Neither the phrase "Proposed Implementation Timetable" nor "Decide-by Date" appear in the regulatory framework. The Panel could not be granted such a wide-reaching power without express words to that effect.

## Ground II.

6. The Claimants contend that the Authority cannot approve a Proposed Modification if the proposed Implementation Date is “unworkable”. However, there is nothing in the regulatory framework to suggest that the Authority’s powers are limited in this way. Such a limitation would oblige the Authority to leave out of account the relevant consideration that, if the proposed Implementation Date is unworkable, it could remedy the problem by amending the Implementation Date following the approval decision. Such a limitation would in addition be contrary to the best interests of the industry, which the BSC is intended to promote.

## **B FACTS AND LEGAL FRAMEWORK**

7. The factual background is set out in the witness statement of Sarah Harrison. In respect of the factual account set out in the Claimants’ Grounds, the Defendant makes four points:

7.1. The Authority’s function is not “entirely referential” (Grounds, para. 3). As set out below, this is an accurate description in relation to the Authority’s power to approve or reject modification proposals. However, the Authority has a broad discretion relating to timetabling matters.

7.2. It is not correct that in the Modification Reports (*“an Implementation Date ... of ... 1 October 2008 if the Authority decision is received after 22 March 2007 but on or before 20 September 2007”*) the BSC Panel “required” the Authority to decide whether or not to approve any of the Proposals by 20 September 2007 “at the latest” (Grounds, para. 5). Rather, the Panel recommended a proposed Implementation Date, and made it clear that the proposal *of that implementation date* depended upon the date of the Authority’s decision. The Panel did not state that the Authority could not take a decision after 20 September 2007. The implication of the Panel’s proposal is that if a decision to approve the Proposals was not taken by 20 September 2007, a later Implementation Date would be likely to be appropriate.

7.3. The Authority did not state on 26 June 2007 that it would issue a final decision on the proposals by 20 September 2007 (Grounds, para. 6). It stated that its then current intention was to do so **[Tab 4, page 300 of the Claimants’ JR Bundle]**.

7.4. The Authority did not state in its 14 September 2007 letter that the proposed Implementation Date was not feasible or practical (Grounds, para. 9). It stated that it was “very likely” that the proposed Implementation Date would require extension should any proposal be approved **[Tab 4, page 75 of the Claimants’ JR Bundle]**.

8. The relevant legal and regulatory framework is broader than that set out in the Claimants’ Grounds: it is therefore set out below, albeit with some inevitable repetition.

### **The Electricity Act 1989**

9. The Authority’s powers in respect of the BSC derive from the Electricity Act 1989 (“the 1989 Act”). Under s.4(1) of the 1989 Act:

*“A person who –*

*(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;*

*(b) participates in the transmission of electricity for that purpose; or*

*(bb) distributes electricity for that purpose;*

*(c) supplies electricity to any premises, or*

*(d) participates in the operation of an electricity interconnector,*

*shall be guilty of an offence unless he is authorised to do so by a licence.”*

10. The Authority’s power to issue licences is in s.6(1) of the 1989 Act:

*“The Authority may grant any of the following licences –*

*(a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (“a generation licence”);*

- (b) *a licence authorising a person to participate in the transmission of electricity for that purpose ("a transmission licence");*
- (c) *a licence authorising a person to distribute electricity for that purpose ("a distribution licence");*
- (d) *a licence authorising a person to supply electricity to premises ("a supply licence"); or*
- (e) *a licence authorising a person to participate in the operation of an electricity interconnector ("an interconnector licence")."*

11. The Claimants cite s.137 of the Energy Act 2004 in connection with the powers of the Secretary of State to determine standard conditions for transmission licences. Neither the Claimants nor the Defendant rely on these powers in support of their case, but for the avoidance of doubt, the standard conditions relevant to this case were first determined by the Secretary of State using his powers under s.33(1) Utilities Act 2000, prior to the amendment of that section under the Energy Act 2004.

## **The Licences**

12. Condition C3(1) of the standard conditions for electricity transmission licences ("the Standard Conditions"), requires a relevant licensee to have in force a BSC. Standard Condition C3 is only 'switched on' in respect of the transmission licence held by National Grid Electricity Transmission plc, which is therefore the company obliged by its licence to have in force a BSC. The holders of other types of electricity licences are required by their licences to comply with the BSC: electricity generation licence standard condition 9(1); electricity supply licence standard condition 11(2); electricity distribution licence standard condition 10(1); electricity interconnector licence standard condition 3(1) (**Exhibit SH1, tab 9, pages 381-384**).
13. Under Standard Condition C3(1)(c), the BSC must include the modification procedures required by Standard Condition C3(4), which states in relevant part:

*"The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide ...*

*(a) for proposals for the modification of the BSC to be made by the licensee, BSC parties and such other persons or bodies as the BSC may provide;*

*(b) where such proposal is made ...*

*(v) for the preparation of a report*

- setting out the proposed modification and any alternative,*
- evaluating the proposed modification and any alternative,*
- assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s),*
- assessing the impact of the modification on the core industry documents and the changes expected to be required to such documents as a consequence of such modification,*
- setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and*

*(vi) for the submission of the report to the Authority as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs (i) to (v).*

*(c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted..."*

14. The Authority's power to direct a modification to the BSC is set out in Standard Condition C3(5)(a):

*"If a report has been submitted to the Authority pursuant to the procedures described in paragraph (4)(b)(vi), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification."*

## **The BSC**

15. The procedures for modification of the BSC are set out in BSC Section F. Under F1.1.1, the BSC may only be modified pursuant to the transmission licence. Under F1.2.1, the BSC

Panel is responsible for the operation of the Modification Procedures in accordance with the provisions of the BSC.

16. F2.1.1 sets out those bodies which can make a "Modification Proposal", a term defined in the general glossary in Annex X-1 as, "a proposal to modify the Code which has been submitted (and not refused) pursuant to and in accordance with Section F2.1." A Proposed Modification is, "a modification to the Code which has been proposed by way of a Modification Proposal but which has not or not yet been made in accordance with Section F1.1.1."
17. Under F2.2.3, the Panel has certain choices relating to the process to be followed in respect of a particular Modification Proposal. The process relevant to this claim is the Panel's power to submit the Modification Proposal to an Assessment Procedure pursuant to F2.6. Under F2.6.2:

*"The purpose of the Assessment Procedure is to evaluate whether the Proposed Modification identified in a Modification Proposal better facilitates achievement of the Applicable BSC Objective(s) and whether any alternative modification would, as compared with the Proposed Modification, better facilitate achievement of the Applicable BSC Objective(s) in relation to the issue or defect identified in the Modification Proposal."*

18. Where a Modification Proposal is submitted to an Assessment Procedure, the Panel must establish or designate a Modification Group under F2.6.3. Under F2.6.4:

*"The Modification Group shall:*

- (a) evaluate the Modification Proposal for the purpose set out in paragraph 2.6.2;*
- (b) where appropriate, develop an alternative proposed modification (the "Alternative Modification") which, as compared with the Proposed Modification, would better facilitate achievement of the Applicable BSC Objective(s);and*
- (c) prepare a report for the Panel ... which shall set out, in relation to the Proposed Modification and any Alternative Modification, the matters referred to in Annex F-1, to the extent applicable to the proposal in question."*

19. The matters which the Modification Group's report shall include are set out in Annex F-1 of the BSC. In outline, Annex F-1 provides for the report to include an analysis of the Proposed Modification and any Alternative Modification against the applicable BSC

objective(s). It includes various matters relevant to the timetable for implementation of any Proposed Modification. In particular, to the extent applicable to the proposal in question, it shall include:

- 19.1. Under Annex F-1 paragraphs 1(c)(iv) and 1(d)(v), an assessment or estimate of the time period required for the changes which would be required to certain computer systems used in connection with the BSC;
  - 19.2. Under Annex F-1 paragraph 1(d)(iii), an assessment of the likely timescale for the making of the changes which would be required to certain documents connected to the BSC.
  - 19.3. Under Annex F-1 paragraph 1(q), the Modification Group's proposed Implementation Date(s) for the implementation (subject to the consent of the Authority) of the Proposed Modification and any Alternative Modification.
20. Upon completion of the report, it is placed on the agenda of the next Panel meeting under F2.6.11. The Panel must then determine whether to proceed to the Report Phase and, if so, it must determine the proposed Implementation Date to be included in the draft Modification Report (F2.6.13(b)(iii)). The Implementation Date is defined in the general glossary in Annex X-1 as, "in relation to an Approved Modification, the date with effect from which the Code is to be given effect as modified by that modification, as such date may be extended pursuant to Section F2.11.7."
21. There follows a process of consultation, following which the Panel finalises the Modification Report. Under F2.7.7:

*"The matters to be included in a Modification Report shall be the following (in respect of the Modification Proposal):*

- (a) the recommendation of the Panel as to whether or not the Proposed Modification or any Alternative Modification should be made;*
- (b) the proposed Implementation Date for implementation of any Proposed Modification or Alternative Modification;*
- (c) the other items referred to in Annex F-1, based on the report prepared by the Modification Group (where the proposal was submitted to a Modification Group prior to the Report Phase) except to the extent that the Panel has formed a different view as to any matters contained in*



*such report, together with a copy of the representations made by Parties and interested third parties during the consultation undertaken in respect of the Proposed Modification and any Alternative Modification.”*

22. The Modification Report is then furnished to the Authority under F2.7.8. The Authority’s power to approve a Proposed Modification is not referred to or derived from the BSC: rather, its power is that set out in Standard Condition C3(5)(a) of the transmission licence, set out above. If the Authority does approve a Proposed Modification, it then becomes an Approved Modification, defined in the general glossary in Annex X-1 as, “a modification to the Code which has been made pursuant to Section F1.1.1 but which has not yet been implemented.”
23. Section F.2.11 deals with “implementation”. There is no freestanding definition of “implementation”, but under F1.9.1, “[f]or the purposes of this Section F, in relation to an Approved Modification, ‘implement’ (and derivative terms) shall mean ‘bring into operational effect’.”
24. There are two general provisions under the BSC for the amendment of an Implementation Date. Under F2.11.7:

*“Without prejudice to the obligations of the Panel and BSCCo under this Section F, the Implementation Date may be extended or brought forward with the prior approval of, or at the direction of, the Authority.”*

25. The Authority may also under F2.11.10 substitute a “Conditional Implementation Date” where there is a “Relevant Challenge.” This procedure is set out in some detail in the Claimants’ grounds (Grounds, paras. 28–30).

## **C THE AUTHORITY’S POWER TO APPROVE A PROPOSED MODIFICATION**

26. Accordingly, as set out above, the Authority’s power to decide whether or not to approve a Proposed Modification to the BSC is set out in the transmission licence, not in the BSC.

The Authority is not a signatory to the BSC. Nor is there anything in the transmission licence to suggest that the Authority's powers could be curtailed by the BSC.

27. The BSC does not purport to be concerned with the Authority's powers to approve a modification. The Claimants rely on the argument that there is no power set out in the BSC for the Authority to approve a modification after the Decide-by Date. However, the BSC does not set out any power for the Authority to approve a modification at all. By the Claimants' logic, this would mean that the Authority could never approve a modification.
28. The answer to the Claimants' repeated assertions that the BSC does not grant the Authority various powers is, therefore, that they are looking in the wrong place.
29. The Authority's power to approve a Proposed Modification is set out in Standard Condition C3(5)(a). The power arises "*[i]f a report has been submitted to the Authority pursuant to the procedures described in paragraph (4)(b)(vi).*" Standard Condition C3(4)(b)(vi) provides for the submission of a report to the Authority. It is not disputed that, in this case, the relevant reports have been submitted to the Authority.
30. Once the Authority's power to approve a modification is triggered by the submission of a report, as in this case, the Authority may direct the licensee to make the modification if, "*the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s)*" (Standard Condition C3(5)(a)). If the Authority is of the opinion that a modification "*would ... better facilitate achieving the applicable BSC objective(s)*", it may approve the modification. If it is not of that opinion, it may not do so. The transmission licence does not purport to constrain the Authority's power to approve a Modification Proposal submitted to it by reference to any proposed date for decision or implementation of that proposal.

## **D THE CLAIMANTS' GROUNDS**

31. Further and/or alternatively, even if, contrary to the submission set out above, the Authority's powers are defined or curtailed by the BSC, the result would be the same. There is nothing in the BSC to suggest that it is intended to limit the Authority's power to approve a Proposed Modification to the period prior to a Decide-by Date purportedly imposed by the Panel.
32. In this regard, the Claimants do not identify any express provision in the BSC which is said to limit the Authority's power to approve a Proposed Modification. There is no such provision. In fact, the BSC makes no reference to the Authority's power to approve a modification.

### **Ground 1**

33. The Claimants' first ground encompasses two submissions.

#### **(a) Whether the Authority can modify a proposed Implementation Date**

34. [REDACTED]
35. Under the BSC, there is no Implementation Date save in relation to an Approved Modification. Prior to the approval decision, there is no Implementation Date. There is merely a report made by the Panel, including a Proposed Modification, and the Panel's proposed Implementation Date. The Authority agrees that it does not have the power, to alter this proposed date. However, there is no need for the Authority to have the power to alter the Panel's proposal so as effectively to propose a date to itself. The Authority, in deciding whether or not to accept the Proposed Modification, is not bound by the proposed Implementation Date. In the event that the Proposed Modification is approved

by the Authority, the Implementation Date can be extended or brought forward at the direction or with the consent of the Authority.

36. The Claimants have adopted in support of their submission a strained and unnatural approach to the meaning of a proposed Implementation Date, which the Authority submits is incorrect. Instead of interpreting a “proposed Implementation Date” as a proposal regarding the appropriate Implementation Date, they assert that it is, “the Implementation Date which accompanies the Proposal whether or not it is recommended by the BSC Panel for approval by the Authority” (Grounds, para. 23). There is no proper basis for this interpretation.
37. The Defendant understands the Claimants’ submissions in respect of failed BSC Modification Proposal P93 (Grounds, para. 42), and the provisions on Conditional Implementation Dates (Grounds, paras. 31 and 40), to relate to this point. Given that the Defendant agrees that it cannot modify a proposed Implementation Date, it does not address those matters further in these Grounds.

(b) The Proposed Implementation Timetable

38. The Claimants state that, “[t]he Authority has no power to approve any of the Proposals except in accordance with the Proposed Implementation Timetable” (Grounds for Judicial Review, I). The Defendant understands this to mean that the Authority cannot approve a Proposed Modification after the Decide-by Date.
39. However, it is not correct that the Panel has in fact attempted to impose a Decide-by Date. The language used in the Modification Reports indicates that the Implementation Date which the BSC Panel proposes depends upon the date of the Authority’s decision, but the Panel has never purported to state that the Authority cannot reach a decision after 20 September 2007.

40. In any event, the Panel would have had no power to impose such a constraint on the Authority. Nothing in the transmission licence or the BSC entitles the Panel to limit the Authority's power to approve a proposed modification in that way, or to set a timetable for approval of a Proposed Modification that could bind the Authority.
41. Standard Condition C3(4)(b)(v) of the transmission licence states that the report to be submitted to the Authority must set out, *"a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect."*
42. This reference to a "timetable for implementation" is clearly a reference to the timetable for implementing a modification after the approval decision has been made, and not to any timetable for making the approval decision itself. This interpretation seems to be accepted by the Claimants, who state that "implementation" means, *"the duties and powers of various bodies, including the Authority, to take practical steps after a decision has been made on a particular Modification Proposal to realise the reform of the BSC it was intended to bring about"* (Grounds, para. 35(a)).
43. There is therefore no suggestion in the transmission licence that the Report could or should contain a timetable for making the approval decision.
44. Even if the expression "timetable for implementation" did incorporate the timetable for making the approval decision, including a Decide-by Date, such a timetable could not bind the Authority: see Standard Condition C3(4)(c). The Authority's power to amend the timetable for implementation contrasts with its powers in relation to the substance of Proposed Modifications, where the Authority may only approve or reject a proposal, and is not entitled to amend it.
45. Under BSC F2.7.7(b), the Modification Report must include a proposed Implementation Date. Under BSC F2.7.7(c), the Modification Report must contain the other items referred

to in Annex F-1. As is set out above, this includes matters relating to the timescale for implementing the modification.

46. However, there is no reference in the BSC to a Decide-by Date. In light of the fact that the licence and the BSC set out a comprehensive code in respect of the other timetabling matters to be included in the Modification Report, no power to include such a date can be implied.
47. The Claimants state that the BSC does not give the Authority the power to change the Decide-by Date (Grounds, para. 36). As is set out above, the reason for this is that the Panel has no power to impose such a date in the first place.
48. However, this assertion highlights a further flaw in the Claimants' approach. It is clear that the Authority has the power to alter every date which is mentioned in the regulatory framework: under the BSC it can alter the Implementation Date (F2.11.7); and under the licence it can alter the implementation timetable (C3(4)(c)). The only date, according to the Claimants, which it cannot amend is the one date which is not even mentioned in the regulatory framework, namely the Decide-by Date. This would be an astonishing outcome.
49. The Claimants also point to the Authority's, "broader role in the modification procedure for the BSC," and what they call its, "limited secondary referral function" (Grounds, para. 38). But the Authority's role is limited to a referral function only *in respect of the Proposed Modification*. In respect of *timetabling matters*, the Authority has a broad discretion. It can amend the implementation timetable and the Implementation Date. It would be inconsistent with this broader role if its power of decision could be limited by a timetable chosen by the Panel.
50. Furthermore, a consideration of the *Panel's* broader role further supports the view that it cannot limit the Authority's powers. The Panel is responsible for submitting proposals. The Authority can accept or reject those proposals insofar as they relate to actual

modifications to the code; and it can amend them insofar as they relate to timetabling matters. It would be wholly inconsistent with the Panel's broader role if it had a power to limit the Authority's power in the manner suggested by the Claimants.

51. The Authority's previous view of this matter (Grounds, para. 39) is irrelevant to the issues in this case, which are matters of law and construction.
52. As to the need for certainty (Grounds, para. 41), the Claimants do not explain why tying the Authority to a Decide-by Date would introduce any greater certainty. The Claimants themselves accept that, if the Authority approved a Modification Proposal before the Decide-by Date, it would then be able to amend the Implementation Date pursuant to BSC F2.11.7. And on the other hand, the Defendant accepts that it will need to consult prior to altering the Implementation Date. There is therefore no added certainty in the Claimants' approach than in the Defendant's.
53. In fact, the Defendant's approach is the better one in the interests of the electricity industry. The reason that the Authority has delayed making the decision until after 20 September 2007 is so that it can undertake a further review of the analysis which had been made of the Modification Proposals (**see Sarah Harrison witness statement, tab 8, paragraphs 34–52**). It is clearly in the interests of the industry that the Authority's decisions should be well-informed, and that the Authority should be able to commission further analysis where necessary, rather than being rushed to make a decision. It is not in the interests of the industry that a Proposed Modification to the BSC, which might significantly improve the operation of the BSC, should have to be rejected purely because the Authority needed more time to consider its implications than allowed for by the Panel in its Modification Report.

## **Ground II**

54. The Claimants' second ground is that, since under the BSC the Authority cannot alter a proposed Implementation Date, it therefore cannot, "[approve] a Proposed Modification

with an unworkable or unfeasible proposed Implementation Date simply so as to “access” its power thereafter to alter the Implementation Date” (Grounds, para. 43).

55. It is not correct that the Authority would approve a Proposed Modification “simply” so as to access a power to alter the Implementation Date. If the Authority does approve any of the Proposals, it will be because it is of the opinion that the modification would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), in accordance with Standard Condition C3(5)(a). The ability under the BSC to alter the Implementation Date would be a consequence of the Authority’s decision, not the reason for it.
56. As to the general argument that the Authority’s inability to alter a proposed Implementation Date means that it cannot approve a Proposed Modification where that date is unworkable: this simply does not follow. The fact that taking one decision (approving the proposal) might then require another decision to be taken (changing the Implementation Date) does not mean that the first decision cannot be taken.
57. Indeed, the very reason why the Authority may amend the Implementation Date and timetable is so that it can remedy inappropriate timescales. There is no good reason to prevent it from doing so.
58. Lastly, there should be no suggestion that the Authority has already decided to amend the Implementation Date. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The decision to modify the Implementation Date will be taken, if at all, following an approval decision.



**E OTHER MATTERS**

59. [REDACTED]  
[REDACTED]  
[REDACTED] The Defendant therefore does not raise any complaint of ‘prematurity’, and does not oppose the grant of permission in this case.

60. However, it is not correct for the Claimants to state that the Defendant has accepted that the Claimants are “justified in bringing a legal challenge”; and still less that it has, “encouraged and required” them to do so (Grounds, para. 46). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DINAH ROSE Q.C.**  
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