



The Rt. Hon Alok Sharma
Secretary of State for Business, Energy and Industrial Strategy
House of Commons
London
SW1A 0AA

21 May 2020

Dear Secretary of State

The Swansea Bay Tidal Generating Station Order 2015 (the “Order”) – Extension of Time

This letter is sent on behalf of Tidal Lagoon (Swansea Bay) Plc (“TLSB”), which is the undertaker granted powers under the above Order. The powers under the Order remain in place for five years beginning on 30 June 2015 and will consequently expire on 30 June 2020. Preparations for the implementation of the project have been materially affected by the COVID-19 pandemic. This letter seeks the assistance of the Government by extending those powers for a limited period to enable the Swansea Bay tidal lagoon project (the “Project”) to be commenced and this ground-breaking infrastructure delivered.

Tidal Lagoon (Swansea Bay) Plc copied you on their letter to Welsh Ministers on 8th April 2020 in respect of the above matter. Welsh Ministers consider that their powers are constrained in that, whilst planning is devolved, legislative competence is not devolved in respect of planning. Therefore, it appears that it is BEIS and MHCLG who have competency to extend this DCO.

There has been material progress in delivering the funding, decommissioning and planning elements needed to carry out the Project such that the powers granted under the Order are on the very verge of being exercised by beginning the onshore works associated with the Project. However, as a result of the necessary measures surrounding COVID-19 and their consequential impacts, this is now *in doubt and verging on the impossible. The UK now faces the very real prospect of losing the work and investment of the past seven years – and missing out on the immediate, urgent economic benefits of this shovel-ready project post COVID-19, as well as a huge opportunity to lead the world in tidal technology.*

Basis and precedent for UK Government action

In order to prevent the Order from lapsing, we propose that the Government should enact a one-provision bill that would result in the extension of powers under the Order by one year. This could be done for the Order alone, for all energy DCOs or for all DCOs nationally. Or indeed for all planning applications nationally.

This would accord with the approach passed by the Scottish Government in the Coronavirus (Scotland) Act 2020 at section 8 and paragraphs 8 et seq. to schedule 7 to that Act <http://www.legislation.gov.uk/asp/2020/7/contents/enacted>. The Coronavirus (Scotland) Act 2020 automatically extends consents due to expire by a further 12 months: *“the duration of planning permissions that would lapse within six months of the date the Act comes into force will be extended by one year from that date”*.

It is consistent with the approach taken by the UK Government extending planning permissions in response to the Global Financial Crisis in the late 2000s. It should be noted that in the late 2000s and in Scotland the Planning Act 2008 did/does not apply – hence a different approach is required for DCOs nowadays. It is also important to note that the pre-application procedures applying to a DCO or its variation are sufficiently onerous that they could not be fulfilled in the time remaining prior to the expiration of the powers in the Order.

The UK Government and Parliament retain responsibility for planning and, in particular nationally significant infrastructure projects. The Welsh Government has competence in respect of planning generally under the National Assembly for Wales (Transfer of Functions) Order 1999 and the Government of Wales Act 2006. Following the amendment of the regime applying to the Planning Act 2008 by the Wales Act 2017, the Welsh Ministers also have competence in respect of onshore and offshore generating stations having an installed capacity or proposed installed capacity of less than 350 MWe. The installed capacity of the project would be less than 350 MWe. However, the Welsh Ministers consider that their powers are constrained in that planning is devolved, but not legislative competence in respect of planning and the 2008 Act in particular. Further, the Welsh Ministers consider that in the time available, it is not possible even to comply with the provisions in the 2008 Act that relate to “exceptional circumstances”, since these would take some time to discharge.

We understand that your department has consulted energy industry stakeholders to establish numbers of DCOs that will require extensions as a result of current restrictions. We understand that there are other projects which are affected by COVID-19 measures which are rendering their implementation very difficult. We, alongside Energy-UK believe that BEIS should follow the Scottish example in England and Wales. For the Order, this is very pressing and we urge you to proceed with such an approach as soon as possible.

If you were so-minded, we believe this could be achieved in one of two ways in respect of the Order:

- A short Bill in order to provide (on the Scottish model) for all development consent orders likely to lapse within a given period to be extended; or
- A Bill specific to the Order that would amend:
 - Requirement 2 in Part 3 of Schedule 1 so as to read: *The authorized development must commence no later than 30 June 2021; and*
 - Paragraph 27(1) to commence: *After 30 June 2021 – (a)....*

The prize

The Project is a showcase for a first-of-a-kind tidal energy project to be constructed in Swansea Bay. It would generate 320 MW of clean, renewable electrical power and would provide an investment of £1.3billion predominantly into the UK economy. It would generate 2,232 construction jobs and support over 3,000 manufacturing jobs.

In this age of uncertainty, one thing we can rely on is that the tide will come in and the tide will go out. The nationwide benefits are significant and wide ranging. In terms of direct manufacturing infrastructure, this new industry will provide a new hydro-turbine manufacturing plant to be sited in Swansea Docks meaning turbines for the Project and all future lagoon projects, nationally, would be British-built, a new heavy fabrication facility to be sited in West Wales; and a new modular assembly yard offering further industrial opportunities.

Swansea is the template project for the £8bn Cardiff and £7bn Colwyn Bay lagoons which together will provide low cost renewable power for 2.7 million homes, with Cardiff alone delivering £6.7bn of private sector funded orders to British industry and 11,000 jobs in construction and manufacturing through a supply chain which stretches from West Wales to Teesside. The demand for hydropower and logistics skills will lead to a new national training academy in Wales and the opportunity to become a world leader in renewable energy boosting civic pride.

Case for extension

TLSB has put in place measures to implement the Project which in normal circumstances would ensure a commencement of works before 30 June 2020. However, actions are being severely and materially constrained by the measures prudently and appropriately put in place by the UK Government to tackle COVID-19.

The position in relation to commencement is:

- Planning conditions (known as “requirements” in a DCO) required for the commencement of the works for the project on land, which would ensure it is capable of implementation are ready to be discharged. A phasing scheme dealing with this has been submitted to the City and County of Swansea Council (“CCSC”) and Neath Port Talbot County Borough Council (“NPTCBC”). However CCSC has informed TLSB (by email dated 21 March 2020) that the Coronavirus outbreak is having a significant effect on the Councils’ operations and it cannot guarantee the resources required to enable the Project to be implemented in the timescales. We continue to work with CCSC;
- A contractor – Alun Griffiths - has been procured to implement the first works for the Project. However, the contractor has stated (by email dated 27 March 2020) that due to the existing COVID-19 measures it is not confident that it will be able to mobilise and make a start on site in time to meet the deadlines;
- In accordance with the provisions of Article 7 of the Order, TLSB expects to inform the City and County of Swansea Council shortly that:
 - It is entering into an Alliance agreement for delivery of the mainworks;
 - That funding will be available for the works; and
 - That a guarantee of the sum of £10.5M as required by Article 7 will be available,
 However, in each case, the ability to put measures in place requires agreements to be concluded with overseas turbine suppliers (Andritz Hydro), contractors and funders, in addition to CCSC having the ability to process these submissions. All of these activities are being severely constrained by the COVID-19 social distancing measures.
- We await the decision of the Welsh Government on the findings of the Local Democracy and Boundary Commission (“LDBC”) for Wales, which conducted a review of the Seaward Boundaries of the County Borough of Neath Port Talbot and the City and County of Swansea. This will be needed in order to discharge some of the planning conditions relating to the offshore works.

TLSB has taken the necessary actions which in normal circumstances would be adequate to implement the Project within the existing timelines. However, the exceptional circumstances created by COVID-19 and in the light of the above, it is now necessary to secure the assistance of the Welsh Government to enable the Project to proceed. This will mean that as recovery from the COVID-19 impacts takes place, the Project is able to provide the economic opportunities required.

We should be grateful if you would contact us as a matter of urgency in order to discuss the contents of this letter and how the delivery of the Project can be secured. In particular, we should be grateful if you would urgently consider an extension being made using a Bill before the powers in the Order expire.

I would be very happy to explain the position in more detail in a phone conversation.

Yours faithfully



Mark Shorrock