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Your reference

JR

Our reference

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13 March 2020

By Post and Email

Dear Ms Robertson

**INEOS UPSTREAM LIMITED
SCOTTISH MINISTERS
APPEALS: FALKIRK & STIRLING PPA-240-2032 & PPA-390-3029**

INEOS has now had the opportunity to consider matters in the light of the information which it has received from (i) the Chief Planner regarding the application by the Scottish Ministers of their finalised policy of “no support” and (ii) the Reporters regarding the scope of the additional information that they would expect to receive from the interested parties ahead of completing their recommendation report. As a result, INEOS has decided to withdraw its appeals.

Whilst INEOS considers (notwithstanding its focus on shale gas development rather than coal bed methane) that there would have been a deal of public merit in having the appeals determined, in that their re-instatement would have provided the UK petroleum industry with a forum in which there could be a review and appraisal by independent experts of the public health and other environmental concerns which prompted the Scottish Ministers to introduce its policy of “no support” in the first place, the following three related factors overrode that perceived merit and underpinned its decision to withdraw.

The first is the outcome of the SEA process and the apparent disconnect between the conclusions drawn in the SEA Environmental Report (October 2018) concerning the significance of the likely environmental impacts of onshore unconventional oil and gas development and the actual scientific evidence and advice that the Scottish Government received from its commissioned experts. INEOS notes, for example, the conclusion drawn in the SEA Environmental Report that the effect of the policy of “no support” was judged to be “significant positive” in relation to greenhouse gas emissions; this despite the facts that the Scottish Government have accepted (as confirmed in its statement outlining its policy position on unconventional oil and gas development) that “oil and gas will continue to have a vital role in the energy mix over the short, medium and long term” and the Committee on Climate Change in its 2016 report to the Scottish Government had advised (as the SEA Environmental Report acknowledges at paragraph 8.5) that tightly regulated domestic production could provide “an emissions saving when displacing imports of liquified natural gas and would provide greater control over the level of emissions associated with supply”. Similarly, the SEA Environmental Report concluded that if onshore unconventional oil and gas

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INVESTOR IN PEOPLE

development were to be allowed to proceed under a “business as usual” scenario, it would have a “significant negative” effect on population and human health, despite the fact that the advice that the Scottish Government received from Health Protection Scotland was that, if the Scottish Government were to allow onshore unconventional oil and gas development to come forward in Scotland, it should apply a “precautionary approach” that was both “proportionate to the scale of the hazards and to the potential health impacts both adverse and beneficial” and based on the adoption of “a range of mitigation measures involving operational best practice, regulatory frameworks and community engagement”; an approach which the oil and gas industry generally, and INEOS in particular, is committed to applying to all its activities both onshore and offshore. The concern for INEOS, in the context of the appeals, is that, despite the apparent disconnect between the SEA conclusions and the scientific evidence and advice proffered, the Reporters and the Scottish Ministers would inevitably attach significant weight to the SEA Environmental Report’s conclusions.

The second is the impact of the long delay since the close of the public inquiry in 2014 on the ability of all the parties, but especially the appellant, to properly reinstate their respective cases. Through no fault of its own, INEOS finds itself in a position where, if it were to commit to pursuing the appeals, it would have to effectively start again from scratch. Several of the consultants who prepared the reports that informed the original environmental statement and who gave evidence at the inquiry and hearing sessions have either retired or moved on to work for other organisations. Gordon Steele QC, who advocated the case for the appellants at the inquiry sessions, has also announced his intention to retire. The investment of several hundred thousand pounds that the original appellant committed to taking forward a deemed refusal appeal in the hope that it would lead to an early decision from the Scottish Ministers has been wasted. To start the appeal process again after this long lapse of time would require INEOS to incur significant further costs. Whilst exposure to additional costs in the context of a planning appeal involving a major development would normally in itself not be an issue, especially in circumstances where, as is the case here, a considerable amount of money had already been invested by the appellant in the planning process, there would at least, in the normal course of events, be some reasonable prospect of a return on the investment in the form of the grant of planning permission. But, so far as INEOS is concerned, no such prospect exists in respect of the subject appeals.

This, of course, is because of the third and, ultimately, determinant final factor - the Scottish Government’s policy of “no support” itself. As you are aware, INEOS asked the Scottish Ministers to explain how the policy would be applied in practice. In making that request the hope was that the Scottish Ministers might have confirmed that by “no support” they intended to adopt a neutral position, which could be influenced by the scientific evidence, rather than one that fundamentally opposed any form of onshore unconventional oil and gas development, regardless of its merits or national need. It is self-evident, however, from the advice that INEOS has received from the Chief Planner that, regardless of the terms of the Reporters’ recommendation report, the Scottish Ministers would inevitably reject the appeals (and any future applications caught by the policy) on the “public concern” and other grounds that the Chief Planner cited in his letter. INEOS had hoped that the Reporters might be persuaded by the point that I had previously raised in correspondence on its behalf, that, if the appeals were to be reinstated, it would have been on the basis that the application of, and weight to be attached to, the “no support” policy would not be a matter for the Reporters in the



context of the preparation of their recommendation report, but rather be a material consideration that the Scottish Ministers would be expected to take into account at the point at which they finally came to determine the appeals in the light of the Reporters' recommendation. Had that point been accepted, INEOS might have been prepared to reinstate the appeals for the public merit reasons outlined above. The Reporters, however, have made it clear in their views on the scope of the additional information which they wish to see that they do regard the policy of "no support" as a relevant material consideration for them to consider. That decision effectively drew a line under matters, so far as INEOS is concerned.

INEOS have asked me to pass on their thanks to the Reporters and to the staff at the DPEA who were involved in the appeals for their kind and professional guidance and direction throughout this long running matter. Mr Steele QC and our Mr Telfer would wish to take this opportunity too, to express their thanks to Ms Heywood and Mr Buylla. And, of course, to you.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'DLA Piper'.

DLA PIPER SCOTLAND LLP

Agents for the Appellant