Department of Energy & Climate Change

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Your Reference: BRYBR/BRYBR

31 March 2016

Dear Ms Byrne

PLANNING ACT 2008
APPLICATION FOR A NON-MATERIAL CHANGE TO THE HORNSEA ONE OFFHSORE WIND FARM ORDER 2014

1. I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the application (the "Application") which was made by Dong Energy Power (UK) Limited (the "Applicant") on 30 October 2015 for a change which is not material to the Hornsea One Offshore Wind Farm Order 2014 ("the 2014 Order") under section 153 of, and Schedule 6 to, the Planning Act 2008 (the "2008 Act").

2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate by the Applicant on 30 July 2013 and was granted development consent on 10 December 2014. Consent was granted for the construction and operation of an offshore wind turbine generating station in the North Sea approximately 103km off the coast of East Riding of Yorkshire, comprising up to 240 wind turbines with a gross electrical capacity of up to 1200MW and associated offshore and onshore infrastructure.

3. The Applicant is seeking consent for a change to the 2014 Order to increase the permitted length and area of the offshore high voltage alternating current (HVAC) offshore collector substation (OSS) platform and the length and width of the offshore HVAC Reactive Compensation Substation (RCS) platform. The Applicant is also seeking to correct a previously undiscovered clerical error in Requirement 10.

4. In order for the Applicant to be able to proceed with the construction of the offshore wind farm, it has concluded that it is necessary to increase the length of the OSS platform from 45m to 60m to take into account the helideck overhang which must be suitable to accommodate large search and rescue helicopters. The Applicant has also concluded that it is necessary to increase the width of the RCS platform from 45m to 50m, and to increase the length of the RCS platform from 40m to 50m in order to accommodate a Radar Beacon to alert shipping traffic to the location of the substation to avoid collision.

5. Requirement 10 on the decommissioning programme requirements of the Order requires that no part of the authorised development below mean high water springs (MHWS) should commence without an approved decommissioning programme. In order to ensure consistency with the requirements of Section 105 of the Energy Act and DECC guidance for industry on the decommissioning of offshore wind farms, the Applicant has requested that the reference should be amended so that it refers to the mean low water mark.

Summary of the Secretary of State's Decision

6. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the development consent granted on 10 December 2014, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2014 Order so as to authorise the changes detailed in the Application.

Consideration of the materiality of the proposed change

7. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.

8. So far as decisions on whether a proposed change is material or non-material, the "Guidance on Changes to Development Consent Orders" (December 2015)[1] document makes the following points. *First*, it is not possible to set out precise, comprehensive and exhaustive guidance on whether a change is material or non-material. *Second*, that there are 4 matters which in many instances would provide a good indication of whether a proposed change would be more likely to be a material change, namely a) whether an update would be required to the Environmental Statement (from that at the time the original development consent order ("DCO") was made) to take account of likely significant effects on the environment; b) whether there would be a need for a Habitats Regulation Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected

[1] https://www.gov.uk/government/publications/changes-to-development-consent-orders

Species ("EPS"); c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO; or d) whether the proposed changes have a potential impact on local people and businesses. *Third*, that although the above matters were capable of being good indicators of the position, none of them (either alone or cumulatively) would be determinative of the material/non-material issue under paragraph 2 of Schedule 6. Each case must depend on thorough consideration of its own circumstances.

9. The Secretary of State therefore began her consideration of the materiality of the proposed variation by considering the 3 matters lettered (a), (b) (c) and (d) above:

   (a) The Applicant supplied information which compares the proposed parameter change against the worst case scenarios applied in the original Environmental Statement.

   The information provided demonstrates that the potential impacts associated with the proposed changes to the OSS and RCS platform layouts are of no greater significance than those identified in the original Hornsea Project One Environmental Statement. The previously identified impacts are a consequence of the physical presence, and footprint of the substations i.e. the interaction of the foundations and scour protection with the seabed, aspects which are not affected by the change in the platform topside dimensions. In addition the worst case scenario for the number of OSS substations that was assessed within the ES was five. Only three are now required for Hornsea Project One.

   The Secretary of State also noted Natural England's advice that there would be no new or significant environmental effects arising from the proposed amendment to the offshore substation platform dimensions which would affect any Environmental Impact Assessment topics or the conclusions of the HRA.

   In the light of the analysis supplied by the Applicant and the responses to the consultation, the Secretary of State concludes that an update to the Environmental Statement is not required.

   (b) In the light of the analysis of the predicted impacts referred to above, because the proposed change does not result in any increase in the environmental impacts of the project, or in any new significant effects, the Secretary of State does not consider that a new HRA or new or additional EPS licence is required.

(c) The proposed change does not result in any change to the compulsory acquisition provisions of the 2014 Order.

(d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2014 Order.

10. The Secretary of State has also taken into account the *Wheatcroft* principle – whether treating a proposed change as non-material would be unfair in that it might limit, for instance, consultation with an interested party on the proposed change. The *Wheatcroft* principle is mentioned in *Advice Note 16* issued by the Planning Inspectorate in July 2015 on making changes to DCOs. The Secretary of State does not consider that this in any way undermines the conclusion that the proposed changes should be considered non-material.

11. The Secretary of State therefore concludes that none of the specific indicators referred to in the Government response, or other relevant considerations, suggest that this proposed change is a material change. She has also had regard to the effect of the change and considered whether there are any other circumstances in this particular case which would lead her to conclude that the proposed change is material but has seen no evidence to that effect.

12. The Secretary of State is therefore satisfied that the change proposed in the Application is not material and should be dealt with under the procedures for non-material changes.

Consultation and Responses

13. The Planning Inspectorate on behalf of the Secretary of State publicised this application in accordance with regulation 6 of the Change Regulations and on 30 October 2015 consulted the persons specified in regulation 7 of the Change Regulations in the manner prescribed. The deadline for receipt of representations on the Application was 11 December 2015.

14. The Planning Inspectorate received representations within the deadline for receipt of representations from the Marine Management Organisation, The Crown Estate and East Lindsey District Council. In addition the Secretary of State contacted Natural England during her consideration of the Application to request their views on the Application.

<u>Marine Management Organisation ("MMO")</u>

15. The MMO noted that the Applicant included amendments to the deemed Marine Licence in Schedule 11 of the 2014 Order, and commented that these changes should not be made as they are to be determined by the

MMO under a separate application under separate legislation.. The Secretary of State agrees with the MMO and has therefore not included these amendments requested by the Applicant in The Hornsea One Offshore Wind Farm (Amendment) Order 2016 ("the amending Order").

The Crown Estate

16. The Crown Estate had no comments to make on the proposed amendment as it did not consider it will have any bearing on its interests.

East Lindsey District Council ("ELDC")

17. Suffolk County Council had no comments to make on the proposed amendment as it did not consider it will have any bearing on its interests.

Natural England

18. Natural England confirmed their view that there would be no new or significant environmental effects arising from the proposed changes which would affect any EIA topics or the conclusions of the HRA and confirmed that in their view the proposed amendments to the offshore substation platform dimensions represent a non-material change.

Environmental Impact Assessment

19. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2014 Order.

20. The Secretary of State is satisfied that the 'HOW01-Technical Note-Variation to the DCO' provided by the Applicant is sufficient to allow her to make a determination on the Application.

21. As there are no new significant environmental impacts as a result of the proposed changes, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects.

Habitats

22. The Secretary of State considered the relevant and important policies in respect of the United Kingdom's international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations require the Secretary of State to consider whether the development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a

European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of a European site.

23. The Secretary of State has considered the 'HOW01-Technical Note-Variation to the DCO' submitted with the Application and is satisfied that the Application will not have a likely significant effect on any European site over and above that already assessed in the Appropriate Assessment for the original application (May 2014). The Secretary of State is satisfied that there is sufficient evidence to conclude that allowing the change set out in the Application to the development authorised by the 2014 Order will not have a likely significant effect upon any European sites; and a further Appropriate Assessment is therefore not required.

General Considerations

Deemed Marine Licence

24. The Secretary of State notes that the changes to the 2014 Order being sought by Application apply equally to the deemed Marine Licence ("dML"). Consequently, the Applicant has made an application to the MMO to make similar changes to the dML.

Equality Act 2010

26. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships;[2] pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

27. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010, and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

[2] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Human Rights Act 1998

28. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

29. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

30. The Secretary of State notes that no person has disputed the acceptability of the proposed change to the development authorised by the 2014 Order. The Secretary of State notes that in order that the Applicant can proceed with the construction of the offshore wind farm, it has concluded that it is necessary to increase the length of the OSS platform, increase the width and length of the RCS platform and to correct the terminology used within Requirement 10 to ensure consistency with the requirements of Section 105 of the Energy Act and DECC guidance for industry on the decommissioning of offshore wind farms.

31. The Secretary of State considers that the changes proposed are small when considered in context of the development authorised by the 2014 Order and for the reasons set out above that it is appropriate and advantageous to authorise the proposed change as detailed in the Application.

32. The Secretary of State has also considered the ongoing need for the development. In her speech dated 18 November 2015 the Secretary of State stated that "New nuclear, new gas and, if costs, come down, new offshore wind will all help us meet the challenge of decarbonisation." In addition, the Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) both set out that electricity generation from offshore wind farms is expected to contribute a significant proportion of renewable energy generation. The Secretary of State considers, therefore, that the ongoing need for the project is established.

33. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to the 2014

Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant with the exception to the requested changes to Schedule 11 covered in paragraph 15 above.

Challenge to decision

34. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

35. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the Change Regulations.

Yours sincerely

Giles Scott

Giles Scott
Head of National Infrastructure Consents and Coal Liabilities

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

http://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/hornsea-offshore-wind-farm-zone-4-project-one/?ipcsection=overview

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)