

From: FOX Matthew [<mailto:Matthew.Fox@pinsentmasons.com>]
Sent: 16 December 2015 23:53
To: Hornsea2
Cc: MCCREATH Gordon
Subject: E.ON E&P UK Ltd: End of Examination Submission [PM-AC.FID2203580]

Dear Sirs,

E.ON and the Applicant are close to agreement of commercial terms in order to protect the position of E.ON, however it unfortunately it has not been possible to confirm the position before midnight today.

E.ON hopes to reach agreement with the Applicant in the very near future, but in case this is not possible, E.ON attaches its submission responding to the comments of the Applicant at Deadline 8.

Please acknowledge receipt.

Yours faithfully

Matthew Fox

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**SUBMISSION of E.ON E&P UK Ltd: RESPONSE TO APPLICANT'S
DEADLINE 8 SUBMISSIONS**

16 December 2015

Hornsea Offshore Wind Farm Phase 2 DCO



Introduction

Further to E.ON E&P's submissions at deadlines 5-8, extensive negotiations have been conducted with the Applicant with the aim to resolve matters between both parties such that an agreement can be reached.

However, at the present time, an agreement has yet to be reached, and as such, until such time as an agreement is reached, or in the eventuality that an agreement cannot be reached, the Examining Authority will be required to consider the submissions of E.ON and the most appropriate form of protective provisions that should form part of the made DCO.

This submission responds to the submissions of the Applicant at Deadline 8, which go to the heart of the issues of the protective provisions and the areas that they seek to protect.



Response to Applicant's Deadline 8 Submission

Applicant Submission	E.ON Response
<p data-bbox="183 418 450 448"><u>Form of Protection</u></p> <p data-bbox="183 491 1088 746">At paragraphs 10.2 to 10.7 of its Deadline 8 submissions, the Applicant seeks to make the case that any protective provisions that form part of the DCO recommended by the Examining Authority and made by the Secretary of State, should make it explicit that the protective provisions do not have any effect on the potential need for E.ON to pay compensation to the Applicant for loss of part of their Agreement for Lease area.</p> <p data-bbox="183 788 1104 1262">The Applicant posits that "<i>the primary differences between the provisions promoted by E.ON E&P and those put forward by the Applicant flow from the different approach to dealing with the significant uncertainty in relation to if, when, where and how the development of Block 48/3 will come forward. E.ON E&P seek to deal with that uncertainty through restrictions which give it absolute control over what happens in a large area (a very blunt tool which effectively sterilises the area from windfarm use for an unquantified time period). The Applicant, on the other hand, has proposed a set of protections which ensure that all reasonable restrictions are applied as are necessary to fully protect proposals which have been developed, fully authorised and are coming forward</i>".</p> <p data-bbox="183 1303 1059 1334">The Applicant claims that the protective provisions in the form</p>	<p data-bbox="1128 491 2033 635">E.ON notes the Applicant's concession that the protective provisions need to protect seismic activity and drilling rigs. However, E.ON remains concerned that the protection does not adequately protect its licensed activities.</p> <p data-bbox="1128 676 2049 783">E.ON's licence (and the relevant policy) envisages a structured programme of exploration and appraisal before development can begin.</p> <p data-bbox="1128 825 2033 1114">E.ON may not obtain any field development consent until 2019 or later. Apparatus and wells drilled during exploration and appraisal are temporary and are usually plugged and abandoned. In the normal course of oil and gas exploration, there will be a period after appraisal drilling is completed where results of appraisal drilling are analysed, a development plan is designed and applications for consent to develop are submitted. This is part of the scope of activity that requires protection.</p> <p data-bbox="1128 1155 2029 1334">The protective provisions proposed by the Applicant contain significant gaps, requiring E.ON to proceed with the risk that it could find it has no protection between completion of appraisal drilling and commencing production, during which the Applicant would be unrestricted and could construct a windfarm in the</p>



promoted by E.ON E&P are unduly restrictive and are not necessary to protect the oil and gas interests from the operation of this DCO.

The Applicant also claims that the form of protective provisions which it has proposed fully protects the oil and gas proposals in whatever form they finally come forward.

protected area in such a way as to prevent the production activities E.ON would wish to undertake. That could also happen before exploration wells for all or some of the prospects on the respective timetables submitted by the Applicant and E.ON. E.ON has explained at Deadline 7 that in financial terms, it cannot justify the commitment of capital for drilling the exploration and appraisal wells with no genuine protection for production stage activities under its licence.

Even with the concessions the Applicant has made, the Applicant's protective provisions are not adequate to protect the licensed activities E.ON needs to undertake to develop the oil and gas prospects in the block.

E.ON notes that the Applicant has accepted the need to ensure that E.ON can meet its statutory decommissioning obligations.

In relation to the proportionality of the protection, E.ON's proposed protected area is the Known Prospects and the area required around them to ensure that drilling to explore those prospects, with necessary support by helicopters to drilling rigs, can take place. E.ON has made clear why that area is necessary to protect its proposals. Given that the overlap area itself only forms a small part of the overall Hornsea Project Two, it cannot be considered that a 'very large area' is affected.

Although E.ON acknowledges that the development of this block is at an early stage, E.ON has sought to reach a compromise by only seeking to pursue its licensed interests in areas where development prospects are known. This is despite the fact that it

	<p>has been granted a licence for, and has been paying licence fees in relation to, the whole of Block 48/3. There is provision for the area to shrink as the licence is relinquished, which is a known, not an unquantified, period as set out in E.ON's previous submissions. The protective provisions therefore cannot be considered 'unduly restrictive'.</p> <p>E.ON has made its position on compensation very clear in its previous submissions and does not propose it repeat it again. E.ON also made clear the context of its extracts from guidance to which the Applicant refers, showing that they do no more than show that the oil and gas clause mechanism is an option. E.ON has also explained why it is a last resort option and not a necessary, mandatory or lawful means of resolving conflict in the current circumstances.</p> <p>In this light, it cannot be considered that a 'reasonable commercial solution' requires compensation to be part of it. For all the reasons given in E.ON's submissions at Deadlines 5-8, it is considered that a reasonable commercial solution has been offered to the Applicant.</p>
<p><u>Area of Protection – Sharing of Plans</u></p> <p>The Applicant suggests that E.ON have not been sharing relevant plans and shape files with them.</p>	<p>Whilst E.ON has unable been to provide the shape files for the areas to date, it has shared co-ordinates with the Applicant to enable them to ascertain the full effect of its revised proposals.</p> <p>The Applicant also claims that a plan of the revised proposal for</p>



	<p>the area of protection had not been seen by them in advance of its submission into the examination. That is not true. E.ON gave the Applicant a plan of the area at a meeting on 7 December 2015.</p> <p>[E.ON has now been able to produce the necessary plan and shape files for the benefit of the Applicant and the Examining Authority. This is appended at Appendix 1.]</p>
<p><u>Area of Protection – Percentage of Area</u></p> <p>The Applicant has provided a table setting out its view on the dimensions and percentage of overlap area taken by E.ON's original and revised proposals.</p>	<p>E.ON set out corrections to its percentages in its Deadline 8 submission.</p>
<p><u>Area of Protection - Loss of WTG</u></p> <p>The Applicant disputes the figure of 56 wind turbines lost to the revised proposal area suggested by E.ON at Deadline 7.</p>	<p>E.ON set out corrections and updates on loss of turbines in its Deadline 8 submission.</p>
<p><u>Area of Protection – Revised Proposal</u></p> <p>The Applicant queries why E.ON's proposal has changed between Deadlines 5 and 7 and queries each of the reasons it believes E.ON have given for the revisions:</p> <ul style="list-style-type: none"> • 1 NM Helicopter buffer zone • Allowance for 500m safety zones for the Applicant's installations • 500 metre buffer zone for any apparatus installed in 	<p>E.ON first wishes to clarify that the eastern 'extension' to the proposed protective provisions plan is made up <u>only</u> of the 1 NM buffer zone required for helicopter access.</p> <p>This 1 NM for helicopter access would <u>include</u> the 500 metre safety zones for the Applicant's installations. These safety zones do, however, for the reasons given at paragraph 4.14 of E.ON's Deadline 7 submission, provide an additional reason as to why a</p>

<p>connection with Babbage</p>	<p>buffer from the easternmost edge of the Known Prospects is required. The extension is therefore not 1 NM <u>plus</u> 500 metres.</p> <p>In its criticism of the 1 NM helicopter buffer zone, the Applicant suggests that eastern prospects within the protected area could be accessed purely by vessels or vessel flight approach in the right conditions. This imposes an unnecessary restriction on E.ON's activities.</p> <p>E.ON has explained that whilst the final constructed platform may be unmanned, it is necessary for helicopter access to be maintained for jack ups, both during initial construction and during any routine maintenance on the well itself which requires a jack up barge. When such work is ongoing, E.ON will need to maintain helicopter access for crew change and delivery of supplies to the facility. Weather conditions in the Southern North Sea mean that a visual flight approach only restriction would represent a significant restriction on E.ON's ability to access with helicopters.</p> <p>Taking the prevailing winds into account (helicopters need to turn into the wind to land) part of the 1nm would be required for helicopter access to installations within the central part of the protected area.</p> <p>In its Deadline 5-8 submissions, E.ON has set out its concerns that the Applicant has not demonstrated that the changes to navigation and helicopter access created by the Project will not adversely affect existing infrastructure for the Babbage platform.</p>
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	<p>Furthermore, E.ON notes that in earlier discussions with the Applicant, the Applicant was proposing protective provisions which covered a 500m area around apparatus connected to the Babbage platform (as noted at paragraph 4.28 of their Deadline 5 submission). E.ON has therefore updated its own protective provisions to ensure that they also include a protected area around the Babbage Platform.</p> <p>Given that E.ON has explained in its previous submissions that it is highly likely that the development of the Known Prospects will involve tie backs to the Babbage platform, it is important that these tie backs are adequately protected, to ensure that the production phase of the block 48/3 is not restrained.</p> <p>Although E.ON considers that the area it has proposed to be protected by the protective provisions to be reasonable and justified, it is aware that the Examining Authority will be required to make a judgement between this area (with the coordinates given in E.ON's suggested protective provisions at Deadline 7) and the area originally proposed by E.ON at Deadline 5.</p> <p>To aid the Examining Authority in ensuring that proper and effective protective provisions can form part of the made DCO, at Appendix 1 is a table of co-ordinates for the protected area as originally proposed, to form part of the protective provisions.</p> <p>In preparing this table, E.ON has noted that a small error appeared in the table of coordinates that formed part of its protective provisions submitted at Deadline 7. This is also set out in Appendix 1.</p>
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<p><u>Environmental Statement</u></p> <p>The Applicant has explained the assessments carried out to determine any likely significant effects of the Project on oil and gas operators (including operators of Block 48/3) (see for example Appendix H of the Applicant's response to Deadline VI and Appendix P of the Applicant's response to Deadline VII). That assessment can only be based on information which is available on likely future activities. During the course of this Examination E.ON E&P have provided some additional information on what, they say, are their likely activities. The Applicant has explained, by reference to the Assessments carried out, what potential interactions there could be (on the basis of this still limited information) with those activities.</p> <p>Due to the physical overlap between E.ON E&P's "known prospects" and the Project's area, depending on whether, when and the way in which E.ON E&P decide to exploit these prospects, there is the potential for interactions within that overlap area. The Applicant has therefore offered to give E.ON E&P the power to impose all reasonable restrictions on the Applicant's operations in that area in order to protect their assets if and when fully authorised.</p> <p>The imposition of these restrictions within the DCO fully mitigates against the prospect of a significant impact and, in the Applicant.</p>	<p>E.ON has explained in its Deadline 5-8 submissions its concerns with the Applicant's Environmental Statement and the fact that its cumulative impact assessments of the impacts on oil and gas activities are inadequate in relation to site selection, helicopter, and navigational issues. Nothing that the Applicant has submitted to date has corrected these inadequacies.</p> <p>It is considered that, for the reasons given above, the Applicant has not given E.ON the 'power' to impose restrictions that could mitigate the Project's impacts on its interests. The protective provisions proposed by the Applicant are inadequate for the reasons set out above, and in E.ON's other submissions.</p>



Appendix 1: Tables of Coordinates

Deadline 5 Protective Provisions Plan Table of Coordinates

<i>Point</i>	<i>Co-ordinate</i>
1	1.44E, 54.01N
2	1.44E, 54.009N
3	1.49E, 53.836N
4	1.45E, 53.836m

Deadline 7 Protective Provisions Plan Amended Table of Coordinates

<i>Point</i>	<i>Co-ordinate</i>
1	1.44E, 54.009N 54.01N
2	1.52E, 54.008N
3	1.52E, 53.836N
4	1.45E, 53.836n