

Hornsea Offshore Wind Farm

Project Two

Summary of Oral Case – Compulsory Acquisition

Hearing on 29 October 2015

Appendix I to the Response submitted for Deadline V

Application Reference: EN010053

12 November 2015

smartwind.co.uk

**SUMMARY OF COMPULSORY ACQUISITION HEARING HELD ON 29th OCTOBER 2015
SUBMITTED FOR DEADLINE V**

1.	Welcome
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- 1.1 Following an introduction from the Ex. A, the Applicant, along with other parties in attendance, introduced its representatives.
- 1.2 The Ex. A asked whether any party in the room wished to make oral representations. Representatives of Gradebrook Filling Stations Limited (Gradebrook) confirmed that subsequent to their recent late submissions to Deadline IV, they have had further discussions with the Applicant and understand the areas of land subject to their concern were removed from the Project's Order limits pursuant to the Applicant's submission of 27 April 2015. By consequence, they understood the only area remaining within the Order limits in which Gradebrook hold an interest is the area subject to agreed Heads of Terms between them and the Applicant. As such, they intended to withdraw their objection.
- 1.3 The Applicant confirmed the only remaining within the Order limits within which Gradebrook hold an interest is Plot 392.

2.	To receive any update on the need for acquisition of rights sought under Schedule E of the draft DCO and powers of temporary possession sought under Schedule G of the draft DCO on various plots and the case that the tests in s122 and s123 of PA2008 have been met.
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Updated version of the Applicant's plot by plot analysis

- 2.1 The Applicant noted it had provided an Updated Plot by Plot Analysis at Appendix G of the response to Deadline IV on 20 October.
- 2.2 The Applicant narrated that the updates made included:
 - 2.2.1 Noting the interests of the executors of H Gladding (now deceased);
 - 2.2.2 Reflecting the agreement of protective provisions with National Grid Electricity Transmission and National Grid Gas in Column C;
 - 2.2.3 Reflecting the transfer from the Secretary of State for Transport to Highways England Company Limited and the consequential amendments to the Crown interests column (Column D);
 - 2.2.4 Reflecting the submission by The Crown Estate in respect of s135; and
 - 2.2.5 Ensuring consistency in Column F (powers of compulsory acquisition sought) with the newly formatted Book of Reference.
- 2.3 It is the Applicant's intention to submit a final Updated Plot by Plot Analysis at Deadline VII of 10th December 2015, alongside a final version of the Book of Reference for sake of completeness.

Amendments to Schedule E and G of the draft DCO

- 2.4 In relation to Schedule G, the Applicant noted that it had revised Article 26(10) of Version 5 of the draft DCO to make clear that only temporary possession of the land in Schedule G could be taken. The Applicant would refer the Ex. A to paragraphs 3.1 and 3.2 of Appendix K of the response to Deadline III (Summary of Oral Case – CA Hearing 17 September 2015) for further detail on this proposed amendment.
- 2.5 Similarly, it further advised that it had proposed a couple of minor corrections to Schedule G regarding Plots 353 and 517 of the Land Plans, which were first notified to the Ex. A at the previous compulsory acquisition hearing held on 17 September 2015. The Applicant would

refer the Ex. A to paragraph 8.15 of Appendix K of the response to Deadline III for further detail on these proposed amendments.

- 2.6 The Applicant confirmed that no further amendments to Article 26 and/or Schedule G are envisaged.
- 2.7 In relation to Schedule E, the Applicant confirmed that it amended the reference to “access track” in relation to the Centrica access road (Plots 512 and 521 on the Land Plans) to now state “access road” in Version 5 of the draft DCO.
- 2.8 The Applicant noted that no further amendments to Schedule E are envisaged.

Update on description of rights sought and any revisions to the Book of Reference

- 2.9 The Applicant confirmed it had submitted an updated and reformatted Book of Reference at Appendix E of its response to Deadline IV.
- 2.10 The Applicant noted this revised Book of Reference included an additional column within Part 1 to detail the nature of the powers of compulsory acquisition sought under Articles 18 and 19 of the draft DCO, and/or temporary possession sought under Articles 26 and 27 of the draft DCO against each specific plot of the Order Land.
- 2.11 The Applicant would refer to paragraph 4 of its main response document to Deadline IV for further commentary on the proposed amendments to Version 3 of the Book of Reference.
- 2.12 The Ex. A queried whether any further express link could be made between the Book of Reference and the draft DCO within those respective documents. The Applicant has considered this matter further and is of the opinion that the documents are already sufficiently cross-referenced and does not propose any further amendments. The Applicant notes in particular that:
 - 2.12.1 The additional column inserted into Part 1 of Version 3 of the Book of Reference expressly refers to the “*powers of compulsory acquisition sought under Articles 18 and 19 of the Order and/or powers of temporary possession sought under Articles 26 and 27 of the Order*”;
 - 2.12.2 The “Order land” is defined in the interpretation section of the draft DCO to mean “*the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference*”; and
 - 2.12.3 “book of reference” is defined in the interpretation section of the draft DCO to mean “*means the book of reference certified by the Secretary of State for the purposes of this Order*”.
- 2.13 The Applicant considers the above drafting extracts from the draft DCO and the Book of Reference provide sufficient cross-reference to one another.

3.	To receive any proposed revisions to the onshore Order Limits and Land Plan; particularly in relation to Land Plan Sheet 27 of 27
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Outline of construction scenarios in the circumstance of Hornsea Project One being under construction or completed and the Applicant’s response to Question CA23 of the ExA’s second round of written questions

- 3.1 The Applicant noted it responded to question CA23 of Deadline IV to set out the proposed use of the land in and around the Project’s proposed substation site under three different scenarios, specifically:
 - 3.1.1 Hornsea Project 1 transmission stations not commenced;
 - 3.1.2 Hornsea Project 1 transmission stations under construction; or
 - 3.1.3 Hornsea Project 1 transmission stations complete.

- 3.2 The Applicant would refer the Ex. A to this response for confirmation on this point generally, but has provided additional explanation on particular queries raised by the Ex. A in its respect below.
- 3.3 The Ex. A queried the justification concerning Plots 501, 502 and 505 of the Land Plans, in particular the extent to which they are alternatives of one another. The Applicant clarified that Plot 501 is a compensation compound and so would only ever be used by the Hornsea Project One Companies where both Project One and Project Two's substations are being constructed simultaneously. The Applicant confirmed that this was to compensate Project One for the loss of available land in Plot 506, which would be being used for the purposes of constructing the Project Two substation. The Applicant confirmed this would be subject to scheduling discussions between the respective projects' construction teams, but that both projects have confirmed this is a satisfactory way to construct their respective substations (see paragraph 2.1.9 and Section 3 of the SoCG between the Project and Hornsea Project One (submitted by the Applicant on 10 September 2015) for confirmation on this matter).
- 3.4 The Applicant then progressed to Plot 502 and confirmed that this would act as a construction compound for the purposes of constructing the Project's substation. The Applicant further confirmed that access would be taken through Plot 500.
- 3.5 The Ex. A queried whether there would be sufficient space to accommodate construction access through Plot 506 into Plots 500 and 502 and vice-versa, considering the proposed designs of the Project's substation. The Applicant confirmed there would be sufficient space to allow construction traffic to pass through the plots, and to allow Plot 502 to be vacated following completion of the works. The Applicant further noted that it was possible access could be taken along the cable corridor into the substation. However, the Applicant wishes to make clear that this is not considered to be the primary access route for the purposes of constructing the substation and it would not be used to bring in Abnormal Loads. The Applicant refers to paragraph 3.3.140 to 3.3.145 in the Project Description (Doc ref No 7.1.3) which narrates the proposed use of the haul road and access track during the construction phase.
- 3.6 The Ex. A queried whether the Applicant anticipated any further refinement to the Project's design envelope, particularly whether they anticipated being able to restrict to either HVAC or HVDC transmission only. The Applicant confirmed that it was necessary to retain the flexibility sought to protect the commercial and practical viability of the Project. Accordingly, the Applicant does not propose any refinement of the Project's envelope in relation to the HVAC/HVDC transmission technologies.

Plot No. 506 and Plot No. 505 proposed amendments

- 3.7 The Applicant would refer the Ex. A to the Applicant's response of G10 of Deadline IV for its submission on this matter.

Plot No. 505 and the need for temporary possession powers

- 3.8 The Applicant would refer the Ex. A to the Applicant's response to CA23(2) of Deadline IV for its commentary on this matter.

Applicant's response to Question CA21 of the ExA's second round of written questions in relation to the Centrica access road

- 3.9 The Applicant would refer the Ex. A to the Applicant's response to CA21 of Deadline IV for its commentary on this matter.
- 3.10 The Ex. A further queried what "DNO" stood for and the Applicant confirmed this was an acronym for "District Network Operator".

Plot Nos. 507 and 509 and the ExA's second round written question CA18

- 3.11 The Applicant would refer the Ex. A to the Applicant's response to CA18 of Deadline IV for its commentary on this matter.

Plot No. 511 and the Applicant's response to Question CA22 of the ExA's second round of written questions

- 3.12 The Ex. A sought confirmation of its proposed understanding of the Applicant's response to CA22 at Deadline IV. The Applicant confirmed that access will be required through Plot 511 (this being the road that connects the National Grid substation to the road between the Centrica Power Station and Chase Hill Road) to access the Project's assets within the National Grid substation (Plot 510). The Applicant confirmed the Project will own assets within the National Grid substation and will require to undertake O&M work, such as inspections, maintenance and repairs, on these assets.

Procedure for dealing with amendments to the Order Limits

- 3.13 The Applicant noted it was the Ex. A's intention to issue a procedural decision to confirm the amendments to the Project's onshore Order limits as non-material and looks forward to receiving confirmation of the same.

4.	Book of Reference
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To receive any amendments to the Book of Reference

- 4.1 The Applicant would refer the Ex. A to paragraphs 2.9 to 2.13 above for its submissions on this matter.

To receive an explanation from the Applicant of the criteria used to define the Qualifying Persons under Regulation 7(1)(b) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (Category 3 in s.57(4) of PA2008)

- 4.2 The Applicant notes that the criteria which should be used to define "Qualifying Persons" under Regulation 7(1)(b) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the 2009 Regulations) is that set out at section 44(5) of the Planning Act 2008, namely "a person is within Category 3 only if the person is known to the applicant after making diligent enquiry."
- 4.3 The Applicant noted that it had identified by way of diligent inquiry all the relevant persons under Category 1, Category 2 (together contained in Part 1 of the Book of Reference) and Category 3 (contained in Part 2 of the Book of Reference). As described in the Consultation Report (paragraphs 4.1.6 to 4.1.10 of Doc ref No 2.1), these persons were all identified by way of desk based research and land referencing, searches of the Land Registry Index Map, review of title information, enquiries of the utilities companies and local authorities, as well as site visits to all of the onshore land affected and numerous meetings with owners and occupiers by the Applicant's land agent.
- 4.4 The Applicant considers that by its nature the process of diligent inquiry within defined Order limits means that there will be a very significant crossover and indeed repetition of parties who may be noted as Category 2 persons as well as qualifying Category 3 persons i.e. as possible claimants for compensation.

- 4.5 In terms of further diligent inquiry to identify any persons under Category 3 the Applicant sought advice from expert chartered surveyors, Fisher German Priestner Limited (“FGP”), who have significant experience in a large number of schemes and projects similar in type and scale to Hornsea Project Two.
- 4.6 To determine where a claim for compensation may be possible, advice was sought in relation to the possible heads of liability for compensation in compulsory acquisition including the liability for any relevant claim by a Category 3 person. The outcome of this advice was provided at Schedule 3 of the Funding Statement (PINS Document Ref: 6.2). It is a letter dated 20 January 2015 addressed to SMart Wind Limited from FGP.
- 4.7 The Applicant’s expert confirmed at the Hearing that they had considered the potential for a relevant claim during the construction period for the Project and concluded that any claim submitted would not be successful as any impact would be temporary only. Similarly, the Applicant’s expert confirmed they had reviewed the Environmental Statement submitted with the Application in the context of the operational substation area, and in particular the noise and lighting information contained therein, and concluded that no claims submitted would be successful.
- 4.8 In accordance with the advice received from FGP the Applicant anticipates that no claim will be successful on the grounds of blight or injurious affection. However it is still necessary to include all parties identified by way of diligent inquiry as possible claimants in the Book of Reference. This is the Applicant’s duty in accordance with section 44(4) and (5) of the Planning Act 2008.

5.	To review revisions to the Draft DCO in relation to CA matters received at Deadline 4
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Article 26(10)

- 5.1 The Applicant would refer the Ex. A to paragraph 2.4 above for commentary on this matter.

Definition of ‘completion’ – Article 26(5) and any consequential amendments

- 5.2 The Applicant notes this heading was not discussed at the Hearing, but would refer the Ex. A to paragraphs 3.4 to 3.10 of Appendix K of its response to Deadline IV for its submissions on this matter.

6.	To receive any amendments to the Funding Statement
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- 6.1 The Ex. A requested a composite copy of the Updated Funding Statement to incorporate the Funding Statement (Doc ref No 6.2) submitted with the Application and the subsequent update to it submitted by the Applicant to PINS on 14 September 2015. The Applicant noted this request and has provided a Composite Updated Funding Statement at Appendix M to its response to Deadline V.

Applicant’s response to Question CA20 of the ExA’s second round written questions

- 6.2 The Applicant would refer the Ex. A to its response to CA20 at Deadline IV for its comments on this matter. In addition, the Applicant noted that the final investment decision had been taken on DONG Energy’s 660MW Walney Extension Offshore Wind Farm, located in the Irish Sea on 28 October 2015. The Applicant considers that this provides further reassurance in market confidence for bringing forward large scale developments and DONG Energy is evidently at the forefront of the market in this respect.

Applicant's response to Question DC32 of the ExA's second round written questions

- 6.3 The Applicant would refer the Ex. A to its response to DC32 at Deadline IV for its comments on this matter.

7.	To receive any amendments to the Statement of Reasons
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- 7.1 The Applicant noted that it provided at Appendix H of the response to Deadline IV a Composite Updated Statement of Reasons. This document was produced as a composite version of the Statement of Reasons submitted on 30 January 2015 and the Update to the Statement of Reasons submitted as Appendix B to the Applicant's submission of 10 September 2015.
- 7.2 The Applicant narrated that, principally, the changes made reflect the acquisition of SMart Wind and the Project Companies by DONG Energy Power (UK) Limited and reflect the consequential changes to their ownership structure. The updated document also sets out (see paragraph 1.8) which are the most recent versions of the compulsory acquisition documents (being the Statement of Reasons, the Funding Statement, the Land Plans and the Book of Reference) as at 20 October 2015 for the ease of reference of the Ex. A, and the Secretary of State in due course. The changes also included:
- 7.2.1 The correction of plot number from Plot 508 to Plot 506 to correct a typographical error in the specification of the plots subject to compulsory acquisition of land. This errata was notified to the Ex. A in the Applicant's response to Question CA1 at Deadline I;
- 7.2.2 Correction of the tables specifying those plots contained in Schedule E and those in Schedule G to reflect the errata in relation to Plot 353 and 517. This errata was notified to the Ex. A at paragraph 3.7 of the Applicant's response to Deadline III. Version 5 of the draft DCO (see Appendix A of the response to Deadline IV) has also been updated to correct this errata; and
- 7.2.3 Updates to the status of land agreements and agreements with statutory undertakers.
- 7.3 The Applicant noted that to assist with the review of the changes made, the Applicant also provided a comparison of this Composite Updated Statement of Reasons with the Statement of Reasons originally submitted on 30 January 2015 (submitted as Appendix I to the response to Deadline IV). The Ex. A flagged a typographical error at page 63 of the Comparison version (Crown Land – paragraph 4.2.1). The Applicant notes that this is a formatting error provoked by the comparison, rather than a typographical error within the Statement of Reasons itself. The Applicant would direct the Ex. A to paragraph 9.2.1 of the clean copy Composite Updated Statement of Reasons (Appendix H of the Applicant's response to Deadline IV) for confirmation on this point.

8.	To receive any further submissions on Alternatives
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- 8.1 The Applicant notes no further submissions were raised at the Hearing and so has no additional comment to make on this matter beyond its previous submission at section 9 of Appendix K of its response to Deadline III.

9.	Further update in relation to negotiations with private landowners and statutory undertakers
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9.1 The Applicant has provided a further tabular update to the status of land agreements, now also including a column to indicate whether a representation had been received/withdrawn from the party, at Appendix O of the Applicant's response to Deadline V.

10.	To receive any further representations from Affected Persons and Other Interested Parties
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10.1 The Applicant notes no further representations were received from affected persons or other interested parties at the Hearing.

11.	Statutory Undertakers Land and Apparatus
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Responses to Question CA27 of the ExA's second round of written questions in relation to ConocoPhillips (UK) Limited and Phillips 66 Limited

11.1 The Applicant would refer the Ex. A to its response to CA27 at Deadline IV for its comments on this matter. The Applicant would further note that within its own response to CA27, Conoco Phillips (U.K) Limited have confirmed they are not statutory undertakers. The Applicant has no further comment to make at this stage.

Responses to Question CA28 of the ExA's second round of written questions in relation to E.ON E&P UK Ltd

11.2 The Applicant would refer the Ex. A to its response to CA28 at Deadline IV for its comments on this matter. In addition, the Applicant notes E.ON E&P UK Ltd's (E.ON E&P) response to this question which stated that on the provision that the Applicant is not proposing to compulsorily acquire E.ON E&P's interests then s127 would not apply. The Applicant confirmed that it was not proposing to compulsorily acquire E.ON E&P's interest at the earlier Issue Specific Hearing held on 27 October 2015.

11.3 The Applicant has sought to provide further comfort on this matter by removing reference to plots CL1 and CL2 from Part 4 of the Book of Reference. This proposed amendment will be reflected in the final version of the Book of Reference to be submitted at Deadline VII on 10 December 2015, as well as updates to the Offshore – Crown Plans to reflect the same. The Applicant considers this removes any residual ambiguity on the matter and has no further comment to make at this stage.

12.	Protective Provisions
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12.1 The Applicant has provided an update to the status of agreement on the protective provisions at Appendix O of its response to Deadline V.

12.2 The Applicant also confirmed that the C.GEN Protective Provisions Plan was submitted at Appendix M (the final page) to its response to Deadline III..

13.	Crown Land
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Consents sought under s.135 of PA2008?

13.1 For sake of completeness, the Applicant has provided a tabular overview of the required Crown Consents below:

<u>Crown body</u>	<u>Plots of land</u>	<u>Consent received</u>
The Crown Estate	Plot 1 – 20, 22 – 29 and 32	Yes TCE provided consent under s135(2) by letter to PINS dated 15 July 2015. TCE provided consent pursuant to s135(1) and reaffirmed its position re s135(2) in its letter dated 20 October 2015 submitted at Deadline IV.
Secretary of State for Defence	Plots 34 to 44	Yes The Defence Infrastructure Organisation provided consent on behalf of the Secretary of State for Defence under s135(1) and s135(2) on 6 August 2015. This was submitted to the Ex. A as Appendix B of the Applicant's response to Deadline II on 10 August 2015.
Highways England Historical Railways Estates	Plot 168	Yes Highways England Historical Railways Estates provided consent

13.2 The Applicant also noted that following:

13.2.1 the sale of the GPSS assets from the Oil & Pipelines Agency to CLH Pipeline System (CLH-PS) Limited on 30 April 2015; and

13.2.2 the transfer from the Secretary of State for Transport (SoSfT) to Highways England Company Limited (Highways England) on 1 April 2015,

there are no other Crown interests held in the Order land and therefore no other Crown consents are required.

Update in respect of Highways England land and responses to Question CA19 of the Ex. A's second round of written questions

13.3 By way of update to the Applicant's response to CA19 at Deadline IV, the Applicant provided to the Ex. A a certificate from the SoSfT confirming the transfer of their land interests in the Order land to Highways England to seek to provide definitive clarification on this matter (see Appendix P of the Applicant's response to Deadline V for a copy of the same).

13.4 The Ex. A noted this certificate does not reference the historic SoSfT interest in Plot 272 and the Applicant clarified that legal title to this plot is registered at the Land Registry to Highways England. The Applicant noted the comments from SoSfT and Highways England regarding the de-trunking of this road and clarified that this has no impact on the entries on the Land Registry and accordingly the right of Highways England must continue to be recorded in the Book of Reference in relation to this point. However, for the avoidance of doubt, the Applicant has also included the interests of North East Lincolnshire Council (as highways authority) as an Occupier of this Plot and has consulted with them on that basis.

- 13.5 The Applicant confirmed that Highways England have provided confirmation that they do not consider Highways England land to be Crown Land and do not consider s135 of the 2008 Act to apply to them, nor does the consequent protection afforded by Article 39 of the draft DCO. However, the Applicant clarified that protection for Highways England is already secured by the provisions of the draft DCO and the New Roads and Street Works Act 1991 (the 1991 Act).
- 13.6 Section 82 of the 1991 Act imposes liability on an undertaker for damage or loss incurred due to the carrying out of street works and Article 10(1) of the draft DCO expressly applies all of the provisions of that Act. Therefore when carrying out any street works pursuant to the powers contained in the DCO the undertaker would be bound by the statutory provisions already in place. In addition to the protection afforded by section 82, the Applicant understands that the A160/A180 is a “protected street”. Section 61 of the 1991 Act provides that before placing any apparatus in a protected street, the undertaker must obtain the separate consent of the street authority. This means that there is a prior approval mechanism which offers additional protection to Highways England in respect of any protected streets.
- 13.7 Finally, pursuant to a letter to the Applicant dated 5 November 2015 Highways England have withdrawn all representations previously made in respect of the Application and confirmed that it has no objection to the grant of the DCO including compulsory acquisition powers and/or powers of temporary possession in respect of land in which it has an interest. A copy of this letter has been provided at Appendix Q of the Applicant’s response to Deadline V.
- 13.8 The Applicant has also provided a tabular overview of Highways England’s interests in the Order land, together with the rights sought by the Applicant at Appendix R of its response to Deadline V for sake of completeness and in response to a request for the same from the Ex. A.

Applicant’s response to Question CA17 of the ExA’s second round of written questions

- 13.9 The Applicant would refer to its response to CA17 at Deadline IV for its submission on this point. However, the Applicant noted the Ex. A’s suggested amendment to the crown interest exclusion wording proposed in Version 3 of the Book of Reference and is happy to undertake to make this alteration in the final version of the Book of Reference to be submitted at Deadline VII. The Applicant has set out the proposed amendment below for ease of reference:

“Including all interests other than those interests held by or on behalf of the Crown in accordance with Article 39 of the Order”

14.	Commons Land and open space
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- 14.1 The Applicant would refer to its response to CA25 of Deadline IV and has no further comment to make at this stage.