

Hornsea Offshore Wind Farm

Project Two

The Applicant's response to Question 8 of the Rule 17 Letter dated 26 November 2015

Appendix S to the Response submitted for Deadline VII

Application Reference: EN010053

10 December 2015

smartwind.co.uk

No.	Item	For attention of
8	The ExA would welcome the views of the Applicant, E.ON E&P Ltd and the Marine Management Organisation (MMO) on how the policies within the Eastern Inshore and Offshore Marine Plan (particularly the OG and WIND policies and GOV3) are secured by the proposed Hornsea Project 2 with respect to potentially competing/conflicting developments of wind energy and oil and gas exploitation.	E.ON E&P Ltd, Applicant, MMO

Overview

1. The East Inshore and East Offshore Marine Plans (the “Marine Plans”) contain a number of policies to “*inform and guide regulation, management, use and protection of the marine plan areas*”. Offshore wind development, such as the Project, has substantial policy support in Policies WIND1 and WIND2. Oil and gas activities, such as those proposed by E.ON E&P, also have substantial policy support in Policy OG2. Co-existence is encouraged in Policy GOV3.
2. The WIND policies and the OG2 policy advance different ideologies for the future of the UK’s energy production. These policies, whilst different, can be reconciled.
3. In many cases offshore wind development and oil and gas activities can coexist, even within the same area. In other cases coexistence is not possible and in those scenarios a package of resolution mechanisms are in place, for example via the oil and gas clause, the Ministerial Statement and the relevant consenting regimes (see paragraphs 295 and 296 of the Marine Plans).
4. In the context of the current Application, the Applicant considers that the DCO can strike the correct balance to ensure there is no unjustified prejudice to, on the one hand, its interests under the Agreement for Lease held with the Crown Estate and any development consent granted; and on the other hand, the interests of E.ON E&P by virtue of the award of a licence for block 48/3 for its oil and gas activities, all in accordance with the policies set out in the Marine Plans.
5. The Applicant has set out below a description of the relevant policies contained within the Marine Plans. If the Applicant and E.ON E&P remain unable to reach commercial agreement within the timescales remaining the Applicant considers that the appropriate application of the policies set out therein can be achieved through the imposition of the Applicant’s proposed protective provisions for the benefit of E.ON E&P (submitted at Appendix I of its response to Deadline VI). The Applicant also refers to Appendix L of its response to Deadline VI for further justification as to the appropriateness of its version of the protective provisions offered and to its response to Question 7 of the Rule 17 letter in Part 1 of its response to Deadline VII.

Marine Plans policy in favour of offshore wind development

6. Policies WIND1 and WIND2 set out the policy commitments for offshore wind development.

Policy WIND1: Developments requiring authorisation, that are in or could affect sites held under a lease or an agreement for lease that has been granted by The Crown Estate for development of an Offshore Wind Farm, should not be authorised unless

- a) they can clearly demonstrate that they will not compromise the construction, operation, maintenance, or decommissioning of the Offshore Wind Farm
- b) the lease/agreement for lease has been surrendered back to The Crown Estate and not been re-tendered
- c) the lease/agreement for lease has been terminated by the Secretary of State
- d) in other exceptional circumstances

“306. This policy covers lease areas granted by The Crown Estate’s rounds 1, 2 and Extension leasing programmes, demonstration sites and projects brought forward from Round 3 Offshore Wind Farm zones for agreement for lease (including areas under Offshore Transmission Owner leases). See figure 15 for the current locations of these lease boundaries. The policy seeks to prevent other new development or activities that would compromise construction, operation or

decommissioning of the Offshore Wind Farm. This protects the existing rights of Offshore Wind Farm leases and agreements for lease.

307. The protection afforded by WIND1 will be kept in place until such time as the Offshore Wind Farm has been a) constructed; b) the lease/agreement for lease is surrendered back to The Crown Estate or c) the lease has been terminated by the Secretary of State.”

7. Policy WIND1 applies to Hornsea Project Two. The Project is a Round 3 Offshore Wind Farm which has entered into an Agreement for Lease with the Crown Estate. E.ON E&P’s proposed activities are new activities (the licence having been awarded after the Agreement for Lease was entered into). E.ON E&P’s activities have the potential to adversely affect the Project, the detail of these activities is currently unknown and as stated (see paragraphs 7 to 13 of the response to Question 7 of the Rule 17 Letter in Part 1 of the Applicant’s response to Deadline VII) are still subject to further consents under the Oil and Gas consenting processes.
8. Paragraph 307 of the Marine Plans states that the protection afforded by Policy WIND1 will be kept in place until construction, surrender of the Lease or termination of the Lease. None of these events have occurred and so the Applicant considers that as a primary position, the policy protection must still be afforded to the Project and to its Agreement for Lease.
9. The Applicant specifically notes the reference to the termination of the Lease which is a reference to the oil and gas clause mechanism. As the Applicant has continued to assert, this process is in place and available should co-existence with any oil and gas activity ever prove unworkable (even with the protection afforded by protective provisions). That mechanism is expressly recognised in the Marine Plans (see paragraph 295).
10. The Applicant considers that Policy WIND1 provides clear support for the Project.

Policy WIND2: Proposals for Offshore Wind Farms inside Round 3 zones, including relevant supporting projects and infrastructure, should be supported.

“310. The Crown Estate’s work to identify the Round 3 zones already takes into account, to some degree, the adverse impacts of Offshore Wind Farm development on the environment and other marine users. Developers are also currently undertaking a substantial amount of work to fully understand the characteristics of their zones and potential impacts that development may have which will inform Offshore Wind Farm projects being brought forward from Round 3 zones. This policy reflects the work undertaken to date and the significant investment by Round 3 developers.

...

311. This policy will be applied by public authorities to ensure that the large potential for Offshore Wind Farms in the East marine plan areas and the ambitions of government for renewable energy are realised.”

11. Policy WIND2 reaffirms the Government’s commitment to offshore wind development generally. It sits alongside the more specific policy support given to those projects with a Lease or an Agreement for Lease in Policy WIND1. Policy WIND2 recognises that a Zone Development Area identification process has been gone through by The Crown Estate, and that substantial investment in appraising and developing those zones has been committed by developers.

Marine Plans policy in favour of oil and gas development

12. Policy OG1 and OG2 set the marine policy for offshore oil and gas activities.

Policy OG1: Proposals within areas with existing oil and gas production should not be authorised except where compatibility with oil and gas production and infrastructure can be satisfactorily demonstrated.

13. E.ON E&P has no existing oil and gas production facilities within Subzone 2. Policy OG1 could operate in respect of helicopter access to the Babbage platform and indeed the Applicant notes that the Marine Plans specifically refer to helicopter approaches from wind farms in relation to a platform. As set out in its previous submissions and as set out at Appendix P of the Applicant’s response to Deadline VII, the Applicant has fully assessed the impacts of the Project on helicopter access in the ES and has concluded that it will have no likely significant effects on

such access. The Applicant's position therefore is that Policy OG1 is met in full as compatibility with the existing oil and gas infrastructure has been satisfactorily demonstrated.

Policy OG2: Proposals for new oil and gas activity should be supported over proposals for other development.

14. Policy OG2 provides support for oil and gas activity. However, whilst the upfront text of this Policy appears to be unequivocal, the background text surrounding it confirms that this is not the case and that, in some instances where there is a co-located activity, including offshore wind development, negotiation may be required.

"295. All oil and gas activity is spatially restricted to the areas where the resource is found, or likely to be found. Although some of these are known, the total extent and recoverability of the reserves is not, therefore exploration and appraisal activity is ongoing. This creates uncertainty as to the future location and spatial extent of exploration and potential production activity. Future oil and gas activity has the potential to require access to the same area of seabed as other activities. In most cases, the consequence of this will be insignificant due to the small footprint of oil and gas production infrastructure. In some cases this may not be the case, such as where another user of the sea bed has a lease in place. Where a lease has been agreed for a co-located activity, there may be a requirement for negotiation between parties involved. More detail on how such issues may be resolved between offshore wind and oil and gas can be found elsewhere, for example in the written ministerial statement made by the Secretary of State for Energy and Climate Change to Parliament on the 12th July 2011.

296. In situations where there is potential conflict between alternative development opportunities, the relevant public authority considering the proposals would be expected to consider any impact on existing proposals or developments in its decision. Public authorities will need to look at the full range of impacts and benefits when making decisions which could affect oil and gas developments, or when considering oil and gas activities that could affect other developments."

15. A number of relevant points can be taken from the paragraphs quoted above.
- a. Firstly, as previously noted, the policy is not as unequivocal as it first seems. It should not be read as permitting oil and gas activity at the cost of all other development. The Applicant notes for example that Policy WIND1 is written in similar, seemingly unequivocal, terms. Policy OG2 should not therefore be read as supporting E.ON E&P's proposed activities at all costs, including at the expense of the Project.
 - b. Where a Lease has been agreed for a co-located activity, negotiation may be required. The Applicant considers that this statement would also apply where an Agreement for Lease has been entered into given the terms of WIND1, which affords protection to parties with a Lease or an Agreement for Lease. Policy OG2 therefore appears to promote coexistence where possible.
 - c. There is recognition of the regulatory mechanisms already in place via the oil and gas clause and Ministerial Statement to resolve coexistence issues. This accords with the Applicant's position that these mechanisms are viable, established, available and should be used as part of the package (along with this DCO process and the oil and gas consenting processes) to manage any coexistence issues. It is for that reason that the Applicant's proposed protective provisions for the benefit of E.ON E&P (see Appendix I of the Applicant's response to Deadline VI) expressly provide for their preservation.
16. Paragraph 296 of the Marine Plans also states that it is for the public authority considering the proposals to consider any impact on existing proposals or developments in its decision. In this context this means that future consenting authorities for E.ON E&P's proposed activities (see paragraphs 7 to 13 of the response to Question 7 in part 1 of the response to Deadline VII for a description of the further consents which E.ON E&P requires for its exploration activities) will have to consider the impact of those activities on the Project.

Policy in favour of coexistence

Policy GOV3: Proposals should demonstrate in order of preference:

- a) that they will avoid displacement of other existing or authorised (but yet to be implemented) activities
- b) how, if there are adverse impacts resulting in displacement by the proposal, they will minimise them
- c) how, if the adverse impacts resulting in displacement by the proposal, cannot be minimised, they will be mitigated against or
- d) the case for proceeding with the proposal if it is not possible to minimise or mitigate the adverse impacts of displacement

269. Marine planning seeks to manage competing demands, reduce conflict and promote compatibility in the marine area. Marine Policy Statement (3.8.10) has a particular focus on the impacts of displacement of fishing activity and the need to avoid this. Displacement has been highlighted as a significant concern by many users of the East marine plan areas which are already busy (see GOV2) and increasingly so. The need to promote co-existence (GOV2) is essential in minimising or mitigating the negative impacts of displacement.

- 17. Policy GOV3 seeks to achieve coexistence between competing marine activities. The Applicant and E.ON E&P both make clear in their submissions that they believe coexistence between them to be possible and that a commercial agreement is preferable. In lieu of such a commercial agreement however the Applicant considers that the policy set out in GOV3 can be secured through the DCO, by the inclusion of its proposed form of protective provisions (Appendix I of the Applicant's response to Deadline VI).
- 18. These protective provisions seek to avoid interference with E.ON E&P's activities by providing a Protected Area for E.ON E&P's known prospects (subject to the necessary consents for apparatus in the Protected Area being obtained). If triggered they prevent the construction of the authorised Project within the Protected Area without E.ON E&P's prior approval (not to be unreasonably withheld) of plans of the proposed works and allow the imposition of reasonable requirements. E.ON E&P's activities are therefore provided significant protection ensuring that conflicts can be avoided and co-existence achieved.

Reconciling the policies

- 19. The Applicant considers that Policy WIND1, WIND2, OG2 and GOV3 can be reconciled and appropriately secured within the DCO for the Project.
- 20. The Applicant's position is that by virtue of its Agreement for Lease with the Crown Estate, policy WIND1 should apply, affording its interests under the Agreement for Lease protection. The policy in OG2 should be considered, and E.ON E&P's proposals given appropriate consideration. Policy OG2 specifically notes however that negotiation may be required and that there are regulatory mechanisms in place to resolve any coexistence issues. It does not afford policy support to oil and gas activities at the expense of offshore wind particularly those projects with a Lease or Agreement for Lease. Policy WIND2 recognises the commitment to offshore wind generally. Finally, Policy GOV3 seeks to reconcile all of these policies and require the parties to achieve coexistence where possible.
- 21. This interpretation of the policy support in the Marine Plans is confirmed in paragraph 313:

"Other policies should be taken into account when applying the support outlined in WIND2. This includes where OG2 is applicable which would take precedence over WIND2. Once an agreement for lease has been granted by The Crown Estate then these areas will be covered by WIND1. This policy enables development of offshore wind in Round 3 wind farm zones in preference to other conflicting activities but does not preclude co-location of Offshore Wind Farms with other activities in accordance with GOV3. The policy will be applied by public authorities determining proposals for non-Offshore Wind Farm developments or activities within Round 3 wind farm zones as well as public authorities that license Offshore Wind Farm and supporting projects brought forward from Round 3 wind farm zones. These authorities should work in conjunction with the offshore wind farm developer, the Department for Energy and Climate Change's Secretary of State (who will determine Offshore Wind Farm proposals over the 100Megawattsthreshold) and/or the National Infrastructure Directorate."
- 22. As set out in this submission, the Applicant considers that its proposed protective provisions for the benefit of E.ON E&P (Appendix I to the response to Deadline VI) adequately and

appropriately secure the policies set out in the Marine Plans in terms of the current consideration of the DCO Application and maintain the integrity of the other policy and consent processes recognised by the Marine Plans as forming part of the “package” to achieve continuing and workable co-existence.