

# Hornsea Offshore Wind Farm

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Project Two

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## Draft Protective Provisions proposed by the Applicant for the benefit of C.GEN

Appendix V to the Response submitted for Deadline IIA

Application Reference: EN010053

25 August 2015

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[smartwind.co.uk](http://smartwind.co.uk)

## PART [11]

For the protection of C.GEN Killingholme limited

**91** —(1) The following provisions apply to govern the relationship between the undertaker and C.GEN unless otherwise agreed in writing between the undertaker and C.GEN.

(2) In this Part of this Schedule—

“approving party” means the party from whom an approval should be, has been or should have been obtained under the terms of this Part, and shall be the Optimus Wind and Breesea in the case of specified work by C.GEN, and C.GEN in the case of specified work by the undertaker;

“C.GEN” means C.GEN Killingholme Limited (Company number 06422434), whose principal office is at 130 Shaftesbury Avenue, London W1D 5EU;

“C.GEN relevant land” means the area of land shown coloured [yellow] on the plan;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal and “construct” and “constructed” are construed accordingly;

“crossing zones” means those areas of land shown coloured [green] on the plan;

“dominant land” means the Order land shown numbered 500 and 506 on the land plans;

“drainage ditch” means the ditch shown [by a black line marked ‘Drain’] on the plan;

“Hornsea Project Substation Site” means the site shown outlined in [pink] on the plan;

“grid connection land” means the C.GEN relevant land, the thermal buffer zone and the crossing zones;

“the plan” means the plan entitled the C.GEN Protective Provisions plan and certified as the C.GEN protective provisions plan by the Secretary of State for the purposes of this Part of this Schedule;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the grid connection land;

“promoting party” means the party who is seeking, has sought or should have sought an approval under the terms of this Part of this Schedule and shall be the undertaker in the case of specified work by the undertaker, and C.GEN in the case of specified work by C.GEN;

“servient land” means any pond, ponds or any watercourse on land under the ownership of C.GEN as at the date of this Order;

“specified work” means so much of any work or operation by the undertaker or C.GEN as is in, on, under or over the grid connection land; and

“thermal buffer zone” means the area of land shown coloured [red] on the plan.

**92.** The undertaker must not under the powers of the Order acquire—

- (a) new rights over the C.GEN relevant land; or
- (b) new rights over the thermal buffer zone, except for the purposes of access and maintenance,

without the consent of C.GEN, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

**93.** (1) The promoting party must give to the approving party not less than 28 days’ written notice of its intention to commence the construction of the specified works and at the same time must submit plans for those specified works to the approving party.

(2) Not more than 14 days after completion of the construction of the specified works the promoting party must give the approving party written notice of such completion.

**94.** ---(1) Following receipt of the notification of the intention to commence the construction of the specified works under paragraph [93(1)], the approving party must within 14 days give notice in writing to the promoting party that (acting reasonably):

- (a) it approves the plans; or
- (b) it does not approve the plans and provide reasons for this.

(2) Where the approving party confirms that it does not approve the plans for the specified works then both parties shall, acting reasonably, enter into negotiations to seek to agree the plans. If following the expiry of 14 days from the date of notification under paragraph [94(1)(b)] no agreement has been reached, the matter shall be determined in accordance with paragraph [111].

**95.**—(1) Subject to sub-paragraph (3), any specified work must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the approving party.

(2) If any part of the specified work is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the approving party may by notice in writing require the promoting party at the promoting party's own expense to comply with the requirements of this Part of this Schedule or (if the promoting party so elects and the approving party in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the approving party reasonably requires.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (2) is served upon the promoting party, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the approving party may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the promoting party.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the approving party must not except in an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

**96.** The promoting party must at all reasonable times during construction of the specified works and thereafter allow the approving party, its servants and agents, access to such work and all reasonable facilities for inspection of any such work.

**97.** —(1) After the purpose of any temporary works has been accomplished the promoting party must with all reasonable dispatch, or after a reasonable period of notice in writing from the approving party requiring the promoting party to do so, remove any such temporary works or any materials relating thereto which may have been placed in, on, under or over the grid connection land by or on behalf of the promoting party.

(2) If the promoting party fails to do so within a reasonable period after receiving such notice, the approving party may remove the same and may recover the reasonable costs of doing so from the promoting party.

**98.** —(1) If any damage to the grid connection land or any apparatus of any approving party upon such land or any interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the promoting party must, notwithstanding any approval, make good such damage to the reasonable satisfaction of the approving party and must pay to the approving party all reasonable expenses to which the approving party may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction in accordance with paragraph [99].

(2) If the promoting party refuses or fails to do so, the approving party may cause the work to be done and may recover the reasonable cost of doing so from the promoting party.

**99.** —(1) Without prejudice to the other provisions of this Part of this Schedule, the promoting party is to be responsible for, and must make good to the approving party, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the approving party) which may reasonably be incurred by or occasioned to the approving party by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by the approving party or its duly authorised representative;
- (b) the construction or failure of the specified works, or the undertaking by the approving party of works or measures to prevent or remedy damage to any property of the approving party arising from such construction or failure;

- (c) any act or omission of the promoting party or their servants or agents whilst engaged in the construction of any of the specified works.
- (2) The approving party must give to the promoting party notice in writing of any claim or demand for which the promoting party may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the promoting party.
- (3) Nothing in this paragraph imposes any liability on the promoting party to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of the approving party or of any person in its employ or of its contractors or agents.
- 100.** The fact that any work or thing has been executed or done with the consent of the approving party and in accordance with any conditions or restrictions prescribed by the approving party or in accordance with any plans approved by the approving party or to its satisfaction or in accordance with any directions or award of any arbitrator, does not relieve the promoting party from any liability under the provisions of this Part of this Schedule.
- 101.** Any consent or approval of an approving party required under this Part of this Schedule—
- (a) must not be unreasonably withheld or delayed; and
  - (b) may be given subject to reasonable conditions.
- 102.** Any consent or approval of an approving party required under this Part of this Schedule shall be deemed to have been given if it is neither given nor refused within 28 days beginning with the date on which the application for consent or approval was submitted to the approving party.
- 103.** Without prejudice to the generality of paragraph [101] of this Part of this Schedule, it shall not be reasonable for an approving party to withhold or delay any consent or approval under this Part of this Schedule in relation to specified work in, on, under, or over the grid connection land solely on the basis of thermal interaction between the circuit and any adjacent circuit, whether existing or proposed, where it has been demonstrated that there will be no material thermal interaction, which shall be deemed to have been demonstrated where the separation between such circuits is 6 metres or more (from the centre line of each circuit).
- 104.** Without prejudice to the generality of paragraph [101], and in addition to the circumstances described in paragraph [103], it shall not be reasonable for the approving party to withhold or delay any consent or approval under this Part of this Schedule in relation to specified work in, on, under, or over the crossing zones solely on the basis of thermal interaction where the plans of the specified work submitted under paragraph [93] demonstrate that all reasonable steps have been taken to minimise thermal interaction between the circuit and any other circuit, whether existing or proposed.
- 105.** With the exception of any duty owed by the approving party to the promoting party expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order is to be construed as imposing upon the approving party, either directly or indirectly, any form of duty or liability to which the approving party would not otherwise be subject which is enforceable by proceedings before any court.
- 106.** Save as this Part of this Schedule permits, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the approving party at the commencement of this Order or any title of the approving party in, to or over any lands held or acquired by it.
- 107.** In the event that the promoting party requires to alter the course of, modify, or remove any part of the drainage ditch such alteration, modification or removal works must be approved in writing by the approving party prior to the works being carried out, such approval not to be unreasonably withheld or delayed but may be given subject to reasonable conditions.
- 108.** The undertaker must ensure that the rate and/or volume of water discharged from the dominant land onto, over, across or through the servient land will not result in a significant increase in the exercise of the rights of the easement enjoyed by the dominant land on, over, across and through the servient land other than with the prior written approval of C.GEN.
- 109.** The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of land) or article 19 (compulsory acquisition of rights) in respect of the Order land shown numbered 510 on the land plans to extinguish any rights that C.GEN has to connect into the North Killingholme National Grid substation.

**110.** The provisions of this Part of this Schedule will enure for the benefit of the undertaker, C.GEN and any statutory successor of either which is licensed under section 6 of the 1989 Act and is in occupation or use of the Hornsea Project Substation Site, the grid connection land or any part thereof pursuant to their undertaking.

**111.** Any dispute or difference arising between Optimus Wind and/or Breesea on the one hand and C.GEN on the other as to their respective rights, duties and obligations under this Part of this Schedule or as to any matters arising out of it or in connection with the subject matter of this Part of this Schedule shall be determined by a single arbitrator whose appointment is to be agreed upon between Optimus Wind and/or Breesea (as appropriate) and C.GEN or where agreement cannot be reached within 14 days to be appointed on the application of either party (after notice in writing to the other party) by the President or Deputy President of the Royal Institute of Chartered Surveyors.