East Anglia THREE
Offshore Windfarm

East Anglia THREE

Written Summary of Oral Submissions DCO ISH

Document Reference – Deadline 6/DCO ISH/Written Summary of Oral Submissions

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Applicant's Written Responses: Issue Specific Hearing: Development Consent Order (Wednesday 26 October 2016)

Applicant's reference for Examining Authority Question	Question Applicant's Response	
Agenda Item: Revisions and drafting changes to the latest version of the East Anglia THREE dDCO (Version 3)[REP4-003 - 5], arising from the Applicant.		
Agenda Item: Applicant's review of the substantive changes made in Version 3 of the dDCO, and the ExA's questions arising.		
DCOHQ1	Applicant's response	**East Anglia ONE turbines** As previously set out in the Applicant's written response for oral submissions to the environmental hearing (Ref Deadline 6/EM ISH/Written Summary of Oral Submissions), it is the Applicant's position that it is not necessary to secure a reduction of the maximum number of turbines for East Anglia ONE to 102 turbines.
DCOHQ2	Applicant's response	**The Crown Estate** As set out in the Applicant's written response for oral submissions to the compulsory acquisition hearing (Ref Deadline 6/CA ISH/Written Summary of Oral Submissions), negotiations are continuing with The Crown Estate (TCE) in relation to the drafting of the Crown Rights article, and it is hoped that agreement will be reached before the end of the examination period. The Applicant has undertaken a preliminary review of the Crown articles contained in the North Wales Wind Farms Connection Order 2016. It appears that the additional article may have been included as a result of concerns raised on behalf of the Welsh Ministers due to a lack of progress in negotiations for property agreements. The Applicant sees no reason to adopt this approach in the draft Order and has concerns, given that interests which may be acquired are restricted to those specifically referenced, that this may not provide the necessary certainty for the project. The Applicant also notes that this drafting was not adopted in the Hornsea Project 2 DCO which was made subsequently to the North Wales Wind Farms Connection Order 2016.
DCOHQ3	Applicant's response	**Maintenance of drainage**

		In relation to Requirement 18(2), the Applicant considers that maintenance of drainage will be captured under the Surface Water and Drainage Management Plan, which is to be included within the Code of Construction Practice and which, therefore, is secured under Requirement 22 of the draft Order. The East Anglia ONE Order dealt with this in the same manner.
DCOHQ4	Applicant's response	**Definition of commence** The Applicant refers to its detailed written response to DCO1 (Ref: Deadline 5/Second Written Questions/Applicant's Response). The draft Order has been prepared on the same basis as the East Anglia ONE Order, and no issues have arisen to date. The relevant planning authorities are content that the pre-commencement archaeological activities being undertaken by East Anglia ONE are proceeding using an approach which has been agreed with the relevant planning authorities. The context of the East Anglia THREE project and particularly its less intrusive operations must also be borne in mind. The Applicant considers that the nature of the majority of the pre-commencement activities undertaken would not give rise to likely significant effects or, therefore, require prior approval of plans. There are also strong commercial justifications why flexibility to undertake pre-commencement works, without triggering commencement, should be permitted. It is also in the Applicant's interest to conduct any pre-commencement works in liaison with the LPAs in order to reduce abortive work or delay. Notwithstanding the above, the Applicant has discussed the matter further with the relevant planning authorities and has agreed to include prior notification for any site clearance works, as well as for archaeological works at the substation, in advance of those works being undertaken. This will give the planning authorities an opportunity to consider the works being proposed and, therefore, whether they require any plans to be approved before the works can proceed. It should be noted that the archaeological prior notification is restricted to the substation site given the extensive works to be carried out along the cable corridor by East Anglia ONE and also given the pull through nature of the East Anglia THREE operations. It is not considered that any other pre-commencement activities will give rise to likely significant effects or require prior approval of plans, and therefore no prior notification is proposed for those other activities. It will be noted that the drafting of the definition provides for a deemed approval in the event that the relevant planning authorities do not respond within the periods specified. The Applicant considers that this strikes a reasonable balance between affording notice of the works to the planning authorities whilst avoiding unnecessary delay given the extent of the operations proposed.
DCOHQ5	Applicant's response	**Definition of maintain** The Applicant notes the very wide definition of maintain which has been included in the recently made Order for the Hornsea 2 project. The North Wales Wind Farms Connection Order also goes further than the definition in the draft Order and permits maintenance which will give rise to effects not assessed provided that those effects are not materially new or materially different to what has been assessed. In short, there is strong commercial justification to

		incorporate a wide definition of maintain in the draft Order. In relation to the East Anglia THREE project, the Outline Offshore Operations and Maintenance Plan sets out the extent to which maintenance has been assessed in the Environmental Statement. In addition, the Applicant proposes to amend the definition of maintain in the draft Order, so that it is consistent with the definition of maintain in the East Anglia ONE Order.
Agenda Item: Deemed Marine Licence (DML) provisions (Schedules 10 – 15) - A review of proposed changes to the draft DMLs.		
DCOHQ6	Applicant's response	**Draught height condition** The Applicant's proposed wording to restrict draught height is set out at the written response to HRA11 (Deadline 5/Second Written Questions/Applicant's Response). As set out in the Applicant's written response for oral submissions to the environmental hearing (Ref Deadline 6/EM ISH/Written Summary of Oral Submissions), the parameter relates to the number of turbines rather than a spatial area. The Applicant proposes to include the new parameter in the relevant DMLs (Schedule 10 and 11) as well as in the parameters contained in the Requirements of the draft Order. The Applicant will continue to liaise with the MMO, Natural England and the RSPB on the approach to the drafting of the parameter.
DCOHQ7	Applicant's response	**Ground-truthing and Noise Registry** The Applicant notes that the MMO confirmed it was content with condition 19 of the relevant DMLs in relation to ground-truthing and condition 20 of the relevant DMLs in relation to requirements to provide information to the Noise Registry.
DCOHQ9	Applicant's response	**pSAC condition** The Applicant notes that TWT raised no concern in relation to the adequacy of drafting to secure delivery of the Site Integrity Plan (SIP). Likewise, the MMO raised no concern, save that from a technical drafting perspective the MMO considered that it was not strictly necessary to incorporate condition 13(3). In relation to this point, the Applicant has followed the approach of the Hornsea 2 DCO in drafting the condition, save that definitions have been included in the definition section of the DMLs. It may well be that the reason for condition 13(3) on the Hornsea 2 DCO was to some extent presentational, in the sense that an outside person looking from an HRA perspective might want to see, set out on the face of the Order, reference to treatment of harbour porpoise as protected features. For the HRA on Hornsea 2 the Secretary of State (SoS) was prepared to accept, at this stage, a condition within the DMLs (the equivalent of the Applicant's SIP) which secured mitigation measures in order to provide sufficient certainty that there would be no adverse effect on the integrity of the pSAC, albeit that the form of that mitigation was to be settled at a later date. The SoS explained the rationale as to why the MMO was the appropriate body to approve

		these mitigation measures in the Appropriate Assessment. In particular, the SoS said: *"15.158 The Secretary of State has considered the advice of the MMO set out above in paragraph 15.120 but maintains the view that the dML is the most appropriate place for the new condition as the MMMP will be approved by the MMO as will other MMMPs for other offshore wind developments. In addition as the body responsible for the dML for this and other offshore developments the MMO will have greater oversight of works occurring within the offshore area in order to identify suitable timing for construction should this be required."* It should be noted that the MMMP for Hornsea 2 dealt with pSAC issues, so this should be considered to be the same as the Applicant's SIP in this context. Accordingly, the Applicant considers that the MMO is the appropriate body to approve the SIP with advice from Natural England. In conducting the Appropriate Assessment for East Anglia THREE, the SoS will need to satisfy himself that there is sufficient certainty that the mitigation measures secured will avoid adverse effects on the integrity of the pSAC. As with Hornsea 2, thereafter and within that framework it is left for the MMO to judge refinement of the mitigation measures and if necessary, the MMO may (as competent authority) consider the need to undertake a further appropriate assessment. On the matter of consultation, the East Anglia THREE approach of incorporating mitigation into the SIP is quite different from the approach taken in Hornsea 2. The Applicant's approach of using a SIP allows much more detail to be included on the approach to mitigation at the outset. This was not the case for Hornsea 2 where the draft condition left a high degree of discretion on the MMO as to the mitigation needed in order to be satisfied of no adverse effect on integrity. In addition, proposals for consultation are already included within the SIP, which was not the case for Hornsea 2 because no SIP was proposed. The Applicant has committed to update the table setting out proposals for consultation in line with comments from both TWT and WDC so that they are informed of the process and provided with copies of documents submitted to the MMO. This will ensure that TWT and WDC are consulted at a much earlier stage than would otherwise be the case, and therefore at a point when they can inform the mitigation proposals, leading to more meaningful engagement. Given the consultation proposals set out in the SIP, adding TWT and WDC as consultees on the face of the DMLs would result in unnecessary duplication and complication. Further, in the event that appropriate assessment is undertaken by the MMO as competent authority in discharging the condition, the MMO will be bound by the requirements of consultation set out in Regulation 25(3) of the Offshore Marine Conservation (Natural Habitats) Regulations 2007 (as amended). This requires that the competent authority must consult JNCC and Natural England and, if it considers appropriate, must take the opinion of the general public. The Applicant proposes to update the draft SIP to take into account the comments received to date, including the point raised by the MMO on review of consents and the points raised by TWT and WDC on consultation. The Applicant proposes to circulate the updated version for further comments before submitting it to the Examining Authority. The Applicant does not propose any further changes to the drafting of condition 13(2) of the relevant DMLs.

Agenda Item: Update on discussions between the Applicant and Eni UK Ltd [REP2-022], [REP4-031] and [REP5-020]. (The ExA notes the proposal that a document recording the latest position in negotiations could be prepared by 19 October 2016 [REP5-020 at para 11]. The ExA will welcome the presentation of an agreed documented position at the Hearing. However, if there are remaining matters that cannot be agreed by 19 October 2016, the ExA requests that the Applicant and Eni UK Ltd present a statement or statements of reservation, making clear those matters that remain in contention). The ExA will also be assisted by the availability of either a projected or hard copy plan or plans showing the location and extent of UK Licence area P1965 (indicating the extent of overlap with the proposed Order limits in the application), as previously provided in REP2-022, Annexure A)).		
DCOHQ13	Applicant's response	The Applicant has prepared a statement of reservation which will be submitted at Deadline 6. The Applicant's primary position is that no PPs are required, but if the ExA decide to recommend to the SoS that some form of PPs should be included in the draft Order, the Applicant will present their version. The Applicant agrees that the NPS and the DECC Guidance are the two key documents. The Applicant would also refer in the NPS to para 180 and 181. The emphasis on coexistence should be noted. The Applicant considers that the guidance points to coexistence solutions which implies, in the absence of other provisions, that both sides start from the same base and attempt to achieve a way of coexisting together. Inevitably any PPs in the form currently sought will involve one party having a prior hold over the other. One can clearly understand why that would be the case for identified apparatus, and indeed all the other PPs relate to identified or immediately prospective apparatus, but that is not the case here. In addition, a pragmatic approach is sought and discussions are to be taken as far as possible. The Applicant has certainly had useful conversations and a meeting with Eni since the last DCO Hearing to discuss what Eni's plans were and if they were more than prospective plans. The meeting concluded that at this stage it was not possible to pursue a commercial agreement in the short term. The nature of the Eni proposals was that the locations of any plant or apparatus that they might wish to install was too uncertain. As far as taking matters to the limit on possible mitigation, the conclusion was that a commercial agreement was not appropriate at this stage but may be appropriate in the future once Eni's plans were clearer. On the use of PPs as mitigation, the Applicant questions this as the PPs would unbalance the respective positions of the parties. The way the DECC guidance is framed envisages both parties working out alternatives, technological solutions and other options to see where the minimum area can be established in order to accommodate each other. A prior right of approval could act as a disincentive to pursue a commercial agreement. It is the Applicant's position that the NPS has been fully taken account of but that it is mutually agreed that a commercial agreement is not practicable at this stage due to the uncertain nature of Eni's plans. The Applicant considers that PPs can be drafted in a way which does require engaged mutual agreement, and which does not unbalance the parties; but that is not what Eni has proposed. The Applicant proposes that within a fixed period prior to the start of construction the Applicant should submit its plans to Eni and engage with Eni with regard to the Applicant's plans and Eni's current proposals, including discussions on the potential for overlap and coexistence. Those discussions can be undertaken with a view to entering into a coexistence agreement if necessary, but not an obligation to enter into one for obvious reasons. This would allow for the sort of factors the DECC guidance envisages. Therefore, it is the Applicant's position that PPs should allow for engagement and dialogue but not prior

		approval. The version of the PPs proposed by the Applicant is aimed at reducing the risk of the SoS effectively saying that an application will only be considered if the SoS can be convinced that the parties have gone through sufficient dialogue to establish that this is the last option. To the extent that arbitration is proposed, the need for this pre-supposes an element of prior approval and this would not be acceptable to the Applicant. The Applicant considers the position in relation to PPs for E.ON on the Hornsea 2 project to be quite different to the position which Eni have put forward. Firstly it did prove possible to agree PPs. Secondly it was possible to reach a coexistence agreement which suggests far more detail on the part of E.ON's proposals. Here, the parties have concluded that that simply is not possible due to the lack of definition of one side's, if not both sides', plans. Thirdly E.ON had defined their plans in considerable detail. There was an identified well (Newton). They submitted that proposed development would compromise E.ON activity at every stage. They identified 3 or 4 wells and stated fundamental conflict between programmes. E.ON maintained that it could not develop its interests at the same time. A PPs Plan was put forward that was to provide access to known prospects, with 20% overlap. E.ON said the maximum impact on Hornsea 2 was 15% of the overlap and 5% of the entire Hornsea 2 area. E.ON had identified plans, wells, prospects and an area where there was potential overlap but this was kept to the minimum. Any maximum net impact to the Hornsea 2 had already been established. It was therefore not surprising that Hornsea 2 accepted PPs in the interim as the extent of overlap was known. The Applicant considers that the two situations are not comparable and Hornsea 2 is not a precedent for PPs for conceptual development. In relation to timing, East Anglia THREE has a target date for offshore construction of 2021-22. However it must be appreciated that if consent is granted in summer 2017, the project will be progressed to the next phase of development and if a CfD is awarded the project will then be on a strict timeline leading up to commencement of construction. One of the first considerations is the CfD regime and the process to be undertaken in preparing to enter the next available auction. The Applicant anticipates this would be in 2018. So as soon as consent is confirmed the process of preparing a bid to the CfD auction would commence. In order to prepare an appropriate and competitive bid (based on lowest price) the Applicant must understand all project requirements and constraints, and Eni are only one of many constraints that the project needs to consider, and have costed solutions into an economic analysis. On the basis of a successful CfD bid in 2018, the process of tendering for contracts required to design and construct the project would commence. The Applicant therefore needs to understand very early in the process and well ahead of 2020, where turbines can be installed, along with cables and other infrastructure, without which the project could not be constructed. A successful CfD outcome would initiate strict timescales with which the project must comply. For example, a financial investment decision (FID) would be required 12 months post award of a CfD contract in 2019. In order to take FID all project constraints and risk must be fully understood and quantified. In addition, one year after CfD contract signing, there is a significant financial milestone against which it must be demonstrated that 10% of total pre commissioning costs have been spent or material contracts entered into, such as for turbines and foundations. At the point of entry to the auction the bidder needs to specify the first commissioning window. There is a one year

		period to commission the project turbines, and if there is a failure to commission at least 80% of capacity within that window then the period of support under the CfD begins to erode. Similarly, if the window is not hit, support erodes. However, a further two year longstop period then begins within which at least 85% of capacity must be commissioned or the contract will be lost. These are the timelines we need to bear in mind. The Applicant will be on a strict timeline once consent is granted in order to meet its CfD obligations. As drafted by Eni, the PPs allow Eni tro withhold approval to protect their apparatus, but apparatus is defined as infrastructure that is *or may be* installed or exploration which is *or may be* carried out. Scope exists therefore for the Applicant to come forward on its timeline to seek approval and for Eni to reject the plans on the basis that it is not yet known where the apparatus may be. The commercial position from the Applicant's point of view is that any provision giving a third party prior approval of the whole project is simply not acceptable.
Agenda Item: Plans and documents proposed to be certified.		
DCOHQ24	Applicant's response	The Applicant proposes to update the Plan of Plans to refer to the individual approval body, and to include any further updates arising from earlier discussions. The certified documents referred to in the draft Order will also be updated, along with any of the certified documents requiring updates. The Applicant anticipates that this will include the Outline Code of Construction Practice, the Outline Landscape and Ecological Management Strategy, the Outline Written Scheme of Investigation (Onshore and Offshore) and the Schedule of Mitigation. Matters relating to the CEMP will also be clarified.
Agenda Item: Any other matters arising.		
DCOHQ27	Applicant's response	The Applicant proposes to amend the next version of the draft Order to update the DML numbering. A table will be prepared to cross reference any new numbering required (which is only anticipated in Schedules 14 and 15), and any relevant plans will also be updated and submitted accordingly.