

**File Name: ISH 7 - 18 July 2022 (Part 2) - Transcript**

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FULL TRANSCRIPT (with timecode)

00:00:02:24 - 00:00:15:18

Welcome back. Time is now 1033 and the issue hitting seven is now restarted after 10 minutes. I'm now going to pass to Ms.. Darling to continue with item five of the agenda.

00:00:17:20 - 00:00:20:14

Thank you very much, Mr. Bradley. Oh, Mr. Phillips.

00:00:21:14 - 00:00:53:07

I Garrison. It's the applicant. Sorry to interrupt your flow. We were wondering if we could just make a couple of points on on procedure that may help going forward. And it's about where we are in the examination and time left to close out issues on on drafting. So we have deadline six coming up on the 27th of July. And at that point, the examining of the applicant is expected to submit an up to date version of the DCO the following Monday.

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Stop you there. That's what you're doing. Sorry, we've got this. We realise that. And I have a suggestion actually at the end of this hearing he was going to bring it up under any other business that actually there's very little point of you submitting a new DCO at deadline six because our internal publication Times are such that it's very unlikely we'll be able to incorporate anything into our recommended DCO or schedule of changes to the DCO that, as you're about to say, literally going to be published the following day.

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So our suggestion was, is that you hang fire with that and any new draft DCO

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will be submitted at deadline seven so that he can cooperate. Any changes that come out of today's issue, specific hearing and anything else that we would raise in our recommended DCO is a way forward.

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Good. Thank you very much. The second point was about

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getting answers from the MMO and natural England. We're aware that those parties don't always listen to the audio of these hearings and therefore the matters that we've recorded as actions as we've gone along in terms of detailed drafting points may not land. So apologies for suggesting more admin for the examining authority, but it may well be beneficial to the examination if rule 17 requests for those actions could be issued following this hearing so that the MMO and natural England know what precisely is expected of them and by when.

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Thank you.

00:02:33:03 - 00:03:17:11

Thank you for that. We will consider that as you're aware. And again, I'll just raise it now rather than towards the end of the meeting when we were going to talk about it and session to any other business.

As you are aware from the information that the examining authority have released to date, we were intending to issue a Rule 17 letter with regards to the compulsory acquisition hearing that was due to be held this afternoon that we have cancelled because having looked at where we are with regard to compulsory acquisition, all we would have been seeking was a variety of updates and clarifications which we can as easily do through a written process, rather than having to drag everyone to a hearing to get those those responses.

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And so we felt it's a more efficient use of time to do that, and we proposed to do that through a Rule 17. Initially, we had proposed to issue that Rule 17 at the same time as the agendas. However, we decided to roll that over towards the end of the issue specific hearing so that it could mop up any other points such as the one that you've just raised that would arise out of the hearings. That was something that could potentially be asked at the hearing because the parties weren't there or whatever. So there will be a Rule 17 at the beginning of next week, and it may be that we'll take on board the comment that you've made, but thank you for making it.

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Was there anything else you wanted to make before particular provisions?

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Your activist on both points. Thank you.

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Okay. The current version of the draft DCO represents five. A note contains 12 protected provisions, and I propose to seek an update on each of those that we have outstanding objections to. I'm assuming those that we haven't had objections to that the parties involved are happy with the wording. And so I want to do that. And then I want to examine why two organisations who should potentially have prepared protected provisions are not currently included in that list.

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So I'm going to start off literally by taking us through the Schedule nine. So I'm going to start with part three, which is National Grid as electricity and gas. Undertaker So dealing with National Grid as the electricity undertaker first national grid, electricity transmission, which is energy. It advised that deadline five at 590, but it still had an outstanding concern regarding the amount of land needed at creek back and that discussions were ongoing and that they preferred that these matters be resolved by agreement prior to the close.

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The examination, however, they still considered that a protective provision would be needed to be put in place to ensure that energy interests and rights, including rights of access, are unaffected by the power of compulsory acquisition, grant and extinguishment of rights and temporary powers being sought by the applicant. The applicant at deadline five, in the statement of reasons which is ratified by 39, indicated that discussions are ongoing between the legal representations with regards to protected provisions. The applicant has received a draft side agreement for entities protection, which is under review and the heads of Terms for voluntary land agreement regarding plot three for three.

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Both both parties were due to have a meeting on the 21st of June 20, 2022 with the expectation that the issues would be sorted before the end of the examination. Now obviously no get on here today, but would the Act can be able to provide us with an update as to what happened with that meeting where they currently are with regard to these negotiations?

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Claire Patrick for the applicant. A meeting actually took place with NJT on the 6th of July 2020. They have now instructed separate solicitors who are dealing with the property negotiations. Heads of terms are being discussed and draft agreements have been circulated. We're expecting a substantive response from National Grid solicitors on these property agreements by the end of the month.

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And I believe a follow up meeting has been scheduled for the 29th of July. So progress is being made on the property agreements in relation to the protective provisions. National Grid has indicated that they require some general amendments to part three to split it so that there is a separate part for National Grid electricity and then another part for National Grid Gas. So some changes will be made in the next version of the DCO to incorporate that request and discussions are ongoing in relation to the site agreement and there are a number of commercial matters that are still outstanding relating to and the extent of the indemnity insurance provisions, the need for security and dispute resolution.

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And we're still hopeful that we might reach an agreement. As we've previously stated, if agreement has not been reached by deadline seven, we will submit our preferred protective provisions into the draft ICO, together with our justification for why Section 127 of the Planning Act can be satisfied.

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They're just touching on National Grid's since the issue specific hearing it deadline three. We had a submission of a draft position statement with National Grid Gas, which is Rep three I 16 which says you're trying to finalize protective provisions and both parties are confident that these can be entered into shortly, according to the update of the statement of reasons that deadline five, which is Rep 539 discussions are ongoing with regards to protective provisions, but confident agreement can be reached by the end of the exam. So assume that and hope that splitting of protective provision is what that was discussion was about.

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Was it

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clear project the applicant. Yes. The splitting of the protective provisions in terms of the wording in the draft and DCA has it was were being referred to. But there are also some additional provisions that are being discussed in a in a separate commercial agreement. And if those can't be agreed, then there may need to be some consequential amendments to the drafting in the DCO to cover points that are no longer being dealt with in that separate side.

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And I think and the risk of sounding like a stuck record because neither national grid as either the electricity or the gas undertaker are here today. The issue that we have is that the examining authority currently does not have any alternative wording for protective provision that they would support. We only got the drafting that you have suggested. So if the issues aren't resolved, I suppose this is going to have to be an action point because not here. Do either these organizations intend to provide the preferred wording that they would wish the examining authority to use? And if so, when would they do that? Obviously you can't respond on that.

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I don't think.

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Clear. But, you know, I expect that they will submit their preferred drafting by deadline seven if we haven't reached agreement. Is that their standard practice?

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Okay. I think if I can then move on to part four, which is network rail infrastructure limited at Rep 5117 network read advise that the option agreement and form of deed of easement together the documents that grant the applicant rights to lay the cable on to plot 176 have been agreed. It's anticipated that the option agreement will be exchanged simultaneously with a private signed agreement that deals with the outstanding level crossing issues and that the side agreement was close to being agreed with a couple of minor points to be confirmed as acceptable by the applicant, and it's anticipated that this will be completed prior to close the examination.

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This was confirmed by an update in the statement of reasons that deadline five, which is at 539, which says that those documents are being prepared for signature. Can I just ask the applicant for an update on that?

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Clap. But the accent. Yes, that is correct. The ingredients are being circulated for signature and we anticipate that it will be signed and completed within the next couple of weeks.

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There will be some consequential changes to the protect provisions in part four of Schedule nine as a result of that agreement, as the agreement requires certain wording to be added so that change will go in the draft to be submitted for deadline seven. But those will be amendments that are approved by Network Rail and they will confirm that that is the case.

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If Network Rail have been here today, I'd want to know if the situation wasn't resolved, if they still wanted their suggested protective provisions as set out in Annex two, if they're written representation, which is up to 86, to be included, and given that that was submitted at deadline two, did it also need to be updated? So that could be an action point for Network Rail to take away and consider?

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So if I then can move on to part five, which is the Environment Agency Rep 599 from the Environmental Agency, which was submitted deadline five seemed to indicate that Watt and Beck was still not the issue surrounding that was still not resolved, but that they potentially would be before the tax and end of the examination. And this had been confirmed by the statement of reasons that but that the applicant submitted it deadline five, which is Rep 539. Again, can I just ask for an update from the applicant can the Environment Agency on here today as with regards what the situation is without protective provision.

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Claire Pacheco, the applicant. We haven't received any comments or suggested amendments from the Environment Agency in relation to the protect provisions that are included in part five of Schedule nine. However, discussions are ongoing between the applicant and the Environment Agency in relation to the heads of terms for the land agreement. And it is intended that some additional specific provisions will be included within that agreement relating specifically to the Wotton back crossing and the comments on the heads of terms currently with the Environment Agency.

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And I understand that they are discussing those internally and those hoping to be a meeting arranged either next week or the first week of August to discuss any outstanding points. The applicant remains hopeful that we will reach agreement on the documents before the end of the examination.

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Okay. And again, we currently don't have any suggested alternative wording for protective provision from the Environment Agency. I question that's going to have to be an action point, but is if the outstanding issues are not resolved before the end of the examination, does the Environment Agency intend to provide the preferred wording that they would wish the examining authority to use? And again, if so, when would they provide this? So that can be an action point. So if I could just move on to part seven then. Dogger Bank, Offshore Wind Farms, Project one and two Project Project Co Ltd at deadline five.

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The Examining Authority received representation on behalf of Dogger Bank, Offshore Wind Farm Project one and Project two Project Co Ltd, which was RET five O 93, which I'm just for my sake, I'm just going to refer to as Dogger Bank from now on in the representation raises concerns in relation to both schedule nine, which is protected provisions which are discussing now of the draft developed consent order and also schedule 13, which is modifications to and amendments to the Dogger Bank Offshore Wind Farm Order 2015.

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As the two matters are interlinked, I was for efficiency proposed to deal with both matters together. Now is there any objection to that?

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Given it's only the applicant.

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He's here

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that I can. Yes, that's fine.

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So it's not covered by the occurrence. Comments on the DCA submissions received at deadline five or the applicants, which is 5023, or the applicant's comments on other submissions received at deadline five. Can I just confirm that you have not commented yet on the Dogger Bank submission that we received? I couldn't seem to see a response.

00:15:02:18 - 00:15:15:14

To the applicant and we haven't provided specific comments on the drafting. The drafting is under discussion between the parties and we're hoping to reach an agreed set of wording prior to the end of the examination.

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So if Dogger Bank had been here, then I would have asked them just to take the opportunity to expand upon what those what their concerns are, because obviously they're asking for a number of amendments and some new paragraphs to be inserted both into Schedule 13 and Schedule nine with regards to how it would all work. Unfortunately, they're obviously not here, so I can't ask them to provide the opportunity to provide that expanded commentary on as to why they consider these new paragraphs are necessary.

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They obviously have provided a preferred wording for the protective provisions, which is 595.

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So does the applicant have any comments on those per changing of the Dogger Bank? Are you proposing to do that in writing?

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Clapper, the applicant and the majority of the changes are in principle acceptable, provided that reciprocal wording is added to schedule 13 so that the applicant has the same level of protection. Should works be carried out by Dogger Bank in proximity to their operator. So at the moment the discussions are just relating to whether those reciprocal provisions should sit within the protected provisions in the DAF, DCO or within a separate commercial agreement.

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Okay. But I note that the draft of the consent order that was submitted at deadline five was not updated to include those changes that had been suggested. So going forward may be included once you've considered them further in any iterations of the DCO.

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Clapper check the applicant. Yes, that's correct. The applicant's preferred drafting will be included within the version of the DCO to be submitted at deadline seven. In addition to a similar justification under Section 127 of the Planning Act as Dogger Bank are an Electricity Act licence holder. We hope that those will be an agreed that are protected provisions. But if they are not, then we will provide our preferred wording.

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Okay. Then if we can move onto part eight, which is the carbon storage licensee and I am assuming Mr. Tait will want to come in on this one. So I just can confirm that the latest version of the protected provisions and the alternative protected provisions being proposed by BP on behalf of any partnership. So the latest drafting provided by the applicant is a protected provision included in the version of the draft DCO submitted at deadline five. Can I just have that confirmed?

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Demonstrate to the applicant? That's correct.

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And can I just confirm with Mr. Tate that the latest suggested alternative wording that is proposed by BP on behalf of the NPP partnership was that which was submitted at deadline four as appendix one to that deadline for response, which is Rep for over nine. This version is dated 10th of May 2022.

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Mr.. Take your on mute.

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Hey, Mr. Tate.

00:18:39:16 - 00:18:40:19

Can you hear me now? I'm sorry.

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I can hear you now. Yeah, that's fine.

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Automatic mute. And I say that.

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Okay.

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The the protect provisions we propose are set out. First of all, it in relation to the generality rep 459 Appendix one.

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So that's the one I've just mentioned. So you're confirming that is the latest version, is it?

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Well, in addition to that, we make clear five the annex to 6.3 that rather than abrogating the interface agreement, etc., it's a narrower provision which is now proposed which so you'll.

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Prepare a.

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Liability. And then thirdly, there are going to be

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there is going to be provided drafting on a compensation provision by deadline six. So it's a hybrid at the moment. You have the wording for most of it, but you don't have the wording for the compensation provision yet. Yes.

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So that was the second part of my question was just to confirm that BP intended to submit revised wording at deadline six at the. You've confirmed that. So I'm just wanting to start by seeking some clarifications on it without prejudice basis to protect provisions as currently drafted. Because you're as you're aware, regardless of my recommendation, the examining authority need to include recommended DCO within the report that we will submit to the Secretary of State. So I'm going to just deal firstly with the applicant's suggested protective provisions, which are those that are included within the current draft of the DCO that was submitted at deadline five A So we touched on this at the last issue specific hearing.

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Paragraph two sets out a number of scenarios which result in the protected provision no longer having effect and to be stated that one such scenario would be where the consents required to develop the project are not obtained by the date specified in paragraph five. Paragraph five, as currently drafted, refers to the timescales for the commencement of the preparation of a coexistence and proximity agreement. And at the last issue specific hearing, you confirmed at 345 that it was the first part of this paragraph.

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Within next months of coming into force of this order, that was the applicable timescale for paragraph two. B I also note that following that specific hearing that the time period was increased from 3 to 4 months. So this is a drafting question for Mr. Phillips. Would it not be clearer and also allow for some flexibility if there was potential delay to the determination of the consents for an MP to amend the wording of TB to specifically refer to the timescale, i.e.

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within four months of coming into force of this order or such other timescale as may be agreed between the undertaker and the licensee, the consents required to develop the project are not obtained. Mr. Phillips, what are your thoughts on that?

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Gareth It's the applicant, yes, that would be acceptable.

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If I can then come to BP to respond to, first of all, their thoughts on the suggested alternative drafting. And again, I recognize that they have a very different perspective on what these provisions should be. But we're just looking at the drafting at the moment. So if I was to adopt the drafting, which he preferred, the drafting that we just discussed, because it's clearer or do you have any comments on the drafting of that a paragraph now?

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Yes, that is one of our concerns about the agreement, not the main concern. And the clearly the absolute four months is wholly unrealistic and inappropriate and doesn't take account of unforeseen delays or judicial reviews and the like. So it should be extended. If it's referred to as agreed, then that leaves open a large degree of uncertainty. So we need to think about the wording if that was to be changed.

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But it certainly needs to reflect

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that the unforeseen delays and judicial reviews and, and the like in relation to obtaining the consents.

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Okay. Thank you. But in terms of just from a purely drafting perspective, do you think it would make it clearer that rather than referring to paragraph five, that wording actually comes into to be.

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That that may well be the case? We can I can understand the thinking behind that.

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So setting aside the four month period, but it's just bringing that wording in. And then obviously if you could come back, um, with regards to the comments, I think I've heard that before with regard to the four month period because obviously the four month period would be the 22nd of June 23 worked out on the basis that the report would be submitted on the 22nd of November. And three months from then, the decision will be the 22nd of February, albeit the Secretary State can determine things faster.

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So, okay. In terms of paragraph six, this is a question for BP. Excuse me, I'm going to have to cough.

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And I just ask BP if, paragraph six, the 28 days to provide a plan of works is, in their opinion, sufficient. And if not, why not? And what would be?

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Again. I think I would need to

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take instructions on that. There are quite a number of instances where there are very tight windows. I think this is one of them. Okay. We will come back to with a considered response on on that. But in principle,



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this is one example of many of very tight timescales which are not realistic.

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Well, I'm just going to come on to the next moment and see you. Just give me. I know. I'm assuming the responses you'll come back to me, but in terms of paragraph seven.

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Is the three months sufficient given what is being asked for? So for example, if a DCI was made on the 22nd of February 2023, then this would be required to be completed by the 20th of October 2023. 22nd October 2023 is incapable and does allow for any slippage in the programme, was my question.

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There's a there's a converse side of this that

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converse the longer one extends some of these dates, the further beyond the financial investment decision which BP needs to take in June 2023, underpinning the NCC plan and is not met. And so we have a wider concern with the co-existence and proximity agreement because it's intending to be a device to defer a decision on co-location in circumstances when that needs to be made now and in advance of June 23.

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So I think that might be an instance where the

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that that co-existence and proximity agreement as a device doesn't work because of its timings being too long. Conversely, plans with the licence licensees works relates to the totality of the works, including in the notification area, other areas outside the exclusion. So that's a slightly different, slightly different principle at work.

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As Mr. Phillips wants to come back on that point.

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Guarantees to the Applicant.

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The only point to make is that the timescales in these protective provisions have been considered earlier in the examination and the time. The date, for example, in paragraph five, moving from 3 to 4 months, was based on the programme that Mr. Cech helpfully explained, I think at the last hearing related to all of this. So in terms of them being tight, I think BP have made comments along those lines before and adjustments have have been made. But I think in terms of sufficiency, we've seen agreements of this nature concluded in the number of months that we've given here.

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And so that's why they're offered. Thank you.

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But your experience is is that those are actually reasonable and achievable because of previous experience. Is that correct?

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That's correct, yeah.

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Okay. Mr. Tate, is there anything you want to come back on that with?

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Well, in particular in relation to paragraph seven, the Coexistence and Proximity Agreement. We think that suffers from a fundamental flaw in seeking to defer the issue of co-location. There are wider issues associated with that that underpin that concern. But you may wish to come back to that in due course.

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Thank you. And then again, I'm assuming it's going to be a similar response with regard to paragraph eight. My question was, is 28 days sufficient to produce the additional information? And how does this then affect the overall time scale? But I think I've had an indication

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with regard to that. But is there anything anyone wants to come out with regards to paragraph eight?

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No.

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I meant that in a negative way. Thank you.

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Okay. So. That clarifies the applicant's suggested protective provisions. In the questions I had with regards to actual drafting and the reasonableness of the drafting and the chief ability of the drafting. Is there any of these issues with regards to drafting? And I suggest I underscore it's drafting and not what it's trying to achieve that BP wish to raise at this point in time. Because obviously, as I've. Caveated this whole conversation with is that we obviously need to include a protective provision. I've got two protected provisions in front of me and I need to consider which one I want to attach to any recommended DCO that I would need to submit to the Secretary of State.

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So it's just what is the if I put this drafting on, is the drafting okay? Or is there any changes that they would want to make regardless of the fundamental issues behind that said, Mr. Tate, is there anything you actually want to add with regards to drafting?

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I think so, yes. Thank you. The first is that the provisions are now expressed to be conditional on specific specified field investigations and modelling, without which the provisions will fall away. And one can see that from paragraph to see the licensee has not undertaken and completed the evaluation and shared that with the undertaker.

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The obligations shall no longer have effect

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and those steps set out in paragraph three under the new DFI definition of evaluation, which is quite specific from A to E, but essentially involve modelling and field trials. And you you will have read in our five a25 why those steps do not address the fundamental issue for co-location, but they underpin the drafting at present.

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And you will have read that it will be years of of work and funding that will be required before any investors would be able to have confidence in what is underpins the evaluation in Mr. Sewell's evidence which is that there is open plus p cable to monitor the endurance reservoir

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whether where they are obstructed by wind turbines so that in so far as that is embodied in the drafting. We are clear that that does not assist in making a conclusion. That is at the heart of the co-location.

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But but on that it can park the technical side of things which have obviously got quite a lot of detailed information as to why, you know, you feel that it can only be monitored in one way and B, you feel that it can be monitored in another way. And I understand those two arguments and I've got quite a lot of technical information on that. And more information is due at deadline six from yourselves with regards to that. But what I could what I would then ask you to do, because it goes back to that fundamental issue that at the end of the day, I need to put a protective provision into a recommended DCO that will support our report.

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And so therefore, if you have problems with the drafting, what I would suggest you do is on a without prejudice basis, should I decide that, you know, the protect provision as drafted by the applicant is the one that we think we want to support, that it is achievable in whatever way that it can be, for my perspective. So if I if you could then provide me with some alternative wording for that part of that drafting, that would be helpful.

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Do that.

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And that is very clearly can I make that very clear? It is on a without prejudice basis, because I understand that your argument is, is that this protective provision doesn't actually work for you. But what we have to look at is just as with a planning permission, you know, if we attach a condition, it may be not that what the objector wants, but it maybe achieves some mitigation. So if you can look at it from that perspective, that would be helpful.

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We will certainly do that. And but I think it will mean that given that that work is of no utility, that it will. Involve removing that part and looking at the remainder because that.

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Okay. But obviously, the more the more information I have, the more informed a response I can make. So just before I come on to BP's currently draft is suggested protective provision. Is there anything that Mr. Phillips wants to make on the points that I've just been raised? Because I just under again, just just going I'm not proposing to go to the technical arguments as to why something is or isn't achievable depending on the different parties points of view, but is just from a drafting perspective.

00:33:40:05 - 00:33:49:28

Madam, just before Mr. Phillips comes in, would you like me to deal with any other points now in relation to what the agreement is problematic or would like to. Mr. Phillips On that very discrete.

00:33:50:22 - 00:33:59:24

Mr. Phillips What would you prefer to would you prefer to skip everything at once or to deal with this one first and then listen to what Mr. Tate has to say on any of the drafting points?

00:34:00:10 - 00:34:04:24

Gareth suits the applicant entirely in your hands, Ms.. Dowling, please proceed. But if you.

00:34:05:19 - 00:34:12:01

If you've got a better retention in memory than mine, then why don't we take it altogether? I mean, personally, I need to take point by point, but we.

00:34:12:05 - 00:34:12:20

All

00:34:14:07 - 00:34:16:04

operate under that based.

00:34:16:14 - 00:34:16:29

Okay.

00:34:17:12 - 00:34:18:10

Now changing the case.

00:34:19:22 - 00:34:25:27

So in terms of drafting Mr. Tate with a protected provision as currently drafted, what were the other areas of concerns from this perspective?

00:34:26:16 - 00:35:07:22

The other points relating to that work is that that work can't be completed even if there was some utility in it, which there isn't in advance of the FIA decision in 2023. So the timing of it doesn't work either. That's the second point. The third point that is that even if the decision is deferred, which is embedded in this document, it's unclear on what basis the secretary of state, because there's common ground the secretary of state should be deciding on the exclusionary, not interface agreement.

00:35:07:29 - 00:35:39:00

It's unclear on what basis the secretary of state would reach a decision, and we've made that point at five, eight, 25, seven, seven and seven eight. And the final point, in addition to the one about the four months and the timings is that it doesn't deal at all with the problems associated with risk of any liability leading to compensation, undermining the exit plan. So those are the points, essentially the focus.

00:35:39:29 - 00:36:08:01

Of if we if we can park issue compensation, because I'm proposing to come onto that. And I know that there is a fundamental concern from BP with regards to liability for compensation, which is why you are seeking to to supply the interface agreement in your version of the protected provisions, but saying, I decide that we're running with this one. It was just looking at it from a drafting perspective. So if I can then come back to Mr. Phillips to allow him to respond.

00:36:08:26 - 00:36:30:18

So if I can just complete on that. So from the fundamental point in relation to the drafting is that it is predicated on the basis, as explained by the applicant in reply page 21, to that it is seeking to realise both projects in the overlap set and that is not realistic. And so that lies at the heart of it.

00:36:31:16 - 00:36:32:12

Yes. Okay.

00:36:35:00 - 00:36:56:12

We'll come on to the actual practicalities of it, but not what I was actually looking at. It was from a drafting perspective. But we've we've looked at that. If I can then come on to allow Mr. Phillips a response and then we'll come on to the protective provision as drafted by PPE, looking at it first from a drafting context. So, Mr. Phillips, do you want to respond to any of the points that Mr. Tate has raised?

00:36:57:12 - 00:37:04:08

Gareth Can Thank you. It's just on the definition of of evaluation and to assist the understanding here

00:37:06:06 - 00:37:45:02

these steps ABCD and A are all those that Mr. Sewell, the expert explained would need to be undertaken in order to assess, you know, whether or not the insurance aquifer could be used and taken forward. So and there also, when you look at insurance partnerships, the five submissions, you'll see that the answer to some of these things is that actually they're already underway. And so we weren't imagining that these steps would be controversial in terms of how they assist the drafting of this part.

00:37:45:04 - 00:38:04:07

They might be controversial from the perspective of other points, whether or not these protection provisions achieve what BP want them to. But these are the steps that we understand from an expert need to be undertaken in order to then be able to move forward with the steps in these protected provisions. So that's it, really. Thank you very much.

00:38:05:13 - 00:38:07:21

Thank you. Mr. Tate, you want to briefly respond on that?

00:38:12:27 - 00:38:19:17

Bearing in mind that I obviously have your reputation with comments links to Sewell's report. So I do know how you feel about that.

00:38:20:01 - 00:38:42:24

Yes. So you would have read that. I won't repeat why we think that is of no utility. But in addition, Mr. Su's report does not address the fundamental issues of rig access relief well, access, helicopter access, you know, REP 347. So there's other reasons why those steps really do not get us anywhere. However willing well may be.

00:38:44:12 - 00:38:47:02

Mr. Phillips, you want to just come back on that very specific point?

00:38:47:14 - 00:38:56:07

Yes, those those points, the rig access and things, those would all be dealt with under the co-existence and proximity agreement. So if one looks at paragraph

00:38:57:22 - 00:38:58:07

eight

00:38:59:24 - 00:39:33:21

and the steps that are required to be taken out, you'll see in both the licences in in, in a there are a number of things that need to be set out, including a Roman numeral for any area of sea or airspace required for the licences works. So again, the rationale here is we understand BP's need for those

those activities, offshore activities. And the idea is that those would be built into the plan of the licences works and then captured in the the, the proximity and coexistence agreement.

00:39:33:23 - 00:39:36:29

So they are there. They are provided for. Thank you.

00:39:37:26 - 00:39:57:03

Thank you. Okay. So I'm going to turn to the drafting. And again, I emphasize the drafting of the provision as proposed by BP. And if we can just currently look at paragraphs four of that protected provision and as currently drafted,

00:39:59:04 - 00:40:07:15

there is no time frame for response of comments from the licensee. My question is, should that be and if so, how long should that be?

00:40:15:09 - 00:40:26:25

So at the moment, the licensee has to submit 56 days prior to information about the work that they're proposing to do, but it doesn't give a timeframe for the written response of that.

00:40:28:04 - 00:40:35:05

No. Well, we we will take. I can see that. We'll take that away and address that by a deadline.

00:40:36:14 - 00:40:38:20

Mr. Phillips, there's nothing you want to comment on that.

00:40:39:25 - 00:40:41:01

Yes, there suits the applicant.

00:40:42:18 - 00:41:02:03

If you look at the similar provisions in our in our protective provisions, we've we've expected the notified party to respond within 28 days. So it was good for the goose being good for the gander in these circumstances, in the provisions, then it would be a 28 day response time.

00:41:03:10 - 00:41:08:21

Okay. Mr. Tate, if you could just take that away and obviously comment on that when you come back with your suggested alternative wording.

00:41:09:07 - 00:41:09:23

Of course, we're.

00:41:14:06 - 00:41:31:10

Paragraph 11, the long stop date of protect provision fall away is five years from the date that the order was made. Should the Secretary of State make it, which would be approximately 2027. But just ask the Mr. Tate what the reasoning behind that time frame was.

00:41:33:01 - 00:41:35:14

Well, that that, again, is to address

00:41:37:03 - 00:42:05:15

ensure there's sufficient flexibility if there are any unforeseen delays in in relation to consents. We are looking we indicated at RET five, we're looking to see whether there is scope to adjust that and we will come back to that next week if there is such scope. But that's the principle underlying the need for a time scale to allow for those uncertainties.

00:42:06:27 - 00:42:09:26

Mr. Phillips, do you have any comment on that five year time scale?

00:42:10:14 - 00:42:42:18

Gareth Phillips of the applicant yes. I mean this is where there's there are a number of inconsistencies in the BP submissions and this is one of those in the on the one hand, when we're talking about the applicants protective provisions, everything's kicked far too long down the road. Decisions need to be taken very quickly, etcetera, etcetera. And yet here in BP protective provisions, they're suggesting a long stop date that some five years down the line. So either things need to be undertaken promptly or not.

00:42:42:23 - 00:43:15:17

And here with five years, that's allowing quite some time. So even though with BP, if we take them on, their submissions would be taking a financial investment decision, an investment decision some time during the course of next year. This would suggest that they would do that without yet having the consent to that project. And that would be quite an unusual Friday decision to take. So if on the basis of this, actually the length of date is five years and there's there's the idea that it could take five years to get consent for for the endurance project.

00:43:15:28 - 00:43:38:09

Well, that kind of puts some doubt over the timescales given for 2023 in terms of making final investment decisions. So the timescale, you know, the long stop date, the idea of that and the point by which they fall away in principle is good in terms of the number of years it counts some doubt over the program that leading up to that or the substance behind the five years.

00:43:39:09 - 00:44:16:08

Well, can I just ask a question? I'll come back to the consents, because I'm fairly sure that the last issue specific hearing, I was advised by Mr. KAC that the consents for a at the Endurance Aquifer Project would be in place by June 2023, which is when they're making their financial decision. But I suppose the reason that I was questioning this and it was a drafting issue with regards to the long stop date, is how would that work with your build program cost effectively? Looking at the way that this protective provision is drafted, then it would enable you to build.

00:44:17:10 - 00:44:32:07

In that overlap zone. But would you have finished your bill program and be out the out of the way by then? So how does that work practically? If that if if, for example, a protective provision falls away and suddenly you're allowed to build in that overlap zone?

00:44:33:24 - 00:44:59:25

Garrett The applicant, I don't think it does work practically, because under these protective provisions we would be prohibited from from doing anything in the overlap zone. And therefore, if they if these don't fall away until five years later, then we would have had to have made a decision, our own final investment decision on a project that excludes the overlap zone so they don't assist us at all. Five years from now, it'll be an academic point.

00:45:00:20 - 00:45:32:13

Well, just as I suggested to Mr. Tait, and before I go back to him on this issue, maybe what you want to look at is, as I mentioned now on numerous occasions, obviously I need to look at I need to put some protective provisions into a recommended DCO, which will go to the ACA to the Secretary of State, regardless of our recommendation as to whether the order should be made or not. But if you can look at that from a drafting perspective, what would be an appropriate time for a long stop date from a from a stats perspective? Mr.

00:45:32:15 - 00:45:36:11

TAIT, is there anything you want to come back on, on what you've heard Mr. Phillips just say?

00:45:37:22 - 00:45:45:20

No, no. We we have read what they have said about their programming ambitions, and we are looking at that date in the light of that.

00:45:46:21 - 00:46:09:29

Okay. Thank you. So can I just confirm if I want to move on to paragraph 12, the non stop date. So and I just want to clarify my understanding of this. So if that protects a provision was to fall away, then paragraph 12 states that the application of the interface agreement would remain. So I just ask BP why they consider that necessary.

00:46:12:02 - 00:46:47:01

We have adjust. We are proposing and we have indicated at five AA in Annex two, that paragraph six is is not going to be pursued in the form that it is pursued. So the intercourse agreement is no longer to be just supplied. So it's a much narrower provision now as set out at 63, which doesn't affect the Crown States rights at all. It is simply relating to the intra party liability between ORSTED and BP as as representative, so that

00:46:48:18 - 00:47:08:20

we are going to reconstruct that those provisions so that they will be on a much narrower basis. And we will be looking at the way in which the long stop date is is drafted and its interrelationship with the new paragraph six accordingly.

00:47:09:26 - 00:47:37:17

Okay. Just to get my head around this. And I may have got this completely wrong, and this is why I'm seeking clarification on it. But if you if protective provision falls away and the application of the interface agreement remains, then the applicant would be allowed to build in the exclusion area. But BP wouldn't be compensated for that. Is that correct? It almost seems as though you're shooting yourself in the foot.

00:47:37:19 - 00:47:41:14

Well, we don't get compensated, unfortunately, under the interface agreement.

00:47:43:21 - 00:47:56:28

It's not clear what what the compensation provisions are that benefit BP. It's very much based on a first come, first served basis. So that's what's that's what underpins our concern.

00:47:58:15 - 00:47:59:07

So the

00:48:01:17 - 00:48:28:09

structure that we are proposing is to provide for the exclusion area to be identified now and for that to be a long stop, which we're going to look at the precise date of for the interface, for the application of the liability to be tied to that long stop so that after the long stop has expired, if it isn't

00:48:31:06 - 00:48:44:20

acted upon, then compensation to orsted in so far as payable, which would then kick in. So we're going to align those two steps in in deadline six.

00:48:45:27 - 00:48:47:05



Mr. Phillips, do you want to comment?

00:48:48:00 - 00:49:18:18

Yes. It's not a new point. It's just helpful with the with the long stop date when you remember you were asking me about paragraph to be in the in the applicant's provision and the date to be put in there. And we talked about well that effectively the long stop date under the applicant's provisions is four months from the date of the order or otherwise agreed, as you suggested. So it would be those that's what we would be expecting under the long stop date in the BP provisions.

00:49:19:17 - 00:49:20:18

Okay. Thank you.

00:49:22:12 - 00:49:28:10

I can just help just to indicate the thinking in the original paragraph 12

00:49:29:26 - 00:49:38:21

to ensure that once the long stop has passed, then the liability doesn't

00:49:40:11 - 00:50:00:10

and has been acted upon, i.e. that the exclusion of the exclusion area falls away, that the compensation provisions don't come back into life again, and to do with the period prior to the long stop date. So it's just a tidying essentially.

00:50:02:04 - 00:50:33:27

Thank you. I think I'm clear on that matter. Now, finally, just with regards to drafting, if the examining authority consider that they wish to proceed with a protective provision as drafted by p p schedule, 15 of the DCO certified documents can refer to the Endurance Protective Provisions Plan. But I note that BP's protective provision refers to it as the protective provisions plan. Could you confirm if these are the same firstly or if they are different?

00:50:39:15 - 00:50:40:00

They are.

00:50:41:02 - 00:50:41:29

So good.

00:50:42:21 - 00:50:44:15

Thank. Thank you, Gareth Garrison. It's the Applicant.

00:50:46:19 - 00:51:06:11

they refer. They're not the same plan. We haven't, we haven't been provided with the protected provisions plan from BP. But nonetheless it would I should think it would show very similar things. We just need to be we just need to differentiate in the certified documents less which protective provisions plan, which we're talking about because.

00:51:06:17 - 00:51:42:08

Yes, I mean, and as I said it, as I predicated that sentence on is if we chose to go with the BP provision, then obviously we would need to amend Schedule 515 rather. And what I was just want to refer to the correct plan and what I was just trying to ascertain was whether they were one in the same plans they just referred to differently by the different parties or whether they were two separate plans. I mean, there was a plan with attached originally to BP's protected provision, but I notice that the latest version of their protect provision, which was submitted a deadline for which is set forth with 59, no longer included that plan.

00:51:42:17 - 00:52:05:27

And so therefore I was going to ask that they submitted a final draft. When they submit a final draft of that protected provision, they include the relevant plan with that so that we can make sure, you know, again, we're looking at it from a pre drafting point of view. This is without without prejudice conversation. But if we chose to go with a BP protected provision, then everything aligned correctly in the DCO. Mr. Tate would be happy to take that away and just check for me.

00:52:06:10 - 00:52:18:05

Yes, we will do that. That's the plan you reverted to. Interpreting isn't isn't the right plan for this purpose and providing a compendium essentially the deadline six, which would influence.

00:52:19:04 - 00:52:43:08

That would be very helpful. So that clarifies the questions I had with of course drafting with regards to BP suggested protective provision. I'm just going to offer Mr. Phillips the opportunity to raise anything that the applicant wants with regards to drafting, just as I did to Mr. Tate with regards to the protective provisions. So so anything Mr. Phillips wants to write raised with regards to drafting?

00:52:44:06 - 00:52:44:25

No, thank you.

00:52:45:28 - 00:53:21:18

Okay. Thank you, sir. That's a review of the protect provisions as currently worded. So setting aside the issue of whether the two projects can coexist in the overlap zone, for which I have very detailed technical information from both the applicant and BP and the indication of further submissions from BP on this matter. DEADLINE six For the purposes of today's hearing, I'd like to focus on the interface agreement, AMP's request to supply it. However, I don't want anyone to misinterpret this questioning as the essay, having a preference for the protector provision as drafted by the applicant.

00:53:21:27 - 00:54:07:25

It is simply that under that protective provision, the idea would remain in place. And so therefore, I want to take this opportunity to make it clear that examining authority has not yet reached any conclusions as to what it will be recommending to the Secretary of State and regards the protective provisions in relation to the carbon storage licensee. So before I move on to why BP are seeking to disallow it, I just want to clarify that I have understood a paragraph within the interface agreements correctly. So if I could just ask the parties to refer to the interface agreement and it's paragraph 40.9 of the interface agreement which says where a notice of proposed infrastructure allocations or programme of activities has been issued pursuant to this agreement.

00:54:08:08 - 00:54:46:23

And either 2.9.1 no material adverse effect is identified as arising pursuant to this agreement or paragraph 2.9.2 commercial agreement or expert determination in accordance with clause six is secured in relation to the same, then no material adverse effect shall thereafter arise under this agreement from such notified proposed infrastructure, locations or programme of activities. And what I'm just wanting to clarify in my own mind is it would appear to me, therefore currently through the wording of the interface agreement and the wording included in that paragraph, there is the ability to vary the terms this interface agreement via commercial agreement.

00:54:46:25 - 00:54:53:14

But I just wanted to check that my interpretation of that was correct. I don't know if Mr. Tate or Mr. Phillips wants to come back first on that.

00:54:54:24 - 00:55:07:12

Gareth Phillips The Applicant Yes. Your understanding is correct. The either the agreement itself can be varied or a subsequent separate additional commercial agreement can be put in place pursuant to that that clause.

00:55:08:14 - 00:55:10:16

Mr. Tate, is that your interpretation of that clause?

00:55:10:18 - 00:55:20:09

To confirm that? I confirm that confirmed that the parties are in discussions, but they have been for some time and that hasn't reached that.

00:55:20:15 - 00:55:41:20

Okay. So on that basis, can I just confirm confirm for example, and this is just a hypothesis. If the examining authority declined by these requests to supply the interface agreement, then there would still be the ability for parties to vary it under the actual terms of the interface agreement. Is that correct?

00:55:42:16 - 00:55:44:13

Garrett To the applicant, yes, that's correct.

00:55:45:28 - 00:55:55:26

Mr. Tate, do you want to say anything on that? I understand the argument that you made, that you've been having discussions for quite a long time and having reached a thing. But just technically, could it be buried?

00:55:56:03 - 00:56:00:08

It could. And we're not seeking to supply the interface agreement, as it were.

00:56:00:13 - 00:56:01:13

Yes, I'm stunned that.

00:56:01:26 - 00:56:18:28

That that we are we are essentially adding one provision in the circumstances where the remainder of the interface agreement would remain in place, including scope to third.

00:56:19:25 - 00:56:38:20

Okay. So on that basis, I understand the argument as put forth by BP where co-development in the overlap would not be possible then. BP's concern is that the interface agreement would introduce risk because the significant and currently unquantifiable amount of compensation would be liable.

00:56:40:05 - 00:57:16:23

BP's financing model means that the Northern Insurance Partnership, which consists of BP, equinor's, national Grid, Shell and total, have limited ability to cover exceptional additional costs. And consequently, the potential to have to pay compensation threatens the investor ability and financing finance ability of the NEP project. That was BP's response to each key to viability, which is with question in F .2.1, which was submitted at deadline five, which is read 591 in its paragraphs 3.6 and 3.18.

00:57:17:10 - 00:57:59:28

So my first question is, and pardon my ignorance is why is the amount of compensation unquantifiable? The interface agreement defines the compensation payable to the wind entity in paragraph 2.6 as the reduction in market value for the loss of power and or the difference in the number of turbines. Given wind power is an established industry with a robust business model, and

given that the design of the proposed development is fairly advanced stage, why would it not be possible to assess the amount of compensation that would be due to instead, if the excess were to agree that no development should occur in the overlap zone? So this is a question firstly for Mr.

00:58:00:00 - 00:58:00:15  
Wright.

00:58:02:03 - 00:58:16:16  
At the heart of this is a timing issue that under the interface agreement there is no requirement to identify the compensation at

00:58:18:06 - 00:58:55:01  
a particular time and in particular at a time which would proceed the idea in the summer of 2023, and which is why that the much narrower provision which you haven't seen, which we are proposing and in relation to compensation, is to bring that forward so that the compensation can be quantified, if there is any at any point in advance or coterminous with the idea that that's the heart of the position.

00:58:56:04 - 00:59:03:01  
Okay. So I understand that there's potentially no timing. And this is before I go back to Mr. Phillips, I'm sure has some has something to say on this. But

00:59:05:04 - 00:59:40:23  
forgive me, BP is a very experienced operator in the field of wind. You have wind farms yourself. Surely it would be you would be able to calculate given, you know, it's quite clear in the interface agreement what that it's a reduction, the market value of the loss of power and the difference number of in the number of turbines and earth. That project is fairly well advanced. And you know what they want to do in that area to make those calculations so that you would at least have an indicative amount as to what the compensation would be should the interface agreement be invoked.

00:59:43:06 - 00:59:44:00  
Mr. Tate.

00:59:47:20 - 00:59:52:10  
Can I. Can I just come back on? Can I just take instructions on that for a moment, just so I can?

00:59:52:12 - 00:59:55:06  
Yes, sure. Would you like Mr. Phillips to comment while you're doing this?

00:59:56:28 - 01:00:01:12  
Okay. Just for. Just for efficiency. Mr. Phillips, is there anything you want to say on that.

01:00:02:18 - 01:00:12:10  
Kind of to the American? Yes. You missed out and you haven't misunderstood anything. The the prod from the wind farm perspective, the compensation can be calculated now.

01:00:13:28 - 01:00:30:03  
The mechanism for doing so might be disagreed upon between the parties. But certainly it is, as you've already stated. Development of offshore wind is pretty well known and there is a way of calculating what the loss of that area to the project would be.

01:00:32:21 - 01:00:43:22

And also isn't there is there would also be, as I understand it, a loss from the if you relocate to the turbines and there was a loss in power, there would also be that calculation to make as well. Is that correct?

01:00:43:25 - 01:00:44:16

That's correct.

01:00:45:25 - 01:00:46:10

Okay.

01:00:48:21 - 01:01:29:21

So if I can come back on that, there are two. There are two aspects of of uncertainty. One is as to what the compensation might be. That depends on a number of factors, which include the array and the size of turbines and whether there's any loss. So there's that issue. And then there is secondly, the issue as to that in relation to the the viability of the ICSI project, which is highly contingent on on knowing the former.

01:01:30:04 - 01:01:30:24

So.

01:01:31:05 - 01:01:34:09

Okay. If you can just. Okay.

01:01:35:01 - 01:01:54:06

That's why the compensation provision that we are intending to propose will have regard both to the loss to Orsted, but also balance the public interest in the EQC plan coming forward. And that's a matter the Secretary of State is very well equipped to deal with.

01:01:57:03 - 01:02:31:27

So I'm going to touch on that. A bit difficult to talk about the proposed compensation that you're proposing to bring forward at deadline six, because obviously we don't have that information. But it would if you're proposing a sum of compensation, then surely you must have some information on which to base this. And to go back to my original question, I'm therefore unsure as to and I'm sure that a said when they're considering your offer of compensation, we'll have a knowledge of what the interface agreement would deliver in terms of compensation to consider it again.

01:02:31:29 - 01:02:40:10

So I'm therefore not quite clear of this argument that the compensation is unquantifiable, which was the argument that you put forward.

01:02:41:03 - 01:02:44:19

But is it is it is un quantified.

01:02:47:08 - 01:03:20:09

What we are going to propose is that the Secretary of State will decide on an appropriate sum. We're not putting a particular sum to you at this examination that would that would not be appropriate. We think that the secretary of state has the expertise available to him to decide on an appropriate sum having regard to orsted's loss of rights in relation to liability.

01:03:20:11 - 01:04:00:14

And that is the narrow exception we make in respect of the interface agreement which otherwise remains in place and balances that against the public interest in securing delivery of the Ehc plan.

Because what is important to avoid is a sum arising from that interface agreement, which is predicated falsely on the premise of co-location being feasible being such as to preclude the viability of the plan.

01:04:01:12 - 01:04:06:27

And so the drafting that we are going to provide will be such that

01:04:08:16 - 01:04:10:20

that during the decision period

01:04:12:08 - 01:05:05:22

following the receipt of your report and the Secretary of State can make that decision and that fits best with the timing imperative or within a short period from the grant of the DCO and makes that decision as to the compensation. And it will also make clear that the confidentiality of the parties will be respected, which is consistent with the expectations in the interface agreement, so that it will be a formula, it will be a framework having regard to those factors, the loss to orsted and the public interest in ensuring the exit plan can proceed and the Secretary of State will be able to operate within that framework.

01:05:05:29 - 01:05:12:25

So that is what that's that's the principle of the drafting we're going to identify for you. DEADLINE six.

01:05:14:29 - 01:05:34:01

Okay. Just before I go back to Mr. Phillips for comment, how is that going to help me make a recommendation if I don't know what that compensation is? Because at the end of the day, you're advocating that the Secretary of state will be able to make a decision. But how can I recommend to the Secretary of State if I don't have that information available to me to make my report?

01:05:34:15 - 01:05:39:08

Because it will be a framework that we would ask you to recommend.

01:05:39:26 - 01:05:41:24

So we will see that framework, will we?

01:05:41:26 - 01:05:59:10

Yes, you will. And so that's what I drafting is going to be, because we we thought that it would be preferable from the point of view of your reporting, to be reporting on a framework or a on an approach rather than on a figure.

01:06:00:06 - 01:06:02:23

Okay. Thank you. Mr. Phillips, do you want to respond?

01:06:03:28 - 01:06:06:03

Three very quick points. The first is

01:06:08:00 - 01:06:38:07

Mr. Tate seems quite well-informed as to what these new protective provisions are going to provide. We haven't seen them yet. And there was an indication that in the deadline five submission that that we'd be able to talk through these today, given how much knowledge is about, will be it in principle what's going into these protective provisions? I wonder whether they can be provided to the examining authority and the applicant before deadline six.

01:06:39:03 - 01:07:20:19

If if background information, you know, the rationale behind it needs to follow a deadline six fine. But it would be really helpful to see the drafting as soon as possible so that we can then provide some comments on on that. The second point here is, is that we started off with the position that BP wish to supply the interface agreement. We then provided legal submissions on why that shouldn't be the case. And now we're at a point where BP no longer wish to supply the whole of the interface agreement, but they now wish to provide a mechanism for a third party determination of how compensation is arrived at.

01:07:22:03 - 01:07:55:27

But my point is we already have that in the interface agreement. The Interface Agreement provides for independent determination of the quantity of compensation by an expert who is either determined, appointed jointly or in a joint agreement between all of the parties as to who should be appointed or is again independently appointed. So there's an independent decision over who should be the independent expert. But the point is, we are we seem to be recreating the interface agreement.

01:07:56:07 - 01:08:31:28

Well, there's an attempt to recreate the interface agreement through the DCO provisions. And given that there's there's a tried and tested principle of law that you don't need to duplicate, you know, consenting regimes, you don't need to duplicate contracts with with statutory procedures and so on. I'm just not sure why all this effort is going to recreate something that already exists. So we already have an independent way of determining the value of compensation under the interface agreement, and that is something that the Crown Estate can participate in, as well as the seabed owner and manager.

01:08:32:19 - 01:08:40:12

So why recreate the same thing in the DCO for the Secretary of State to determine without the Crown estate involved? So those are my points. Thank you.

01:08:44:00 - 01:08:47:04

Thank you, Mr. Tice's. And you want to respond on that?

01:08:47:24 - 01:08:52:28

On those. Two points. We will do our best to

01:08:54:23 - 01:09:25:13

provide drafting to the applicant as soon as we can. We will, in any event, be providing to them in advance of deadline six under prior arrangements. That's the first point. And the second point is that the interface agreement, as we have explained, is based on the assumption that co-location is feasible and it follows the compensation provisions.

01:09:26:24 - 01:09:28:22

Similarly, based upon

01:09:30:15 - 01:09:42:08

that, on a first come, first served basis with compensation to the first mover, neither that principle nor the false premise

01:09:43:27 - 01:10:16:03

is in the public interest. And therefore that is why it is right that so far as the interface agreement is concerned, where it's common ground sectors, so far as the exclusion is concerned, where it's common ground, the secretary of State should be making that decision. That is common ground that in relation to the compensation that also should follow. So that's the first sub point there. And the second sub point is the timing.

01:10:17:16 - 01:10:30:02

And what we propose will enable the timing to be brought forward with certainty so as to secure the potential delivery of the action plan.

01:10:31:23 - 01:11:02:07

Mr. Phillips One very quick point. It was the first of Mr. Tait's sub points then. It's not true to say that the interface agreement assumes that co-existence is going to be achievable. The whole point of the code of the sorry, the interface agreement is that the parties work together to see if co-existence is possible in the event that it isn't. There's a compensation mechanism to provide compensation to the party that has been effectively displaced from the overlap area.

01:11:02:25 - 01:11:05:24

So it does serve the purpose.

01:11:06:00 - 01:11:29:08

The whole point of this agreement is to try and find a way of co-existence, which I might add is based in policy. That's what we're all supposed to be doing under policy offshore. If that can't be achieved because of physical parameters, whatever, then there is a means to compensate the other party. So back to my point earlier, there is no need to now recreate another way of achieving compensation determined by a third party. Thank you.

01:11:31:10 - 01:12:21:22

Before I go back to Mr. Tate building on what you've said, it would seem and it goes back to my original question is, which is why one of the reasons that was put forward by BP as to why the interface agreement should be supplied was that the amount of compensation was unquantifiable and that jeopardised their business case. But it would appear that actually potentially the issue is, is that the formula for calculating the compensation that set out in the interface agreement as currently, which is, as I mentioned, the reduction in market value for loss of power and or the difference number of turbines would be different to that which is being proposed by BP, because otherwise, as you quite rightly point out, the interface agreement.

01:12:23:02 - 01:12:23:18

Whilst it.

01:12:25:07 - 01:12:40:21

And whilst it's trying to enable coexistence, it does actually, as the way I read it and interpret it, does also, if it's not possible to co-exist, just sets up a compensation mechanism for that party that can't go forward. But Mr. Tate, is there anything that I'm maybe missing?

01:12:45:02 - 01:12:58:00

No, that's that's correct. The the interface agreement doesn't allow for the factoring in of viability in the context of compensation. And that's a public policy issue, which is why.

01:12:58:02 - 01:13:05:25

Okay. And then going to come on to the second part of my question, which deals with liability. But if I can just go to Mr. Phillips, he's got his hand up. Is there a point you want to make, Mr. Phillips?

01:13:06:00 - 01:13:37:23

Yes. Just very quickly. Thank you. If the issue is that the interface agreement isn't expressly isn't sufficiently expressly termed in terms of how one calculates the valuation. Then back to your earlier point, is Downing two point. Clause 2.9 provides a mechanism for varying the agreement. So we don't



need to go through all this DCO process and have things change. The parties just need to decide how it should be calculated and the relevant paragraph of the interface agreement changed.

01:13:38:09 - 01:14:11:02

So. And coming back to the point about arbitration, if there is a dispute under the interface agreement, there's third party determination. So if the parties can't get round the table and decide how the value, how the loss of value or the compensation should be determined, they put all of their representations to an independent arbitrator and that independent third party decides what the appropriate mechanism is, and then the parties work out what flows from that. So there's effort being made to put it in place.

01:14:12:02 - 01:14:27:24

An alternative way of calculating the compensation, which we've yet to see. You know, this is the whole point of, you know, maybe that deadline six is going to be illuminating. It doesn't need to be there. It can just be put through negotiations on the interface agreement. Thank you.

01:14:28:23 - 01:14:44:16

Mr. Chase, is there anything you want to respond on that? I suppose the question is, is what is different from the way that the approach that you're proposing from that proposed that would be delivered through the interface agreement in terms of these arbitration where discussion isn't where points aren't agreed?

01:14:46:01 - 01:15:24:00

Two points. First, there's no incentive for the applicant to agree to any variation to the compensation by consent. And secondly, in relation to expert determination, viability is not a factor. Pursuant to the interface agreement, which is our concern about that aspect and the Secretary of State is well-placed to include that factor. When weighing loss against other important public policy imperatives.

01:15:25:02 - 01:16:01:10

If we can just come on to viability. Mr. Phillips, I know you might want to just respond, but they may want to wait until I've asked this question. Then you can respond on everything together. This is a point that's constantly raised by BP, and you've advised that your NFP business case is based on the BI's transport and storage, regulated investment or t r AI model. So looking at the extract from the TR IE model, which is FIG. seven, paragraph 9.4 of RET 157, which select 20 page one three to the allowed revenue is made up of a number of costs.

01:16:01:12 - 01:16:32:14

And whilst I acknowledge that compensation isn't specifically listed within this list, it does, for example, include Devex, which is development expenditure, which could reasonably include compensation. After all, that is the development cost. So if this is the case, then why given you were aware of the interface agreement when you were developing your business model and the fact that compensation would need to be paid to orsted if restricted or prevented from building in the overlap zone, the business model did not take it.

01:16:32:16 - 01:16:33:26

Make an allowance for this.

01:16:42:05 - 01:16:42:20

Well,

01:16:46:03 - 01:16:54:14

I can take further instructions on that, but in essence, that model is still being developed. And so there is

01:16:56:12 - 01:17:01:23

no clarity as to the form that that will take ultimately. It's a short point.

01:17:02:27 - 01:17:05:04

Thank you, Mr. Phillips. You want to sound that.

01:17:06:18 - 01:17:38:28

Specific and just the two quick points. No incentive on the applicant to negotiate under the agreement. That's not correct. The incentive is that we get the same points as BP or arguing. We get certainty over the project and we understand what we're going to build. Bearing in mind, you know, the project will no doubt be going forward for contract for difference auctions in the future. We need to make decisions on what size of project that's going to be in order to be competitive in the CFD auctions. And that set out in earlier, earlier submission.

01:17:39:00 - 01:18:10:17

So there is an incentive and in terms of viability, it's the same point. If there is a need to, you know, look again at how the compensation under the interface agreement is calculated, then the parties can decide whether or not there are certain factors that perhaps weren't mentioned in 2013 this put in place, but now should be put in place. And in any event, there is nothing in the interface agreement that precludes the independent arbiter from considering viability.

01:18:10:20 - 01:18:35:22

This would be in the usual way of doing an arbitration. The parties would set out their submissions and their evidence to the independent arbiter, and no doubt both parties would set out in that what the implications of compensation would be on on their projects. If it's orsted having to pay the compensation, how that affects its own dev model and if it's BP having to pay at the same point. Thank you.

01:18:37:28 - 01:18:39:24

Mr. Tate, is anything you want to raise?

01:18:40:07 - 01:18:46:11

Yes. The interface agreement and the provisions for expert termination simply don't work on that basis.

01:18:48:18 - 01:19:23:25

And we will explain further why that is the case. They do not include viability as a factor. If it is suggested by the applicant that that should be included as a factor, then we would welcome that confirmation in writing. But that is not the position as it stands. I can just on the Tiara II model. I could ask. I will ask Mr. Ben Keck, who's the deputy project director, just to explain briefly and to elaborate on that briefly if he can.

01:19:23:27 - 01:19:24:12

Thank you.

01:19:24:27 - 01:19:25:12

Thank you.

01:19:35:06 - 01:19:38:23

Mr. Cech, we had you briefly, and you've completely disappeared from my screen.

01:19:39:12 - 01:19:40:07

My apologies.

01:19:41:02 - 01:19:42:04

Oh, no, no, thank you.

01:19:44:28 - 01:20:33:12

Thanks. I care for a lot of insurance partnership, so please allow me to elaborate a little bit more about the maturity of the trade business model currently. As you will be aware, the business model is going through a number of iterations as they remain today in draft form. So the equation is provided is a proposal today and the whole nature of a regulated investment is to protect the ultimate cost to the users. So as the developer, our understanding from base is that we are required to to minimize the cost transfer to the consumers and obviously to address what what exactly is viable and what and to understand what exactly is that mechanism, the quantum of that compensation.

01:20:33:14 - 01:21:05:01

So whilst it was, as you rightly point out, that this could be a component of that that X, we are also a very it's also been very clearly made clear to us by base that we should be looking at minimising, if any compensation and that that because of the cost cost through the nature of a regulated investment. One point we want to mention with regards to your questions, madam, about the quantum of of what that the loss of value would be calculated on.

01:21:05:13 - 01:21:51:05

I think we've made clear in a previous response that the DCO is seeking this DCO seeking the maximum number of turbines to be constructed, and that we have provided some examples where the ultimate number could be quite different. And that is one significant factor why that compensation is unquantifiable right now. Furthermore, we intend to provide further information from deadline six about the nature of the overlap, particularly the GEO Technics, which again today does not have the full amount of information to characterize the seabed nature and that that factor also affect the quantum of what that ultimate compensation would look like.

01:21:51:19 - 01:22:05:04

So given the natural progression and development time of the project, this is why we are proposing protective provisions that bring forward this decisions which are currently not catered for, as Mr. Tait mentioned in the interface agreement.

01:22:08:18 - 01:22:15:04

Okay. Thank you very much. Is there anything, Mr. Phillips, you'd like to come back on with regards to the point that Mr. Cech's just made?

01:22:16:09 - 01:22:16:27

No, thank you.

01:22:18:00 - 01:22:34:03

Okay. So just moving on then to the potential revised protective provision that BP is proposing to submit it, deadline six. I think the next question actually was covered by Mr. Phillips,

01:22:35:21 - 01:23:06:22

which was I'll just read it out just for the purposes of just going there, but just maybe confirming it is the inference is that the majority, the drafting would remain the same. The main change would relate to the application of the interface agreement. You would effectively not seek to supply the rights of the obligations of the interface agreement for the Crown Estate and the applicant, apart from in relation to the liability to pay damages or compensation. Instead, this would be replaced by compensation payment on a specified trigger. And as Mr.

01:23:06:24 - 01:23:37:09

Phillips pointed out, the interface agreement contains similar provisions. So my question would have been why does this need to be provided an alternative way? Which I think he responded to the question being was the issue the timing or the quantum of the compensation payment? And why could that not be achieved through the renegotiation of the interface agreement, which is a commercial agreement, rather than having to be done via a protected provision? But I think I just want to give you a final opportunity just to make sure that I've got all of the responses on that, because she was a point made by Mr. Phillips rather than myself. So.

01:23:37:11 - 01:23:42:05

Mr. Tate so anything further you wanted to add to the responses you've already provided to Mr. Phillips on this point?

01:23:47:05 - 01:24:06:23

In the ideal world, we would be renegotiating it by consent. But we have been in detailed dialogue and that has not yet occurred. And in the absence of a renegotiation and an agreement, that viability of the exit plan is even relevant.

01:24:09:24 - 01:24:21:00

There is the need for the protective provisions that we have identified. Having regard also to the timing that that indicative drafting would secure.

01:24:22:13 - 01:24:54:02

And can I just come back on a point because at various points we talked about and it may just be the use of the English language this morning and wanting to mix things up a bit. But both Mr. Tait, Mr. Cech, have now throughout this morning's conversation once explicitly and once implicitly said that the compensation is unquantifiable aid as opposed to unquantifiable. Can I just verify? Because the start of this discussion was that the argument from BP was that it was unquantifiable rather than it had been unquantifiable.

01:24:54:10 - 01:24:56:18

The point I was getting at, could it not be quantified?

01:24:57:14 - 01:25:20:09

Well, but it is. As matters currently stand, it is sufficiently uncertain that the parameters are sufficiently wide. They don't include viability and that that has a severe effect on the idea and which is anticipated to take place in the summer next year.

01:25:21:23 - 01:25:26:26

Thank you. So my next question. Mr. Fitz, do you want to come back on that?

01:25:27:18 - 01:25:45:15

Yes, I can answer the applicant. I think it's agreed between the parties that the compensation is quantified in the agreement, as a matter of fact, by reading the agreement. Your question about whether it is quantifiable now, the answer from the applicant is yes.

01:25:48:06 - 01:25:59:16

Okay. And would she be able to provide any of that information as to what that would be? Subject, obviously, to financial confidentiality into the examination so that we would have an indication.

01:26:01:18 - 01:26:04:12

What's that point that you want to take home and have to think about and come back to me on?

01:26:05:27 - 01:26:49:11

I'm being instructed that we can provide that information into the examination, but it is strictly on a confidential basis. The information has previously been provided to the parties through the ongoing negotiations that Mr. Tate has alluded to. So to my understanding of this though, the quantum of over the compensation. It really isn't a planning matter that's more a viability point for, you know, appropriately qualified experts to determine what is necessary here is that any impacts of the order on this project are considered and mitigated if necessary.

01:26:49:13 - 01:27:21:10

So, provided the Secretary of State is satisfied that there is a mechanism there to determine the quantity, the amount of compensation for either party, whether that's a mechanism in the DCA or in the interface agreement, then then that is the security and the protection that's needed. But I would you know, my instructions are we can provide numbers, but it would be on a confidential basis and therefore I'm not so sure how it could then be added into your report to the Secretary of State.

01:27:21:27 - 01:27:23:14

So perhaps to take away.

01:27:24:05 - 01:27:26:28

Yes, if we could, in fact, come in at some point that we come back to you on that.

01:27:27:00 - 01:27:27:15

Be correct.

01:27:28:10 - 01:28:05:26

So my next question was, was that was the rewording of the protective provisions being done collaboratively? I think it's quite clear from this morning's discussions that it's not it's a response by BT to address at BP to address the concerns that have been raised through the examination. So I note from an information that the information is coming in at deadline six. And I wasn't really proposing to give you the opportunity to explain what in much more detail you're going to do, because I didn't think it would be particularly fair to have to respond on the hoof.

01:28:06:16 - 01:28:17:09

Um, so can I just double check that? What is coming? What you are proposing to submit at deadline six? This is a question from Mr. Tate on behalf of BP, just so we know what's coming in.

01:28:18:05 - 01:28:33:26

Yes, it will be the totality of the protective provision which will reflect the documents that you already have at 459 Appendix one. Yeah, we'll be very. In relation to

01:28:35:27 - 01:28:36:23

paragraph

01:28:40:14 - 01:28:41:10

six.

01:28:42:06 - 01:28:42:21

Yeah.

01:28:44:06 - 01:29:08:17

It is varied in relation to paragraph six. So that no longer is it the case that the interface agreement will be just supplied, but rather the wording will be that which you see it read five annex to paragraph 6.3, which is the far more limited provision in relation to liability under the

01:29:10:23 - 01:29:47:11

interface agreement in relation to the exclusion area. And then in addition to that, in, in relation to paragraphs 11 and 12, we will be giving consideration to reduction in the period for the longest update, whether that is what the implications of that would be and if that can be reduced. And then finally, we will be providing. Which will work hand in hand with the the narrow provision set out at 6.3 of five.

01:29:48:22 - 01:30:02:23

A compensation provision which will allow the Secretary of State to make the decision on the basis that he is best equipped to make it. Having regard to loss to orsted and viability of the.

01:30:05:06 - 01:30:16:22

And I'm assuming that that in addition to obviously the reworded proposal protection provision, there will be a reason that that reasoning will be set out in the reasoning behind it.

01:30:17:00 - 01:30:21:28

And explain how about how we see that working. Lovely. And the reason for it.

01:30:23:05 - 01:30:46:22

Mr. Phillips, I'm going to give you the response, but could I just ask a huge favor of you, Mr. Phillips? You keep putting your camera on when you're not speaking, and I'm finding it very distracting. So would you mind just waiting until you actually want to speak before you put your camera on? Because I'm trying to concentrate on what Mr. Trump, Mr. Taitz, having to say. So he's going forward, if that would be possible. I really appreciate it. So, Mr. Phillips, do you want to respond on the point that Mr. Taitz just made?

01:30:47:19 - 01:31:17:21

Yes. On the technical point, I am sorry I'm distracting you. The reason being that I have to wave at the camera, this thing that looks like R2-D2 to come to me. So if I just emulate, okay, I'm going to put my hands underneath anyway. So coming on to the substantive point, it's a matter of timing. It's absolutely clear from this morning's submissions that BP know what they're going to say and how the provisions are going to work. DEADLINE six is six working days away. DEADLINE five.

01:31:17:23 - 01:31:51:01

Hey, when we were promised things, that deadline six is approximately the same number of days in the past. I just think all this can be achieved a lot quicker and it would be really helpful if we can have at least the protective provisions, you know, maybe this evening or tomorrow or something like that. And if it really takes another six days to work out the substantive, you know, text to support it, then then fine, we can wait to dissect. But I don't see why we, the BP, have dictated this timeline. They said in the five day we shall be providing the update deadline six.

01:31:51:22 - 01:32:03:18

They they've talked about the detail this morning, but we haven't seen anything to look at. Why are we being dictated to by BP on this? Why can't we have the information sooner and advance the examination? Thank you.

01:32:04:18 - 01:32:11:27

And I think in Mr. Tate's defense, he has indicated that he will try to get back to you as quickly as possible. But, Mr. Tate, if you some if you would like to come back on that.

01:32:13:06 - 01:32:22:11

Yes, we will. We will certainly do our best. And it's not just BP. Of course, there are other partners in the NDP project. So I.

01:32:22:13 - 01:32:23:01

Am aware that.

01:32:23:06 - 01:32:27:04

We do need to sign them up, but we hear that message.

01:32:27:27 - 01:32:31:21

Thank you. So just coming on to sort of concluding on.

01:32:34:24 - 01:33:15:15

The protective provisions for the carbon storage licensee, which is part eight with regard to technical reasons which be set behind the protected provision, oversee have quite detailed explanations from both the applicant and BP as to why they consider that they are needed. At the last issue, specifically here into the DCO, the parties indicated that they were going to continue to try to work together to resolve this issue, and it's clear that you have tried to do that. But at the moment, from the evidence before me, it would appear that the parties remain some way apart. Can I ask both parties if they consider, given that there's just over a month left of the examination, whether these matters will be resolved? An agreed approach will have been decided before the end of the examination.

01:33:15:25 - 01:33:19:18

Or do you think this matter will remain outstanding at the close, the examination?

01:33:22:05 - 01:33:23:02

Mr. Tate.

01:33:29:10 - 01:33:30:17

But expectation the.

01:33:33:18 - 01:33:34:03

Yes.

01:33:35:19 - 01:33:38:24

Sorry. So the

01:33:41:14 - 01:33:47:12

we will, of course, work to seeking to secure an agreed position. And that's obviously in

01:33:49:14 - 01:34:17:18

the party's interests as well as as well as your interest. Yes. But we can't say unless unless one or two important central issues are grappled with that that is likely to happen as as currently on current information. But we will be working to try to secure that for the reasons I've mentioned that it's in all parties interests.

01:34:17:27 - 01:34:22:01

And that's very much appreciated by the examining authority. If I could come to Mr. Phillips.

01:34:24:02 - 01:34:59:03

Gareth states the applicant. We echoed that sentiment. The parties will continue to work towards that. I think given where the parties are, as you've rightly observed, I think it unlikely that this position will be agreed by by the end of the examination. It's quite clear that what BP currently wants is to have

exclusive access over the overlap zone and either not pay compensation or have compensation paid by some unknown means. And what orsted to trying to achieve is the applicant is co-existence in the overlap zone.

01:34:59:05 - 01:35:12:03

So it's hard to see how that large gap between the parties is going to come to a close in the next 4 to 5 weeks. But you know that the will is there to keep talking and working this route.

01:35:12:23 - 01:35:51:09

And again, so I can just reiterate. Thank you. That's appreciated from the examining authority's point of view. And I suppose what I would like to conclude this discussion with is that on that basis, as I've mentioned at several points throughout this morning's hearing, we have to, regardless of our recommendation, include a recommended DCO, which will include protective provisions to the Secretary of State when we deposit our report. So therefore, it's very important that those particular provisions that you forward to me before the close of the examination do reflect what each of the parties considered the wording and the drafting that's needed to protect their position.

01:35:51:21 - 01:36:04:06

So if I can just sort of conclude on that point, so can I just ask if there's anything further to add from either party with regards to protected provisions at this point in time?

01:36:06:02 - 01:36:07:20

Gareth Phillips, the applicant? No, thank you.

01:36:08:28 - 01:36:11:10

Mr. Tate, is there anything you want to add at this point in time?

01:36:13:09 - 01:36:14:02

No, thank you, madam.

01:36:15:01 - 01:36:37:28

Okay, I realize it's 12:00 and we all probably would like our lunch, but I think there's quite a few people who've been quite patiently waiting to finish with the hour involved with protective provisions. So my if everyone's happy, I'm proposing to you just conclude all of the provisions and then we'll adjourn for lunch. Does anyone have a problem with this or would need to adjourn earlier?

01:36:42:00 - 01:37:15:21

Okay. I'm going to on that basis just crack on part nine then of the DCO, which is Neo Energy, S.A. Limited. Um, in their written representation, they advised that they needed a protective provision which is rep to a66 to avoid impact, adverse impact on the Babbage field. And at the same time we had a position statement up to 51 advising that the applicant was in discussions regarding the proposed 2.7 nautical mile helicopter buffer and that it was awaiting further input from any in relation to collision risk.

01:37:16:13 - 01:37:48:21

The protective provision for NEA was inserted into the DCO at deadline three Rep 3007. The schedule of changes at 308 cases was included pending progression of commercial decision discussions. But the Spanish memorandum has not been updated since AP 204, so there's an explanation as to why it's now needed. So it's going to start by asking for a further explanation of why particular provision has now been inserted, and has it been inserted with or without any O's agreement? Because I don't have any information from them.

01:37:50:14 - 01:37:52:04



So maybe start with the applicant.

01:37:52:06 - 01:37:52:28

Respondent That

01:37:54:19 - 01:38:01:27

character is the applicant. I'm going to invite a representative of Orsted, Ms.. Nicola Allan to to respond to that. QUESTION. Thank you.

01:38:10:14 - 01:38:16:17

Nicola Allen for the applicant, just waiting to come up on the screen. Yes.

01:38:21:08 - 01:38:25:16

Please, could you restate the question so effectively?

01:38:26:04 - 01:38:35:14

Well, the first iterations of the DCI didn't include a provision for any energy, obviously any. And she has and I'm sort of

01:38:37:13 - 01:38:56:25

compressing all of this, what you said, Sonia, and you have obviously raised concerns and then deadline three and protect provision for Neo was inserted into the DCO. But there doesn't seem to be an explanation as to why that was the case. I'm just trying to find out why it's been inserted and has it been inserted with or without their agreement?

01:38:58:13 - 01:39:26:24

So it has been inserted without the agreement of NIA. It was felt that although discussions were ongoing, they were moving quite slowly and that we needed to put protected provisions in for the benefit of. And we have since had further discussions with Nia where we've restated our position. We have also sent them out a draft cooperation agreement at their request that was sent out the 13th of June. And we're waiting for further response from them.

01:39:28:02 - 01:39:58:21

Okay. Thank you. Unfortunately, I don't think anyone from Nia is here today, but if they had been, I'd asked if they were satisfied with the wording and if not, what alternative wording would they want the examining authority to consider? So if I can maybe ask that to be an action point, they can then move to part ten, which is correct. Co UK Ltd. On Friday afternoon we received an email from Perenchio advising that they had reached agreement with the applicant and that they are in the process of finalising and executing final agreements.

01:39:59:06 - 01:40:21:21

As results of these agreements, they have advised that they will not be seeking a protective provision. I note at deadline five that a protective provision for Franco was inserted into the draft DCO. Can I ask the applicant to confirm the situation with Franco? And if this is the case, are they proposing to remove protected provision for Franco from the final version of the DCO at deadline seven and.

01:40:24:00 - 01:40:43:03

Nicola Allen for the applicant. Yes, we have reached agreement with Franco. We have two of those agreements signed. The final agreement is just waiting partner approval, but all points in it have been agreed. Once that's happened, we and Franco will jointly remove the need for protective provisions. Thank you.

01:40:44:02 - 01:41:05:19

Thank you. If we can then move on to Part 11, which is Northern Powergrid Yorkshire TLC DEADLINE five A protective provision for Northern Powergrid power grid Yorkshire PLC was inserted into the DCO. That's RET five eight. I note we had a relevant representation for today from Northern Powergrid where they raised concerns over the data provision

01:41:07:08 - 01:41:24:20

as they did not consider that it took into account site specific issues and did not accord with the Northern Powergrid standard protective provision and they indicated they were keen to agree appropriate amendments with the applicant. This was followed up at deadline one with a draft position statement when I six was submitted and.

01:41:28:18 - 01:41:56:13

Basically that position statement hasn't been updated since deadline one. And I'm just wondering what the situation with regards to this is. I note from the statement, a recent submitted deadline, five at 539 states that the protect provisions and signed agreements are now agreed and the agreed protected provisions have been included in Schedule nine of the draft, easier submitted at deadline five, and as a result, it is anticipated that Northern Powergrid will withdraw their objects in due course. Can I just ask for an update?

01:41:59:09 - 01:42:19:14

Clapper, the applicant? Yes, that's correct. The agreement has been signed. It's due to be completed this week. And then we anticipate, as per the terms of that agreement, that Northern Powergrid will both withdraw their objection and confirm that the protective provisions included within Part 11 are agreed by them.

01:42:20:11 - 01:42:27:17

Though unlike for Parang cope with the protective provisions remain. In the DCO.

01:42:28:14 - 01:42:31:15

Clair project the at yes these protest provisions in Cape May.

01:42:33:12 - 01:43:04:17

Thank you. Okay. Part 12 Pitch British Petroleum Ltd. I believe we've got some representatives from British Petroleum here today. A note at deadline five. A protective provision for British Petroleum too limited has been inserted into the draft DCO. Can I just firstly confirm it's technical thing? Can I confirm that British Petroleum too is the same as British Petroleum Ltd, who submitted the relevant rep? R o 22 who had concerns regarding the potential effect of the proposed development on the climatic natural gas field.

01:43:04:19 - 01:43:10:16

So I can just assure it's just a technicality and they all want the same. But can I just confirm that?

01:43:12:21 - 01:43:13:07

Mr. Lek.

01:43:14:27 - 01:43:15:12

Leask.

01:43:16:07 - 01:43:16:22

Sorry.

01:43:17:16 - 01:43:21:01

Yes, we both myself Robert Leask from British Petroleum. But also you saw a.

01:43:21:05 - 01:43:21:20

Guy, just.

01:43:21:22 - 01:43:33:18

Pavel there, who is our general counsel, who may be able to answer some of your questions. Yes, sir. Bridge two is a subsidiary of of British Petroleum Ltd.

01:43:33:20 - 01:44:06:17

Okay, lovely, sir. So it's one in the same. So I note that we received a letter from British Petroleum at deadline five, which is read five O 26, where they have advised that they were unable to agree the heads of terms because it would hinder their ability to fill its obligations and enjoy the benefits under the current licence or any future licence. Of particular concern were clauses four brackets two, five, six and seven. Can I just, first of all confirm what those clauses are? Are they the paragraphs of protected provision or are they in relation to the heads of terms, or are they one and the same?

01:44:09:10 - 01:44:23:06

So I think paragraph seven is going to move guys. Probably the best one to answer this guy Common. Yeah. Guy to smell British Petroleum. Yeah. Those are the. Those are references to the protected provisions.

01:44:23:25 - 01:44:25:11

Okay. I just want you to know, I.

01:44:25:13 - 01:44:25:29

Still remember.

01:44:26:01 - 01:44:26:16

Working off.

01:44:28:06 - 01:44:32:21

Okay. So can you explain what your particular concerns were with regard to those clauses?

01:44:35:15 - 01:45:01:20

As the guide spells out for British Petroleum so close for approval, its new control to bridge the licensee over what activity is going to occur. Effectively, it is telling us we will we will come into your comment, the area. We'll do this work and I'll tell you when we're finished. And that was. No. That has no sort of consideration of what what we might be doing at the time.

01:45:05:00 - 01:45:05:15

Okay.

01:45:05:17 - 01:45:07:27

But close. Let me just.

01:45:11:15 - 01:45:36:01

Five. Our concern there is that it provides no flexibility given our current position in relation to the development of the appraisal and then development of where the pipeline will be. It asks us within three months of the date of the audit to commit to a pipeline route, which I think is or we think rather is

01:45:37:25 - 01:45:39:03

too restrictive at this stage.

01:45:41:06 - 01:45:41:21

Okay.

01:45:43:23 - 01:45:46:14

And I think you had a concern with regards to six.

01:45:47:13 - 01:45:49:04

Yes. So clause six

01:45:51:14 - 01:46:23:14

was is the same same thing and restricts, you know, the aerial extent of a license. We're not yet in a position to definitively say and probably probably correct me if I'm wrong, but we're not in a position to definitively say that the the development will occur solely in in the proposed location. So this. This clause provides very little feedback ability for us to work further with and with the applicant.

01:46:24:23 - 01:46:28:00

Should we need to develop in another part of our area a license.

01:46:29:11 - 01:46:32:09

Okay. Mr. respond. So, Mr..

01:46:33:09 - 01:47:08:01

Annan. They are probably list of petroleum. Yes. The men mean hope. When we entered into this discussion was that in the spirit of cooperation, that we'd be able to access some useful survey information that our state would have procured for entrepreneurship for. So we've had discussions over that. But unfortunately we think that it probably isn't sufficient to allow us to determine where we are. So we we it's it's really a clash of development schedules. We would spend the money to have that sort of work somewhat later on in our development schedule.

01:47:08:09 - 01:47:42:00

And we're committed to drilling the appraisal well by that in September 2024 and by first production by the end of September 2028. So you can see that our spend on things like survey for the production facility is somewhat later than than we would like in terms of being able to agree exactly the the extent of where we are it go. We don't know anything about the unexploded ordnance in the area, all that sort of stuff. So, so really we, we, it's a risk for us to see.

01:47:42:02 - 01:47:44:27

Yes. This is the seriousness of this situation.

01:47:46:07 - 01:47:49:13

Okay. Can I ask Mr. Phillips if he wants to respond on those points? I mean, raised.

01:47:50:21 - 01:48:23:24

Interest rates, the applicant. Thank you. The first point to note here is a matter of principle in that the development that Bridge is talking about is at best described as aspirational, and the applicant has already gone some way to essentially respect an area of works for the wellhead. Even though there's no real certainty to these projects coming forward, the funding is in question, etc., etc.. So that's the starting point that the applicant has already gone further than would normally be expected.

01:48:24:21 - 01:48:33:14

The second point in terms of the wider area and what they're saying over over paragraph four is that, as I understand it.

01:48:35:01 - 01:49:12:24

Bridge would like complete flexibility over when they bring forward their project and essentially. First, it just has to work with that. Well, as we've seen in all of the other protective provisions, that that's not how it works. Normally, where there are parties and interfaces, you have to work together towards the timescale you set out a program and there is a mechanism for what needs to be achieved and by when. So we're not going to be able to accommodate blanket flexibility for the area. And then in terms of paragraph five and the three month provision for for doing these things, you know, we've offered

01:49:14:09 - 01:50:05:19

these protective provisions that were offered by us, but we haven't yet had detailed comment back on them. So I think it's a point that you've made earlier in this hearing that we would welcome Bridge to submit on a without prejudice basis, either a different set of protection provisions or if they can work with what we set out here, some track change suggestions as to what it is that they're looking for precisely. So in terms of for if there needs to be an approval mechanism, then are we going to adopt something similar to the other draft protective provisions that we've seen in relation to five? If it's the three month issue in that paragraph, what would they suggest is a different, different timescale? And then the last point is, is a typographical one under line of orientation in paragraph six.

01:50:05:21 - 01:50:35:27

What's happened there is that what was original, paragraph six and seven has been merged into a paragraph that now doesn't make a great deal of sense. You'll see in the second line where it starts such agreement to be entered, but there's no reference to agreement in the balance of six. So apologies for that. If it would assist, we can submit a revised schedule that would show how that should appear and that may then help the examining authority in their DCO. That's published next week. Thank you.

01:50:37:04 - 01:51:03:18

Thank you. Do either of the representatives from Bridge want to respond on that? I mean, Mr. Phillips sort of covered a point that I was going to sort of conclude with, which was obviously you've got concerns with the wording. And as I've mentioned previously for a number of other organisations, if you want us to consider alternative wording, can you please submit that? So do either of the representatives from British Petroleum Ltd want to make any comments on the point that Mr. Phillips just raised?

01:51:05:19 - 01:51:25:26

A guy smells of British Petroleum. Yes. We'd be happy to mark up the mark up the draft. DCO takes action. As it stands about with the under cost, with the first things covered, not banning the at least over the last couple of weeks. So, yes, we'll be happy to.

01:51:27:14 - 01:51:27:29

Okay.

01:51:28:01 - 01:51:39:18

Mr. Phillips And just to say we'll take an action to provide an accurate set of protective provisions directly to bridge so that they can mark up that version rather than the erroneous one that's in the DCO.

01:51:40:20 - 01:51:50:22

Thank you. And give him a very patiently sat through this morning's discussion. Is there anything any other points that they want to raise at this point in time with regards to the drafting of the DCO?

01:51:55:21 - 01:51:57:28

I'm going to take the sound of silence now. Oh.

01:51:59:00 - 01:52:05:08

Really? Skip from British Petroleum. I think I think the answer is no. I think we all will we will respond. Thank you.

01:52:06:04 - 01:52:39:07

So having worked through the particular provisions that are currently included in the draft final consent order, and I want to examine why protective provisions are currently not included for another two organisations that object to the proposed development. The first one of those is Northern Gas Network Ltd, who objected at relevant Rep 30 where they had a draft and a draft position statement was submitted at deadline one, which is Rep one a52. But this hasn't been updated to make something authority have had no further correspondence from them. According to the most recent state update on a statement of reasons which was submitted at 539.

01:52:39:09 - 01:53:13:26

Discussions are ongoing between the legal representatives of both parties in relation to the COT, indeed, which is where we were at deadline two with an estimated timescale for completion prior to the closed examination. The concern in relevant wrap 30 was that the crossing of the northern gas networks apparatus by the cable with particular concern for the crossing of the high pressure pipes because of safety issues, the large volume of gas. And they thought this would be resolved by a private crossing date for each crossing and no testing occurring within the Northern Gas Network without a northern gas network representative being present.

01:53:14:24 - 01:53:43:13

I see that potentially the reason why a specific protective provision hasn't been included for this organisation but has been included for others, is that potentially they are covered by part one of the protective provisions which covers electricity, gas, water and sewage undertakers. But in light of the others who have objected and have had their own protective provisions, I'm just looking for an explanation as to why Northern gas networks don't have their own protective provision, said Mr. Phillips, or somebody in his team would like to respond.

01:53:45:18 - 01:54:25:22

Claire. A project for the Atkins? Yes, you're correct. Northern gas networks are automatically protected under part one of Schedule nine as they are a gas transporter and therefore fall within the definition of the undertaker. And northern gas networks have not requested bespoke protective provisions to be included for that benefit. As you mentioned, they have requested a crossing date and that is being separately negotiated. We did recently get confirmation that they had instructed external solicitors and I received comments on the crossing date last week from Northern Gas Networks and so now we have quite good engagement from them.

01:54:25:24 - 01:54:56:20

We are quite confident that the cross indeed will be able to be completed prior to the end of the examination and they will be able to withdraw their objection, as I mentioned, with some of the other onshore statutory undertakers. In the event that that hasn't been completed by deadline seven, then we will submit a Section 27 statement as part of deadline seven to explain why we consider the protective provisions in part one of Schedule nine to be sufficient.

01:54:57:28 - 01:55:41:26

Thank you. And then the second one was in relation to Harbour Energy. Given the draft of the consent order increase, particularly for Bridge and Neo, I was going to ask the question why was there one also for Harbour Energy? However, I was forwarded an email just before this hearing providing an update from the applicant regarding negotiations on agreements and that in the next version of the

DCO, it will contain a protective provision for harbour. If confirmation of the agreement can't be provided before the end of the examination, given this was very, very much a last minute submission, can I just ask the applicant if there's anything else that they want to add with regards to that? On further information, he could provide us with an update.

01:55:45:06 - 01:55:48:08

Garrison. It's the applicant. No, there's no further update on that.

01:55:50:12 - 01:55:51:06

Okay. Thank you.

01:55:52:23 - 01:55:54:12

Okay. So.

01:55:57:15 - 01:56:04:27

I'm just going to finish off this section on protective provisions with two technical requests on behalf of the examining authority.

01:56:06:24 - 01:56:38:19

Firstly, which I think actually has been alluded to with by Ms. Broderick is the section 1276138 case. Obviously, there's an aspiration by the applicant that lots of the information that we discussed this morning will be agreed before the end of the examination, but that is only just over a month away. And so I just wanted the applicant to confirm that as requested and at issue specific hearing one, they will be submitting a Section 127, section 138 case at deadline seven, which is the 10th of August.

01:56:40:05 - 01:56:43:08

Clapper to the applicant. Yes, that's correct.

01:56:44:29 - 01:57:16:09

Thank you. And the second one was many of the issues regarding protective provisions that we've been advised have been resolved through the use of commercial side agreements. However, the examining authority are not party to those agreements, and nor do we have a copy of them. Not that I'm asking for a copy, but I'm just wondering if it be possible for the applicant to provide obviously recognise the need for commercial confidentiality, a table summarising these signed agreements and what's been agreed and where it's been agreed and why then protective provisions aren't actually required.

01:57:20:06 - 01:57:31:29

Clapper, the applicant. Yes, we can provide details of the agreements. Most of the agreements enable the applicant to confirm their existence, but not the terms. Can you explain.

01:57:33:06 - 01:57:47:25

That? That would be very helpful for when we report to the Secretary of State. So you'll all be glad to hear as I come to the end of item five on the agenda. My last question is, is there anything anyone else wants to raise with regards to protected provisions?

01:57:53:07 - 01:58:11:10

Nope. Well, I'm going to suggest that we take a short break for lunch. There isn't much left on the agenda. There's only item six, seven and eight, and some other points of any other business. So I'm going to hand you back to Mr. Bradley, who's going to coordinate those arrangements.

01:58:13:09 - 01:58:40:25

Yes. Thank you, darling. We think that it's probably in everybody's interest to take a fairly compressed lunch break now. And I think I'm just going to ask Mr. Phillips if you could speak for your side as to whether you would be happy with, let's say, 30 or 35 minutes for lunch and to adjourn until I make it.

01:58:44:24 - 01:58:51:03

105 1305 Gareth is the Applicant. We're all happy with the 30 minute break. Thank you.

01:58:51:24 - 01:58:59:00

Good. So let's say that the hearing is now adjourned and we will reconvene at 1305.

01:58:59:28 - 01:59:00:09

Thank you.