



Awel y Môr Offshore Wind Farm

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Executive Summary

This Statutory Nuisance Statement has been written to comply with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), which states that any application for a Development Consent Order (DCO) should be accompanied by a statement setting out whether the proposal could cause a statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA). If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.

This statement provides an explanation of matters set out in section 79(1) of the Environmental Protection Act 1990 (EPA 1990) in respect of statutory nuisances, the potential implications of the Scheme, and proposals for mitigating or limiting any such potential statutory nuisances identified.

An overview of the proposal and the site location is included in **Section 1.1**.

Section 2.1 identifies the legislative framework pertinent to statutory nuisance.

Section 3 outlines the potential for statutory nuisance arising from Awel y Môr Offshore Wind Farm (AyM) and mitigation measures which have been identified to reduce the likelihood of statutory nuisance impacts occurring, as outlined in the Environmental Statement (which accompanies this DCO application (application ref: 6.1 *et seq*)). The Scheme will potentially engage the following sub sections of section 79(1) of the EPA 1990: (a) relating to general conditions on the site, (d) dust, steam, smell or other effluvia, (fb) artificial light, (g) noise and (ga) noise from a street, with potential for statutory nuisance to be caused in the absence of mitigation.

Construction phase activities will be managed, and mitigated where necessary, through a Code of Construction Practice comprising a suite of environmental management plans (application documents 8.13 and 8.13.1-8.13.12). Approval of the CoCP by the local authority (Denbighshire County Council or DCC) is secured as a requirement of the DCO. Operational phase activities will also be controlled by the relevant requirements of the DCO.

While both construction and operational activities will be controlled using appropriate methods which will provide a protection against statutory nuisance, this does not provide an absolute guarantee that effects that might be considered by third parties to constitute a statutory nuisance will not arise.

1 Introduction

1.1 Overview

- 1 This Statutory Nuisance Statement has been prepared on behalf of Awel y Môr Offshore Wind Farm Limited (the Applicant). It forms part of the application (the Application) for a Development Consent Order (a DCO), that has been submitted to the Secretary of State pursuant to the Planning Act 2008 (2008 Act).
- 2 AyM will be situated in Welsh waters, and will generate electricity from wind, with a capacity of more than 350 megawatts (MW). It therefore falls within the definition of a 'Nationally Significant Infrastructure Project' (NSIP) under Section 14(1)(a) and Sections 15(1) and (3B) of the 2008 Act. As such, a DCO is required to authorise AyM in accordance with Section 31 of the 2008 Act.
- 3 AyM is described in further detail in the Environmental Statement Volume 2, Chapter 1: Offshore Development Description (application ref: 6.2.1), and Volume 6, Chapter 1: Onshore Development Description (application ref: 6.3.1)

1.2 Awel y Môr

- 4 AyM is a proposed sister project to Gwynt y Môr Offshore Wind Farm (GyM) which is located off the coast of north Wales and has been operational since 2015. AyM will comprise an array of offshore Wind Turbine Generators (WTGs) with an overall capacity greater than 350 Megawatts (MW) with an array of up to 50 turbines and transmission infrastructure offshore. Onshore infrastructure comprises the onshore electrical cables running from the landfall (located between Rhyl and Prestatyn), to a proposed onshore substation located to the west of St Asaph Business Park (SABP) and then to the existing National Grid Bodelwyddan substation located to the south of SABP.
- 5 The offshore wind farm array and associated infrastructure and plant are defined in the draft DCO as Work Nos. 1-2A and shown on the Works Plans (application ref: 2.5), and include:

- ✦ an offshore wind turbine generating station with a gross electrical output capacity of over 350 Megawatts, comprising up to 50 wind turbine generators, with offshore substation platform(s), meteorological mast, and cabling (Work Nos. 1, 1A and 2); and
 - ✦ Cofferdam works (Work No. 2A).
- 6 The landfall works for AyM are defined in the draft DCO as Work Nos. 3 - 7A and include:
- ✦ Cabling, cofferdam works, works to groynes, temporary working areas and laydown areas (Work Nos. 3, 3A);
 - ✦ Trenchless crossing together with working areas and other associated development (Work Nos. 4, 5, 6, 6A); and
 - ✦ Creation of construction and operational access routes, haul roads together with working areas and other associated development (Work Nos. 3, 4, 6, 7, 7A).
- 7 The onshore works for AyM are defined in the draft DCO as Work Nos. 8 – 41. These include:
- ✦ Cable works together with working areas and other associated development (Work Nos. 8, 9, 11, 15, 18, 19, 21, 23, 29, 31);
 - ✦ Construction of transition joint bays including trenchless installation together with working areas and other associated development (Work no. 8A);
 - ✦ Creation of construction and operational access and haul roads or improvement to existing route routes together with working areas and other associated development (Work Nos. 8, 9, 10, 10A, 11, 12, 13, 14, 14A, 15, 16, 16A, 17, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 25, 26, 26A, 27, 29, 30, 31, 32, 33, 34, 36, 37, 37A, 38, 39, 39A, 40, 41);
 - ✦ Creation of temporary construction compounds together with working areas and other associated development (Work Nos. 30, 30A);
 - ✦ Drainage works (Work Nos. 28, 29, 30, 31, 32, 33, 35);
 - ✦ Landscaping works (Work Nos. 29, 30, 31, 32, 33, 35);
 - ✦ The substation compound and substation infrastructure (Work Nos. 31, 31A);
 - ✦ A 400kV cable together with working areas and other associated development (Work Nos. 31, 32, 36); and
 - ✦ National Grid Substation works together with working areas and other associated development (Work No. 40).

- 8 Each part of AyM is described in further detail in the Environmental Statement (ES) (application ref: 6.1 *et seq*).
- 9 The AyM array area encompasses an area of approximately 78 km².
- 10 The AyM offshore Export Cable Corridor (offshore ECC) extends from the southwestern to southeastern boundary of the AyM array area in a southeasterly direction to Frith beach on the North Wales coast. The offshore ECC will be approximately 21 km in length.
- 11 The onshore ECC extends from the landfall, between Rhyl and Prestatyn, through primarily agricultural land to the onshore substation (OnSS) west of SABP, before then connecting to the National Grid substation at Bodelwyddan (south of SABP). A number of features, such as the Rhyl Golf Club, the River Clwyd, woodlands, and the A55 are subject to Horizontal Directional Drilling (HDD).

1.3 The purpose and structure of this Statement

- 12 The purpose of this document is to comply with Regulation 5(2)(f) of the APFP Regulations, which states that any application for a DCO should be accompanied by a statement setting out whether the development proposal could cause a statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA 1990). If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.
- 13 Section 158 of the 2008 Act provides statutory authority for carrying out development or doing any other act pursuant to a DCO such that there is an automatic defence to civil or criminal proceedings for nuisance.
- 14 While it is not expected that the construction, operation, maintenance and decommissioning of AyM would cause a statutory nuisance, Article 8 of the draft DCO accompanying the Application (application ref: 3.1) contains a provision that would provide a defence to proceedings in respect of statutory nuisance (in respect of sub-paragraphs (a) relating to general conditions on the site, (d) dust, steam, smell or other effluvia, (fb) artificial light, (g) noise and (ga) noise from a street of Section 79(1) of the EPA 1990).

- 15 The Overarching National Policy Statement for Energy EN-1 and draft Overarching National Policy Statement for Energy EN-1 both provide further information on this statutory authority.
- 16 Paragraph 4.14.1 of the Overarching National Policy Statement for Energy EN-1 states that: *Section 158 of the Planning Act 2008 confers statutory authority for carrying out development or doing anything else authorised by a DCO. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include defence for proceedings for nuisance under Part III of the EPA (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority's duties under Part III of the EPA to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve abatement notice where satisfied to its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is 'prejudicial to health' and not a nuisance.*
- 17 Paragraph 4.14.2 goes on to state that it is very important that, at the application stage, the Secretary of State considers sources of nuisance under Section 79(1) of the EPA 1990 and how these may be mitigated or limited, so that appropriate 'requirements' can be included in any DCO that is granted.
- 18 Revised draft versions of the National Policy Statements have recently been consulted on by the UK Government and have therefore also been included in this Statement. Paragraph 4.14.1 of the draft Overarching National Policy Statement for Energy EN-1 states that: *'Applicants may include in their application, a request for the grant of a defence of statutory authority against nuisance claims. In particular, the application may make reference to the provisions of Section 158(1) and (2) of the Planning Act 2008, which confers a defence of statutory authority for the purpose of providing a defence in any civil or criminal proceedings for nuisance arising from infrastructure for which development consent has been granted. For the purpose of Section 158 the term 'nuisance' takes its common law definition. This defence is also available for statutory nuisances under Part III, Environmental Protection Act 1990'.*

- 19 Draft Paragraph 4.14.2 similarly reiterates that the sources of nuisance and how they may be mitigated must be considered by the Secretary of State so that suitable conditions can be included in the DCO.
- 20 This Statement first describes the legislative context for the identification of matters which constitute statutory nuisance and the methodology for the assessment of these. This is followed by a summary of the assessment of the statutory nuisances, using information from the ES (application ref: 6.1 *et seq*), including any relevant mitigation measures and residual effects, whether embedded within the design of AyM or secured through requirements within the DCO.

2 Identification and assessment of Statutory Nuisance

2.1 Legislative Framework

21 Section 79(1) of the EPA identifies the matters which could constitute statutory nuisance as follows:

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road; and
- (h) any other matter declared by any enactment to be statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

2.2 Assessment of Significance

- 22 The ES for AyM addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in Section 79(1) of the EPA 1990.
- 23 ES Volume 3, Chapter 11: Air Quality (application ref: 6.3.11), Chapter 10: Airborne Noise and Vibration (application ref: 6.3.10), Chapter 2: Landscape and Visual Impact Assessment (application ref: 6.3.2) and the associated appendices provide detailed assessments of these potential statutory nuisances and identify mitigation measures where necessary.
- 24 The ES provides an assessment of the potential effects on receptors as negligible, minor, moderate or major. Moderate and major effects are considered to be significant for the purposes of the EIA.
- 25 The only matters addressed by the EPA 1990 which have been assessed as potentially being significant for AyM are identified as noise and air quality during construction works. However, it is demonstrated in Section 4 of this document that AyM would have no significant effects following the implementation of the identified mitigation measures.

3 Potential Effects

3.1 Noise

26 Section 79(1) of the EPA 1990, subsections (g) and (ga) state:

*noise emitted from premises so as to be prejudicial to health or a nuisance;
and*

*noise that is prejudicial to health or a nuisance and is emitted from or caused
by a vehicle, machinery or equipment in a street.*

27 The potential impacts and mitigation for this nuisance have been discussed as part of the noise impact assessment which is presented in ES Volume 3, Chapter 10: Airborne Noise and Vibration (application ref: 6.3.10).

28 The ES concludes that:

- ▲ If unmitigated, significant noise impacts could arise from the following during construction:
- ▲ Construction activities at landfall during weekday daytime and on Saturday afternoons;
- ▲ Trenchless crossing activities at landfall during the evening and night-time;
- ▲ Construction activities along the onshore ECC during weekday daytime and on Saturday afternoons;
- ▲ Trenchless crossing activities along the onshore ECC during the evening and night-time;
- ▲ Construction of access roads during weekday daytime and on Saturday afternoons;
- ▲ Construction traffic accessing the construction working area and haul road during weekday daytime, on Saturday afternoons and at night-time in a limited number of places; and
- ▲ Piling activities associated with construction of the offshore wind turbines during the night-time during neutral weather conditions.

29 In addition, if unmitigated, significant impacts could arise from noise emissions associated with the operation of the proposed onshore substation.

3.1.1 Construction Noise Mitigation

- 30 The CoCP includes within it a Noise and Vibration Management Plan (NVMP) (an outline NVMP is included as application ref: 8.13.2) which must be approved by Denbighshire County Council (DCC) prior to the commencement of construction works. The noise assessment in Volume 6, Chapter 10 of the ES considers a range of additional construction mitigation measures that would be informed by detailed design post consent and included within a final NVMP. A full list of examples of what these mitigation measures may be, and an indication of how they operate to reduce effects is provided in Chapter 10. These include: restrictions on working hours, and implementation of noise barriers.
- 31 With regards to the identified night-time wind turbine foundation piling impacts during onshore wind weather conditions (when impacts are likely to be greatest), mitigation is provided in the form of a requirement not to exceed specified noise thresholds (50 dB(A)) which is secured in the DCO. In addition, the outline NVMP (application ref: 8.13.2) identifies the following additional measures:
- ▲ reducing the piling hammer energy where required; and
 - ▲ as far as reasonably practicable, only undertaking piling operations during the night-time during periods of inclement weather.
- 32 The ES concludes that through the implementation of the best practice measures to control construction noise through the use of a NVMP and through a noise threshold of 50 dB(A) Leq,T imposed on offshore construction during night-time hours (2300-0700), noise would be managed and mitigated to reduce residual effects to minor adverse. These effects would therefore be not significant and would not constitute a statutory nuisance.

3.1.2 Operational noise mitigation

- 33 The operational noise from the onshore substation is controlled through a DCO requirement preventing such noise exceeding a specified rating level which does not exceed 5dB(A) above the baseline background sound level at the closest noise receptors.

34 The ES concludes that DCO requirement to limit operational noise from the onshore substation noise will effectively mitigate impacts such that residual effects will be minor adverse. These effects would therefore be not significant and would not constitute a statutory nuisance.

3.2 Air Quality

35 Section 79(1) of the EPA 1990, sub-section (d) states: *any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance.*

36 Dust emissions are anticipated during onshore construction works. Further details of these effects are provided in ES Volume 6, Chapter 11: Air Quality (application ref: 6.3.11). Potential dust effects during the construction phase are considered to be temporary and short-term and may only arise at particular times (i.e. certain activities and/ or meteorological conditions).

37 Air quality impacts will also be experienced by virtue of road traffic emissions during construction, the maximum onshore construction generated flows do not exceed applied screening criteria within 'Land-Use Planning and Development Control: Planning for Air Quality' (IAQM and Environmental Protection UK (EPUK), 2017). Road traffic effects associated with onshore construction activities on air quality are considered as having an insignificant/ negligible effect on human health and effects are concluded to be not significant

3.2.1 Dust mitigation

38 The CoCP includes within it an Air Quality Management Plan (AQMP) (an outline AQMP is included as application ref: 8.13.3). This includes a list of mitigation measures which reflect the Institute of Air Quality Management (IAQM) guidance (IAQM, 2016). The AQMP will be approved by DCC in advance of works commencing as secured in the DCO.

39 The ES concludes that through the implementation of mitigation measures proposed in the AQMP, and in consideration of the assessed maximum traffic flows during the construction phase, any impact would be no greater than negligible, and as such there would not be any significant effects on air quality and would not constitute a statutory nuisance.

3.3 Artificial light

40 Construction lighting (as assessed in application ref: 6.3.2) will be required during working hours in the winter months. The lights of construction vehicles will also add to the levels of lighting and a lower level of lighting will remain overnight for security purposes.

41 Illuminations may also be needed for occasional activities which require continuous working during night time. This may occur where continuous working is necessary for matters such as concrete pours and HDD work s (or other trenchless crossing techniques). Low level security lighting may also be required at night throughout the construction period.

3.3.1 Lighting mitigation

42 The CoCP includes within it an Artificial Light and Emissions Plan (ALEP) (an outline ALEP is included as application ref: 8.13.10). This includes details of the location, height, design and luminance of all lighting to be used during construction. As secured in the DCO, the ALEP will be approved by DCC prior to works commencing.

43 As stated in the outline ALEP, external lighting of the construction site will be of a low intensity and designed/ positioned to: provide the necessary levels for safe working; minimise light spillage or pollution; and avoid disturbance to adjoining residents and occupiers. Further, site lighting shall be positioned and directed to minimise nuisance to footpath users, residents, to minimise distractions to passing drivers on adjoining public highways and to minimise skyglow, so far as is reasonably practicable.

44 As set out in requirement 15 of the DCO, construction working hours are proposed to be from 7am to 7pm save as otherwise agreed with DCC. The use of construction lighting would therefore generally be limited to morning or early evening during winter months.

45 The ES concludes that through the implementation of mitigation measures proposed in the ALEP and the limitation on construction hours secured by a requirement of the DCO, effects are considered to be negligible. Therefore there would not be any significant effects on light emissions and would not constitute a statutory nuisance.

3.4 Other matters

46 No other matters are considered to be a potential statutory nuisance associated with the construction and operation of AyM.

4 Conclusion

- 47 This Statement identified the matters set out in Section 79(1) of the EPA 1990 in respect of statutory nuisance and considers whether AyM could cause a statutory nuisance.
- 48 The only matters addressed by the EPA 1990 which have been assessed as potentially being significant for AyM are those associated with airborne noise and vibration (application ref: 6.3.10). However, it is demonstrated in Section 4 of this Statement that AyM would have no significant effects following the implementation of the identified mitigation measures.
- 49 Notwithstanding the above conclusions, the draft DCO that accompanies the application contains a provision in Article 8 that would provide a defence, subject to certain criteria, to proceedings in respect of statutory nuisance falling within sub-paragraphs (a) relating to general conditions on the site, (d) dust, steam, smell or other effluvia, (fb) artificial light, (g) noise and (ga) noise from a street of Section 79(1) of the EPA 1990.



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