

From: [Clark, Juliet - REPG](#)
To: [AwelyMor](#)
Cc: [Robert Jenkins](#); [Burns, Andrew](#)
Subject: Additional Submission - Notification request to be considered as Interested Party / Deadline 1 [ES-CLOUD_UK.FID9480280]
Date: 21 September 2022 12:38:49

Dear Sir/ Madam.

**Planning Act 2008 ("the 2008 Act")
Section 88(3A)(b) – Statutory Party
Section 89(2A)(b) Request**

As requested, and further to our email of 15 September 2022, please consider the following formal Additional Submission request (Deadline 1) by Network Rail under s.89(2A)(b) of the 2008 Act (as a Statutory Party for the purposes of s.88 (3A)(b) of that Act), to be considered as an Interested Party in the Examination of the Application for the Awel y Mor Windfarm DCO.

We are instructed by Network Rail Infrastructure Limited ("Network Rail") in relation to the development consent application made by Awel y Mor Wind Farm Ltd ("the Promoter") for the development of an array of offshore Wind Turbine Generators and supporting infrastructure. Please accept this submission under section 89(2A)(b) of the 2008 Act, made on behalf of Network Rail, to be considered as an Interested Party for the purposes of s.102 of the 2008 Act, in the Examination.

Network Rail is a statutory undertaker responsible for maintaining and operating the country's railway infrastructure and associated estate. Network Rail owns and operates Great Britain's railway network and has statutory and regulatory obligations in respect of it.

Network Rail aims to protect and enhance the railway infrastructure and therefore any proposed development which is adjacent to and interfaces with the railway network or potentially affects Network Rail's land interest will be carefully considered.

The proposal for an Windfarm development which interfaces with the railway network will require certain standard protections for the benefit of the railway. Network Rail's requirements for the protection of the railway infrastructure are set out in further detail in this representation.

1. Protection from Compulsory Acquisition

There are references in the Book of Reference to land owned by and rights for the benefit of Network Rail. Whilst Network Rail does not object in principle to the DCO, Network Rail does object to the permanent compulsory acquisition of rights over land or subsoil under Network Rail's operational land.

Network Rail recognises that the DCO Scheme requires the use of subsoil under Network Rail's operational railway. However, Network Rail would expect the necessary subsoil rights or other rights to be acquired through an agreed easement rather than through the exercise of compulsory acquisition powers. This approach must be adapted to ensure that Network Rail can comply with its statutory duties to maintain the safe, efficient and economic operation of the railway and to ensure such rights do not affect the continued use of the railway by train and freight operators. Network Rail therefore requests the Promoter enters into discussions with Network Rail as soon as possible to seek to agree the necessary rights required for the DCO Scheme.

2. Network Rail's Protective Provisions

Network Rail also objects to the seeking of powers to carry out works for the DCO Scheme in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking, which the draft of the Order for the DCO Scheme does not contain.

Protective provisions for the benefit of Network Rail are well precedented within numerous DCO and TWA Orders. Network Rail welcomes the form of protective provisions for the protection of Network Rail's operations which are included on the face of the DCO as applied for (Schedule 9, Part 6). However, those protective provisions are inadequate insofar as they do not protect Network Rail from the powers in the DCO to use compulsory powers over land, as well as in other respects. Network Rail submits that, in order to effectively protect its assets, those powers should be qualified in respect of Network Rail's operational property and used only where Network Rail consents to such use (such consent not to be unreasonably withheld or delayed). Network Rail has responded to the Applicant with a set of Protective Provisions marked up to show the requisite amendments. Accordingly, **at present Network Rail objects to the draft Order on the basis that it does not include protective provisions in Network Rail's standard form.** If necessary, Network Rail will both in written representations and in submissions at hearings press the need for such protective provisions to be included in the Order where Network Rail's operational infrastructure is proposed to be affected.

In addition to protective provisions for the benefit of Network Rail being included in the Order, Network Rail reserves the right to require the Promoter to enter into an asset protection agreement to ensure the appropriate and necessary technical, engineering and safety requirements for working on or near Network Rail's operational railway are applied to the DCO Scheme, if necessary. This appropriate amendment to the Protective Provisions has been sent for consideration to the Applicant.

2. Removal of objections

It is acknowledged that discussions with the Promoter to date are on-going. If the following criteria are met, then it is anticipated that Network Rail would be in a position to withdraw the objections made above:-

- i. Network Rail's standard protective provisions are to be included in the Order for the DCO Scheme;
- ii. the Promoter enters into a Deed of Undertaking/Framework Agreement to provide formal protection for Network Rail's statutory undertaking;
- iii. any required easement and asset protection agreements or any other required agreements are entered into in respect of the acquisition of addressing both the acquisition of rights over Network Rail's operational land and carrying out of works on or adjacent to NR's operational land; and
- iv. Network Rail is provided clearance to enter into any of the agreements referred to above following internal consultation with affected stakeholders across the business.

Network Rail would like to reserves its position, both in representation and in submissions at hearings, to seek the amendments to the draft Order to ensure protective provisions are inserted for the benefit of Network Rail's operational infrastructure, which is affected by the DCO Scheme.

Network Rail is in discussion with the Promoter to agree acceptable terms for the protection of Network Rail's statutory undertaking.

Kind regards

Juliet

Juliet Clark

Principal Associate

Parliamentary and Infrastructure Consenting



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