

PLANNING ACT 2008

DEVELOPMENT CONSENT ORDER – AWEL Y MOR OFFSHORE WINDFARM

RELEVANT REPRESENTATION ON BEHALF OF RHYL FLATS WIND FARM LIMITED

2. Legal and Policy Context

- 2.4 RF is an operational offshore windfarm and constitutes existing offshore infrastructure. The Applicant has not followed the guidance in the relevant parts of national policy statement EN-3. Consent should not be granted until the impact of the proposed development on RF is properly assessed and appropriate provision is made to minimise negative impacts, disruption and economic loss to RF as required by EN-3.

3. Property Impact

- 3.1 Work No.2 intrudes into the 250m restriction zone around the perimeter of the areas leased by the Crown Estate Commissioners to RFWF where there is a restriction on works without RFWF's consent. No approach has been made to resolve this issue.

4. Impact of Construction Work and Need for Protective Provisions

- 4.1 The Applicant has now accepted that protective provisions are required for the benefit of RF. Draft protective provisions are under discussion between the parties.
- 4.3 Provision for wake loss has not currently been made in the draft protective provisions but RFWFL would intent to provide additional protective provision to address wake loss at Deadline 2 if satisfactory progress is not made.

5. Operational Impact and Wake Loss

- 5.1 It is understood that the Applicant accepts that there may be a wake effect on the RF turbines but that the extent of the impact will depend on the proposed layout and turbine specification of AYM. No proposals have been made by the Applicant on how to address this issue.
- 5.5 There is insufficient material to enable the ExA to satisfy themselves on this jmpact as required by EN-3.

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1. Introduction

- 1.1 Rhyl Flats Wind Farm Limited (“RFWFL”) operate the Rhyl Flats wind farm (“RF”) to the south of the proposed Awel Y Mor wind farm (“AYM”). The location of RF can be seen on sheet 2 of the Works Plans.

2. Legal and Policy Context

- 2.1 Section 104(3) of the Planning Act 2008 requires the Secretary of State, subject to certain exceptions, to determine a DCO application in accordance with any relevant national policy statement.

- 2.2 The relevant national policy statements for AyM are EN-1 (Overarching National Policy Statement for Energy) and EN-3 (Renewable Energy Infrastructure). The key provisions for current purposes are in paragraphs 2.6.176 – 2.6.188 of EN-3. These set out policy on how potential impacts of proposed offshore wind farms on oil, gas and other offshore infrastructure and activities should be considered. EN-3 recognises that offshore wind development may be proposed in locations where existing offshore activities may be taking place and provides guidance on how potential conflict should be managed. The most relevant sections of EN-3 are:-

- a) “Where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by Government, the applicant should undertake an assessment of the potential effect of the proposed development on such existing or permitted infrastructure or activities. The assessment should be undertaken for all stages of the lifespan of the proposed wind farm in accordance with the appropriate policy for offshore wind farm EIAs.” (2.6.179)
- b) “Applicants should engage with interested parties in the potentially affected offshore sectors early in the development phase of the proposed offshore wind farm, with an aim to resolve as many issues as possible prior to the submission of an application to the IPC.” (2.180)
- c) “Where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the IPC. Much of this infrastructure is important to other offshore industries as is its contribution to the UK economy. In such circumstances the IPC should expect the applicant to minimise negative impacts and reduce risks to as low as reasonably practicable.” (2.6.183).
- d) “...the IPC should be satisfied that the site selection and site design of the proposed offshore wind farm has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries. The IPC should not consent applications which pose unacceptable risks to safety after mitigation measures have been considered.”(2.6.184)
- e) “Where a proposed development is likely to affect the future viability or safety of an existing or approved/licensed offshore infrastructure or activity, the IPC should give these adverse effects substantial weight in its decision-making.” (2.6.185)

- f) “Detailed discussions between the applicant for the offshore wind farm and the relevant consultees should have progressed as far as reasonably possible prior to the submission of an application to the IPC. As such, appropriate mitigation should be included in any application to the IPC, and ideally agreed between relevant parties. (2.6.187)”

2.3 The following key points can be taken from EN-3:-

- a) Applicants are expected to assess the potential impact of proposed offshore wind development on existing infrastructure;
- b) Applicants should engage with existing operators with the aim of resolving matters before submission;
- c) Site design should seek to minimise disruption, economic loss or safety to other offshore operators;
- d) The Applicant is expected to minimise negative impacts to existing infrastructure;
- e) Mitigation should be included in the application and ideally agreed with other parties; and
- f) If there are unacceptable safety implications after mitigation is applied then the application should not be consented.

2.4 RF is an operational offshore windfarm and constitutes existing offshore infrastructure. The provisions of paragraphs 2.6.176 – 2.6.1 are therefore engaged in relation to the potential impact of AYM on RF. As matters currently stand, RFWFL consider that the Applicant has not followed the guidance in the relevant parts of EN-3. Consent should not be granted until the impact of the proposed development on RF is properly assessed and appropriate provision is made to minimise negative impacts, disruption and economic loss to RF as required by EN-3.

3. Property Impact

3.1 It initially appeared to RFWL from the Works Plans show that Work No.2 intruded into the area of the sea bed which is leased by the Crown Estate Commissioners to RFWFL for the operation of RF. The Applicant has provided plans which demonstrate that the Work No.2 is in fact outwith the area leased to RFWL.

3.2 However, Work No.2 still intrudes into the 250m restriction zone around the perimeter of the areas leased by the Crown Estate Commissioners to RFWFL for the operation of RF. The restriction zone exists to ensure that other proposed developments do not adversely affect the operation of RF. The Crown Estate Commissioners have covenanted with RF not to grant any lease, licence or consent (other than where the lease requires that RF’s consent is obtained) for the construction of any works within the restriction zone. Although the Applicant referred at Specific Issue Hearing 1 to commercial discussions taking place with RFWFL, there have been no approach made to resolve this issue. It therefore remains an impediment to delivery of the scheme

4. Impact of Construction Work and Need for Protective Provisions

4.1 Work No. 2 would permit construction activities in close proximity to the eastern-most RF turbine. Although AYM has indicated that best practice will be used during cable laying, this is not currently secured by the draft DCO. There are protective provisions in Part 1 of Schedule 9 for electricity undertakers but these do not apply to the offshore works. It is essential that the DCO provides protective provisions for the benefit of RFWFL.

4.2 The Applicant has now accepted that protective provisions are required for the benefit of RF. This acknowledgement is welcome and the Applicant has provided draft protective provisions which are under discussion between the Applicant and RFWFL. The key areas in which RFWFL consider that further provision is required are:-

- a) A mechanism is required for RF to approve the details of how works are to be carried out (including timing) out as well as details of the works themselves. This is necessary to ensure that the works are carried out in accordance with good practice and that the method and timing of the works do not prejudice the operation of RFWFL or any works which may be planned to RFWFL.
- b) The protective provisions need to make provision for RF to have representatives present when the work is carried out to ensure that work is carried out in accordance with the approved details.
- c) Provision is required for the Applicant to reimburse the reasonable expenses incurred by RFWFL as a result of the works carried out by the Applicant. The principle of this point is established in the draft produced by the Applicant but further detail is required.
- d) An indemnity is required in relation to any damage or loss caused to the RFWFL as a result of the Applicant's works, including where there is any interruption or reduction in any electricity generated by RF. The Applicant has included such wording in the DCO for various onshore electricity undertakers and similar provision is required in relation to RFWFL.

4.3 As explained below, there is currently a dispute between the parties on wake loss. RFWFL is seeking further discussion with the Applicant to establish whether this is a matter which is capable of being resolved between the parties. Provision for wake loss has therefore not currently been made in the draft protective provisions. However, in the event that satisfactory progress is not made then RFWFL would intent to provide additional protective provision to address wake loss at Deadline 2.

5. Operational Impact and Wake Loss

5.1 There is the potential for further impacts on RF during the operation of AYM such as if maintenance activity is required to the AYM export cable. This can be addressed by adjustment of the draft protective provisions and RFWFL has proposed such revisals.

5.2 The main issue between the parties relates to potential wake loss. As wind passes through the upstream turbines in a wind farm, due to energy extraction by the first rows of turbines and churning effect of the rotating blades, the flow will get weakened and disturbed. This is termed as the wake effect. As a result of wakes, the power produced by downwind turbines can be less than the upwind turbines. Wake effect can therefore reduce the productivity and economic performance of the turbines which are impacted by the wake effect.

5.3 AYM turbines would lie to the north and north west of the existing RF turbines. There is the potential for the AYM turbines to interfere with wind speed or wind direction and thus cause a reduction in energy output from the RF turbines. It is understood that the Applicant accepts that there may be a wake effect on the RF turbines but that the extent of the impact will depend on the proposed layout and turbine specification of AYM.

5.4 During Issue Specific Hearing 1, the Applicant suggested that the issue of wake loss was a commercial matter between the parties and stated that commercial discussions were ongoing on this matter between the parties. Dealing first with the issue of discussions, although there communications between the parties in relation to the proposed development there have been

no commercial discussions on wake loss. No proposals have been made by the Applicant on how to address this issue.

- 5.5 Moving to the issue of the relevance to the issue of wake loss, and as set out above at 2.3, EN-3 expects applicants to (1) assess the potential impact of proposed offshore wind development on existing infrastructure; (2) minimise disruption and economic loss to existing infrastructure; and (3) minimise negative impacts on existing infrastructure. If AYM would potentially cause a negative impact on RF with a negative impact on the economic performance of RF then this is clearly an issue which EN-3 requires to be considered. Even without the terms of EN-3, if the operation of AYM would result in a drop in energy yield from RF then that would affect the net contribution which AYM would make towards renewable energy targets. That in itself would be an important and relevant consideration to which the Secretary of State would require to have regard in terms of section 104(2)(d) of the 2008 Act.
- 5.6 Although Chapter 12 of the Environmental Statement [APP-058] considers the impacts of the on other marine users and activities - including existing offshore wind farms – this assessment does not extend to assessment of wake loss impacts on RF. Nor does the ES explain why this has been scoped out. There is no material before the examination which assesses the potential impact of the proposed development on the energy yield of RF. There is therefore currently insufficient material to enable the ExA to satisfy themselves that the development has been designed so as to minimise disruption or economic loss to other offshore operators. Nor can the ExA be satisfied that negative impacts to existing infrastructure have been minimised.
- 5.7 RFWFL will continue to engage with the Applicant to seek a satisfactory resolution to the issue of wake loss. However, in the absence of such a solution, the ExA cannot currently be satisfied that the proposed development would comply with paragraphs 2.6.176 – 2.6.1 and the development should not be consented.