

Deadline 5 - Examining Authority's Second Written Questions

Response on behalf of Rhyl Flats Wind Farm Limited

ExQ2	Question to:	Question	RFWL Response
3.8	Rhyl Flats Wind Farm Limited (RFWF)	<p>Wake effects</p> <p>The Applicant provided its view on the matter of wake effects in respect of RFWF in response to ExQ1.3.27 [REP1-007]. Do you agree with the points raised, and if not, do you have any substantive evidence of your own to support your concern on this matter?</p>	<p>Response to Applicant Views on Wake Loss</p> <p>RFWL responded to the views of the Applicant on this matter in their comments at Deadline 2 [REP2-057] and again at Deadline 4 [REP4-047] . RFWL does not agree with the points raised by the Applicant.</p> <p>The Applicant raises 3 main points which are addressed in turn:-</p> <p>1) <u>Crown Estate Siting Criteria</u></p> <p>The Applicant maintains that ensuring a suitable distance between existing and new offshore wind farms was considered as part of TCE's siting criteria and there are no further siting requirements placed on the Applicant in relation to the design of AyM. It is accepted that the Crown Estate's siting criteria include set off distances from existing offshore wind farms but it important to take account of the context for these criteria and how they fit with the policy in EN-3.</p> <p>Crown Estate leases for offshore wind farms typically set restriction zones around the leased area which restrict the granting of new interests. Within the first restriction zone (typically up to 250m from the perimeter of the lease), the consent of the existing tenant is required if the Crown Estate wish to grant a lease for other works. This provision has been referred to by both parties and is why the granting of the lease by the Crown Estate to the Applicant is subject to RFWL's consent.</p> <p>For some offshore windfarm leases (such as the existing RFWL lease) there is also an extended restricted zone prohibiting the granting of a lease for the construction of additional turbines which would result in reduction of energy output from an existing wind farm unless certain criteria are met.</p>

			<p>The Crown Estate siting criteria need to be seen in the context of the Crown Estate’s contractual position in relation to existing wind farms. The siting guidance seeks to avoid new proposals within geographic areas which may trigger liability for the Crown Estate under existing leasehold arrangements.</p> <p>The Applicant appears to be suggesting that the ExA can rely on the Crown Estate siting process to have addressed issues of wake loss impact. Planning case law has considered how planning authorities should deal with considerations which are subject to control by other regulatory bodies. The case of <i>Gateshead MBC v Secretary of State for the Environment and Another</i> (1994) 67 P&CR 179 considered air emissions. The case confirmed that air emissions were a material consideration but so too was a stringent statutory regime for controlling such emissions. The planning authority was entitled to be satisfied that the issue of air emissions was capable of being overcome by Environmental Protection Agency (“EPA”) regulation. Whether that point had been reached, however, was a matter for the decision maker to reach in circumstances of the case.</p> <p>The position of the Crown Estate in granting leases for new wind farms is not analogous to a regulatory body in the position of the EPA. The EPA operates detailed regulatory regimes for matters such as air and water emissions. The Crown Estate sets broad siting criteria for the lease of new sites. It is understood that this does include a criterion that the lease of new sites are sufficiently separated from existing sites so as to avoid high levels of impact on existing sites. However, the Crown Estate does not regulate such impacts in the same way as the EPA. It may use locational criteria to avoid what might be the worst levels of impact but it cannot be assumed that a site which the Crown Estate propose to lease will not have a wake loss impact on an existing wind farm or that matters in that regard will have been considered adequately by the Crown Estate. Whether there is an impact or not will be a matter for the circumstances of the case and is a matter which the ExA requires to consider.</p> <p>2) <u>Interpretation of EN-3</u></p>
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