

DEADLINE 5

SUBMISSION ON BEHALF OF NORTH HOYLE WIND FARM LIMITED

Question Number	Question	NHWFL Response
3.9	<p>Protective provisions</p> <p>You indicate that should a crossing agreement not be reached with the Applicant, protective provisions may be needed within the dDCO. Are you able to provide any wording for these for the consideration of the Applicant and ExA</p>	<p>NHWFL is still in discussions with the applicant in relation to the conclusion of a cable crossing agreement. There are currently a number of points between the parties which prevent an agreement being concluded. Principally, these relate to indemnities and financial obligations which the Applicant is seeking to apply to works which may require to be carried out by NHWFL on their existing cables. Currently, NHWFL would be able to carry out these works without these additional burdens. NHWFL do not consider that it is reasonable to be asked to accept additional costs caused by the presence of the Applicant's works.</p> <p>There is also the issue of the extent of the indemnity which has been offered in relation to losses caused by the actions of the Applicant in relation to the authorised works. The Applicant has sought to limit this indemnity to works associated with the cable crossing. NHWFL remains concerned, on the basis of previous experience, that works carried out by the Applicant to connect their development to the grid could lead to temporary disconnection or curtailment of generation of the NHWFL development. NHWFL therefore seeks additional protection for that potential impact.</p> <p>At present it is not clear whether it will be possible to conclude a cable crossing agreement within the course of the examination or what the scope of additional protective provisions may need to be. To assist the ExA, and as requested, NHWFL has prepared a full set of protective provisions which are attached. These would only be required in the</p>

		<p>event that it is not possible to conclude agreement in any form and they would still allow the parties to reach agreement on a contractual basis. Depending on how discussions progress, it may be that parties are able to agree a core crossing agreement with submissions on what additional protective provisions are required.</p>
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For the protection of North Hoyle Wind Farm Limited

Application

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and North Hoyle Wind Farm Limited.

Interpretation

2. In this part—

“Company” means North Hoyle Wind Farm Limited (company number 02904841) whose registered address is at 5th Floor, 20 Fenchurch street. London, England, EC3M 3BY;

“Company cables” means the export cables leading from North Hoyle wind farm to their onshore grid connection;

“crossing points” means the points at which the Company cables and the undertaker cables cross each other;

“force majeure event” means any cause beyond the reasonable control of the undertaker, and which the undertaker by the exercise of reasonable diligence is unable to prevent, avoid or remove, and in relation to which the undertaker has exercised and is exercising the standard of a reasonable and prudent operator provided that a lack of funds shall not constitute a force majeure event;

“method statement” means such designs, details and procedures for performance of the work as are sufficient to enable the Company (acting reasonably) to satisfy itself as to the safety and security of the Company cables and the technical adequacy of the work, such designs, details and procedures shall as a minimum include—

- (a) construction methods and programmes;
- (b) vessel handling and positioning systems;
- (c) stabilisation details;
- (d) details of the vertical and horizontal separation between the Company cables and the undertaker cables;
- (e) details of the proposed protection measures for the Company cables and provision of such protective works (whether temporary or permanent) as the Company may reasonably require for the safety and operation of the Company cables;
- (f) the proposed timetable for the work;
- (g) location, layout and profile of the crossing of the Company cables by the undertaker cables;
- (h) specification of the installation equipment;
- (i) inspection and safety methods; and
- (j) copies of the approved cable burial risk assessment and cable route burial protocol;

“North Hoyle wind farm” means the offshore wind farm operated by the Company to the north east of Work No.2, the location of which is shown on Sheet No. 2 of the works plans;

“specified work” means any operation (including the anchoring of vessels) within 500 metres of the Company cables, including any work for the laying of the undertaker cables, crossing of the Company cables and the installation and any maintenance or remedial work of whatever nature (including removal) on the undertaker cables;

“standard of a reasonable and prudent operator” means seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and complying with applicable law; and

“undertaker cables” means the submarine AC power export cables to be installed by the undertaker in terms of Work No.2.

Requirement for approval of method statement and surveys

3. The undertaker must at least 3 months before commencing construction of any specified work supply to the Company a method statement for the reasonable approval of the Company and the specified work must not be commenced or undertaken except in accordance with such method statement as has been approved in writing by the Company, settled by arbitration under article 44 (arbitration) or as may be agreed to be varied from time to time, such agreement not to be unreasonably withheld or delayed.

4. If by the expiry of 28 days, beginning on the date on which the method statement was supplied to the Company under paragraph 3, the Company has not communicated approval or disapproval, the Company is deemed to have approved the method statement as supplied.

5.—(1) The undertaker shall, at its own cost, carry out all surveys reasonably necessary to confirm the actual position of the Company cables prior to the commencement of any specified work unless otherwise agreed with the Company in writing, such agreement not to be unreasonably withheld or delayed provided that—

- (a) The Company shall provide on request, any reasonable assistance in locating the Company cables which shall include provision of any as-laid/post-installation survey data relating to the Company Cables in the possession and/or control of the Company; and
- (b) If, following the provision of such reasonable assistance, the position of the Company cables has not been identified by the undertaker, the Company and the undertaker shall discuss and use all reasonable endeavours to agree upon a suitable method for carrying out the specified work.

6. In granting its approval (or deemed approval) of the method statement the Company shall not be under any duty to ensure the accuracy, correctness or completeness of the method statement. Approval (or deemed approval) of the method statement by the Company shall not release the undertaker from any obligation or liability and shall not as between the undertaker and the Company be capable of amounting to negligence or contributory negligence on the part of the Company in the event of any claim or proceedings arising out of or in connection with the specified works unless the loss, damage or expense giving rise to such claim or proceeding is caused by the wilful misconduct of the Company.

7. The undertaker shall use all reasonable endeavours to ensure the route of the undertaker cables shall be designed to cross the Company cables at a horizontal angle which is as close as possible to a right angle as is practicable having due regard to other route requirements.

Requirement for notification of start of works

8.—(1) The undertaker shall give the Company no less than 15 working days written notice of their intention to carry out any specified work providing—

- (a) the nature of the work; and
- (b) the anticipated dates of commencement and completion of the work

(2) In the event of the work not being commenced within 15 working days of the anticipated date of commencement as notified by the undertaker pursuant to sub-paragraph (1) the undertaker shall re-notify the information referred to in sub-paragraph (1).

Carrying out of works

9. The undertaker shall allow the Company all access to the Company cables as may be reasonably required by the Company for the purposes of maintenance when carrying out any specified works.

10. The undertaker shall ensure that the specified works are carried out with all reasonable skill and care, in accordance with all relevant statutory obligations and in accordance with the method statement for the specified works approved or deemed approved under paragraph or such alternative designs, details and procedures which the undertaker may propose and the Company may accept from time to time at its sole discretion.

11. Any contractor and/or subcontractor used by the undertaker for the purpose of the specified works shall be suitably qualified and experienced in carrying out the type of work for which it is engaged. The undertaker shall take and procure that its contractors and/or subcontractors shall take all such measures as ought reasonably to be taken in accordance with good offshore cable practice to avoid the risk of damage to the Company cables.

12. Either during the installation or as soon as practicable after the installation of the undertaker cables, the crossing points shall be inspected by the undertaker or on its behalf, at the undertaker's expense, by means of a remotely operated vehicle or by divers or such other method as shall be reasonably agreed by the Company, to ascertain that the undertaker cables and the Company cables have the agreed vertical separation distance at the crossing points in accordance with the method statement approved in accordance with paragraph 3. In the event that the undertaker cables and the Company cables have been adequately vertically separated then the undertaker shall consult with the Company to determine the most appropriate course of action and the undertaker shall, at its own expense then rectify the situation to provide such vertical separation.

13.—(1) The undertaker shall provide the Company with the actual as-laid route of the undertaker cables in the vicinity of the Company cables by—

- (a) provision of co-ordinates of the crossing points within 48 hours after completion of installation of the undertaker cables in the vicinity of the cables; and
- (b) provision of charted information of the crossing points as soon as practicable after the completion of the installation of the undertaker cables.

14. The undertaker shall ensure that the risk of dropped object, anchoring, grounding, vessel drift-off, impact from jack-up legs etc. will be adequately assessed and precautions taken to minimise such risks as far as reasonably possible.

Future specified works

15. Following the installation of the undertaker cables, the undertaker shall use all reasonable endeavours to consult the Company in good faith regarding any future specified work which may be required in to the undertaker cables. The undertaker and Company shall work together to accommodate any such future specified work if this is required and shall use all reasonable endeavours to agree the timings and methods for any future specified work to be undertaken, such agreement not to be unreasonably withheld or delayed by the Company.

16. Notwithstanding the provisions of paragraph 15, if any future specified work is required which is of an urgent or emergency nature, the Company and the undertaker shall use all reasonable endeavours to undertake such work in an expeditious manner and shall work together in good faith to enable such future specified work to be undertaken as required and the undertaker shall give the Company as much written notice as is reasonably possible in light of the emergency or urgency before undertaking such future specified work (including all relevant details of the proposed future specified work).

17.—(1) Subject to paragraph 16, where the undertaker requires to carry out any future specified work then the undertaker shall—

- (a) provide the Company with not less than 1 months notification of its intention to carry out any such future specified work;
- (b) provide the Company with all such reasonable information concerning the future specified work and the procedures for the conduct of the future specified work as the Company may reasonably require and the provisions of paragraphs 3 to 14 shall apply to any such future specified work mutatis mutandis except that
 - (i) the time period for providing a method statement under paragraph 3 shall be 1 month prior to the commencement of the future specified work;
 - (ii) the time period for approving a method statement under paragraph 4 shall be 15 working days
 - (iii) the time period for advising the anticipated dates of commencement and completion of the future specified work under paragraph 8 shall be 10 working days.

Works on Company cables

18.—(1) The Company shall be entitled, at the Company’s expense, to carry out any operation required to re-lay, maintain, renew or remove the Company cables in the vicinity of and over the undertaker cables if such work becomes necessary for any reason provided that, when the Company proposes to undertake such work they shall follow the procedure set out in paragraphs 15 to 17 which applies with the following modifications—

- (a) The references to the “the undertaker” shall be read as references to “the Company”;
- (b) The references to “The Company” shall be read as references to “the undertaker”; and
- (c) The references to “future specified work” shall be read as “work permitted under paragraph 18.”

Restrictions on anchors and moorings

19. The Company shall not deploy anchors or other ground mooring equipment within 250 metres of the Company cables unless in accordance with DNV Standards or otherwise except on obtaining, for the those cables or ground mooring equipment, written agreement of the Company (or the written agreement of representative of the Company supervising the work in terms of paragraph 25.

Indemnity and liabilities

20.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works (including without limitation any specified work carried out by the undertaker or any subsidence resulting from any such work), any damage is caused to any apparatus or property of the Company or there is any interruption or reduction in any electricity supply by the Company or the Company becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from the Company the cost reasonably and properly incurred by the Company in making good such damage or restoring the supply;
- (b) indemnify without limitation the Company for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the Company by reason or in consequence of any such damage, interruption or reduction or the Company becoming liable to any third party as aforesaid other than arising from any default by the Company; and
- (c) Indemnify without limitation the Company for any and all claims, proceedings, damages (whether in contract or tort), costs (including reasonable legal costs), demands, liabilities, or expenses incurred by the Company which arises out of or in connection with any pollution caused by or which arises out of any specified work or in consequence of the construction, use, maintenance or failure of any of the authorised development carried out by or on behalf of the undertaker.

(2) The fact that any act or thing may have been done by the Company on behalf of the undertaker or in accordance with a plan or method statement approved by the Company or in accordance with any requirement of the Company or as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and the Company).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the wilful misconduct of the Company;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business

interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) The Company must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representation.

21.—(1) The undertaker shall be responsible for the recovery or removal and when appropriate the marking or lighting of any wreck or debris arising from or relating to or in connection with its carrying out of a specified work when required by—

- (a) any applicable law or governmental authority;
- (b) any applicable consent or third party agreement that the Company is subject and/or a party to; or
- (c) where such wreck or debris is interfering with the Company's operations or is a hazard to fishing or navigation,

and shall be liable for, and shall indemnify and hold harmless the Company, from and against any and all claims, proceedings, damages (whether in contract or tort), costs (including reasonable legal costs), demands, liabilities, or expenses incurred by the Company which arises out of or in connection with any such wreck or debris, whether or not the negligence or breach of duty (whether statutory or otherwise) of the Company contributed to such wreck or debris.

22.—(1) In the event of the undertaker being liable for damage to the Company's cables, the Company may at its discretion either—

- (a) require the undertaker to repair the damage; or
- (b) carry out the repair work itself.

(2) Should the Company elect to carry out the repair work itself, the Company shall use all reasonable endeavours to minimise costs and shall take all reasonable action to repair the Company cables as soon as practicable. The repairs shall be effected with due regard to the technical requirements of the Company's cables and nothing in this paragraph shall oblige the Company to accept a standard of repair that would adversely affect the technical performance of the affected cable.

23. In the event of the undertaker being liable for damage to the Company Cables, the Company shall use all reasonable endeavours to notify the undertaker of the existence of the damage to the Company cables as soon as practicable after the existence of such damage is known.

24. The undertaker shall use reasonable endeavours to procure that any policies of insurance of the undertaker shall contain waiver of subrogation rights which reflect the provisions of this Part.

Representatives

25.—(1) The Company shall be entitled to have not more than 2 representatives present while any specified work is being carried out by the undertaker whose role shall be as follows—

- (a) Any cost and logistics associated with onboarding and the services of the Company representatives shall be covered by the undertaker.
- (b) Any representatives must be suitably qualified and experienced and must comply with the Maritime Labour Convention 2006 Regulations.
- (c) The Representatives may be located on any vessel carrying out the specified work and shall have full and free access at all times to all activities related to the specified work.
- (d) The undertaker shall afford the representatives its full cooperation in the execution of the representative's duties under this paragraph.
- (e) The representatives only function is to safeguard the interests of the Company and he/she/they shall have no duty to ensure or procure the doing of anything for the benefit of undertaker or to prevent anything which may be to the detriment of the undertaker respectively, provided however that the representatives shall act in good faith at all times.

Insurance

26.—(1) The undertaker shall arrange insurance as follows—

- (a) The undertaker shall at all times when carrying out specified work, insure at its own cost for its liability under paragraphs 20 and 21 for the sum of twenty million pounds sterling (£20,000,000) for any one incident (or series of connected incidents) and forty million pounds sterling (£40,000,000) in total for any incident or series of incidents, related or unrelated, in any 12 month period.;
- (b) All such policies of insurance shall be placed with an insurance office approved to do business in Germany or the United Kingdom; and
- (c) The undertaker shall provide the Company with evidence of that such insurance is in place (via a brokers' confirmation or similar) as may be reasonably requested by the Company from time to time.

Force majeure

27.—(1) The undertaker shall not be responsible for any failure to fulfil any paragraph of this Part if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure event which has been notified in accordance with the following provisions—

- (a) In the event of a force majeure event, the undertaker shall notify the Company as soon as practicable and in any event not later than 10 working days after the undertaker became aware of the event or circumstance giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay;
- (b) Following notification of a force majeure event in accordance with sub-paragraph (1)(b), the undertaker and the Company shall meet without delay (and thereafter at regular intervals) to discuss the effect of the force majeure event with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.
- (c) The undertaker shall at all times use all reasonable endeavours to avoid, overcome and minimise any delay in the performance of this Part as a result of any force majeure event.
- (d) If the undertaker is affected by force majeure event whilst any of its vessels or equipment are engaged in the performance of a specified work they shall ensure that all reasonable steps are taken to ensure the protection of the Company cables from damage and shall immediately notify the Company of any such steps taken.
- (e) The undertaker shall give notice to the Company when it ceases to be affected by the force majeure event and shall as soon as reasonably possible after the cessation of the force majeure event resume performance of its obligations under this Part.