

## DEADLINE 8

### CLOSING SUBMISSION ON BEHALF OF NORTH HOYLE WIND FARM LTD (“NHWFL”)

NHWFL operate the North Hoyle wind farm (“NH”) to the south of the proposed Awel Y Mor wind farm.

Proposed Work No.2 will require that the export cable for the proposed development crosses the export cable for NHWFL. This intrudes into the “Designated Area” for the NH export cable identified in the lease of the NH by the Crown Estate Commissioners to NH for the operation of NH. Within the Designated Area, there is provision in the Crown Estate lease which protects the position of NH. The Crown Estate Commissioners have covenanted with NH not to grant any lease, licence or consent (other than where the lease requires that NH’s consent is obtained) for the construction of any works within the restriction zone without NH’s consent (not to be unreasonably withheld). There is provision in the lease for the Crown Estate Commissioners giving consent for the laying of conduits in the Designated Area but this is subject to agreement with NH on protection for the NH export cable both in relation to the original installation and future inspection, maintenance, repair or renewal work.

The Applicant accepts the need for a cable crossing agreement to regulate the installation of their cable as it crosses NHWFL’s cable. Although progress has been made on the terms of the a cable crossing agreement it has not yet been possible to conclude the terms of the agreement. The key issues in dispute can be summarised as follows:-

- The Applicant seeks for the provisions to be reciprocal in nature in the sense that the requirements in the agreement which require NHWFL’s consent to the installation of the Applicant’s cable would be replicated not just for future works to the cable by the Applicant but also for future works to NHWFL’s cable by NHWFL. NHWFL has agreed to the principle of the consenting provisions applying to their future works.
- The Applicant further seeks that the financial obligations in the agreement (relating in particular to indemnities and insurance). Presently, NHWFL could execute works on their cable without a requirement for third party consent and without incurring potential liability under an indemnity or a having requirement for mandatory insurance. It is the Applicant that is introducing new works which impacts on future works by NHWFL. NHWFL is prepared to agree to reasonable reciprocal provisions to ensure that future works can be coordinated between the parties. However, it is not reasonable for NHWFL to be expected to incur additional liability or expenditure as a result of the Applicant’s works. For that reason, NHWFL cannot accept that they should be placed under a requirement for a reciprocal indemnity and insurance requirement in relation to works which they could currently carry out without such financial obligations.
- 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.
- The Applicant also seeks a cap to their liability which is not acceptable. The Applicant has not included a cap on liability for any of the protective provisions proposed in relation to any other electricity undertaker in the DCO. There is no reasonable basis on which there should be a cap in relation to works which may affect the interests of NHWFL.

The Applicant refers in their submissions to an industry standard template for cable crossing agreements. However, there can be considerable variation in the terms of cable crossing agreements. The previous agreement which the Applicant refers to was entered into in different circumstances and it was made clear to the Applicant at an early stage that different provisions may be required in the present case.

NHWFL still seeks to reach agreement with the Applicant on the terms of the cable crossing agreement. In the event that agreement cannot be reached, however, the NHWFL would seek that the protective provisions are added to the DCO. The Applicant submits that protective provisions are unnecessary as there is still a need for a crossing agreement and appropriate provision can be made under that. That difficulty though is that the parties have not been able to reach agreement. In the absence of agreement, the protective provisions are required. These would still allow the parties to reach a contractual agreement but would ensure that there is a mechanism in place for regulation of the crossing works. NHWFL's proposed protective provisions were submitted at Deadline 5. A revised version is included as Appendix A included provisions on expenses which the Applicant has seen in relation to the draft crossing agreement.

It is noted that the Applicant has not provided any substantive comment on these other than to suggest that they do not contain reciprocal obligations. Contrary to what the Applicant says, NHWFL's draft protective provisions do contain reciprocal provision in relation to the mechanism for approval of future works. However, they do not contain reciprocal financial obligations. This is not considered to be reasonable for the reasons set out above.

It is noted that, in the agenda for the Compulsory Acquisition Hearing on 28 February 2023, the ExA asked in relation to Agenda Item 5 about the possible use of the protective provisions made in the Norfolk Boreas and Hornsea Three DCOs as a mechanism for resolving a dispute with Network Rail Infrastructure Ltd. NHWFL would draw the ExA's attention to Part 8 of Schedule 17 to the Norfolk Boreas Offshore Wind farm Order 2021. This includes protective provisions for the benefit of Orsted Hornsea Project Three (UK) Ltd for the protection of the Hornsea Three cable where it requires to be crossed by the Norfolk Boreas cable. There is therefore precedent for the inclusion of protective provisions in a DCO in relation to cable crossings.