

referneDEADLINE 8

NORTH HOYLE WINDFARM LIMITED – RESPONSE TO DEADLINE 6 SUBMISSIONS

Table 1 – Response to Applicant’s Comments on Responses to the Examining Authority’s Second Written Questions [REP-6-003]

Question Number	Addressed to	Question	NHWFL Deadline 5 Response	Applicant Deadline 6 Response	NHWFL Deadline 8 Response
3.9	North Hoyle Wind Farm (NHWFL) Limited	<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</p>	<p>The Applicant has set out its position in its responses to REP1-085-4.1 – REP1-085-4.4 (REP2-002) and comments on NHWFL’s submissions (REP3-002 and REP5-003). The Applicant maintains that a bilateral cable crossing agreement which contains obligations on both the Applicant and NHWFL as the owner of an existing cable is an industry standard approach. The draft cable crossing agreement uses an industry-standard template previously employed by NHWFL and the Applicant does</p>	<p>NHWFL agrees that the cable crossing agreement is ideally dealt with by means of agreement. At present, however, the parties have not been able to reach a concluded agreement.</p> <p>NHWFL has accepted a degree of reciprocity in the terms of the cable crossing agreement. This includes agreement that the provisions for requiring notification and consent for future crossing works will apply to both NFWFL and the Applicant.</p> <p>The principal difficulty is that the Applicant seeks to include reciprocal obligations requiring an indemnity for future works and the maintenance of insurance for future works.</p>

			<p>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 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. (NHWF also provided a set of protective provisions which are not listed here).</p>	<p>not see why the agreement could not be concluded before the end of the examination. There has been no engagement with NHWFL on the proposed protective provisions to date but the Applicant will consider the draft submitted by NHWFL at Deadline 5 (REP5-040).</p>	<p>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 a 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.</p> <p>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</p>
--	--	--	--	---	--

					<p>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.</p> <p>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>Although the Applicant refers to an industry standard template, 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 provision may be required in the present case.</p> <p>The draft protective provisions were provided in response to a request from the ExA. NHWFL still</p>
--	--	--	--	--	--

					<p>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. These would still allow the parties to reach a contractual agreement but would ensure that there is a framework mechanism in place for regulation of the crossing works. A revised version of the proposed protective provisions is attached as Appendix A, including a provision on expenses which the Applicant has already seen in relation to the draft crossing agreement.</p> <p>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 Threes 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</p>
--	--	--	--	--	---

					<p>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.</p>
--	--	--	--	--	---