

DEADLINE 8

NORTH HOYLE WINDFARM LIMITED – RESPONSE TO DEADLINE 7 SUBMISSIONS

Table 1 – Response to Applicant’s Response to the Examining Authority’s Third Written Questions [REP-7-004]

Question Number	Addressed to	Question	Applicant Deadline 7 Submission	NHWFL Deadline 8 Response
0.5	North Hoyle Wind Farm Ltd (NHWF), Applicant	<p>North Hoyle Wind Farm</p> <p>Could NHWF confirm its anticipated date and duration for decommission work of its offshore wind farm.</p> <p>Could the Applicant please describe its assumption regarding North Hoyle wind farm decommissioning work and if it was included in your cumulative effects assessment.</p>	<p>North Hoyle was the second offshore wind farm to be commissioned in the UK, and the first in Wales. As an existing, operational offshore wind farm, North Hoyle has been considered within the cumulative effects assessment in terms of its potential operational phase effects (see the Offshore Renewable Energy table within ES Volume 1, Annex 3.1: Cumulative Effects Assessment Methodology (APP-042)), where relevant.</p> <p>In terms of decommissioning, whilst overall it is considered that there is insufficient certainty over the nature and timing of works associated with North Hoyle to enable a detailed cumulative assessment there is the potential for these works to take place between 2029 and 2030 and they could therefore overlap with construction at AyM. This is based on an estimated operational life of 25 years (North Hoyle was commissioned in 2004), however it should be noted that no information is available about the programme for decommissioning North Hoyle. To date, the only</p>	<p>As per REP7-057, North Hoyle is expected to operate for at least 30 years which would bring the start of decommissioning to summer 2034 at the earliest. However, there is the potential for the lifespan of North Hoyle to continue beyond the current 2034 decommissioning date. NHWFL had indicated in its Deadline 7 submission [REP7-057] that decommissioning would be expected to last for at least 42 days. However, to clarify the position, this period would only be sufficient for decommissioning of the turbines. Full decommissioning of the cables and monopiles would require a longer period of around 100 days.</p>

			<p>offshore wind farm to have been decommissioned in the UK is Blyth, which is a small-scale pilot project consisting of just two turbines, and the first offshore wind project in the UK.</p> <p>Although there is uncertainty regarding the programme for the North Hoyle decommissioning and the precise nature of those works, a high level cumulative assessment has been possible as the location and scale of the project is known. This has allowed certain assumptions to be made to identify a reasonable worst case for assessment. This can be distinguished from the Morgan and Mona offshore wind proposals where the location and scale of the majority of the proposals are unknown.</p> <p>The assessment has identified that the greatest potential for cumulative effects arise from the interaction between decommissioning at North Hoyle and construction at AyM, which have the potential to cause additive disturbance effects through the generation of underwater noise. Other potential effects would be more localised with limited potential for an additive effect compared to the effects of the projects alone, and therefore the cumulative effects assessment of North Hoyle decommissioning has focused on noise disturbance effects on marine mammals (see Section 7.13 of ES Volume 2, Chapter 7: Marine Mammals (AS-026)) and fish (see Section 6.13 of ES Volume 2, Chapter 6: Fish and Shellfish Ecology (APP-052)). Whilst there is uncertainty</p>	
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Table 2 – Response to Applicant’s Comments on Submissions Received at Deadline 6 [REP7-003]

Applicant Deadline 6 Submission	NHWFL Deadline 8 Response
<p>North Hoyle Wind Farm Limited (NHWFL) submitted a Deadline 6 document (REP6-049) which reads as follows:</p> <p>“NHWFL has considered the comments made by the Applicant in Table 2 of their Deadline 5 submission [REP5-003]. There are no new substantive points in this table beyond the Applicant stating that they consider that the interests of NHWFL will be adequately protected through the proposed cable crossing agreement and that they are awaiting comments on the latest draft from NHWFL.</p> <p>In principle, NHWFL agrees that the interests of NHWFL are capable of being catered for through a cable crossing agreement. However, that depends on acceptable terms being reached between the parties. NHWFL will be responding on the draft very shortly. In the event that the parties are not able to reach agreement then, as requested by the ExA, NHWFL submitted draft protective provisions at Deadline 5 [REP5-040]. The extent to which these provisions will be required will depend on the degree of agreement which the parties are able to reach on the terms of the cable crossing agreement.”</p> <p>The Applicant notes this submission from NHWFL and has provided an update on the status of agreements in Document 7.29 of the Applicant’s Deadline 7 submission.</p>	<p>NHWFL have provided comments on the Applicant’s document 7.29 [[REP7-056] in Table 3. No further comments are required on [REP6-049].</p>

Table 3 – Response to Applicant’s Update on Negotiations with Rhyl Flats Wind Farm Limited and North Hoyle Wind Farm Limited at Deadline 7 [REP7-056]

Applicant Deadline 7 Submission	NHWFL Deadline 8 Response
<p>The Applicant and North Hoyle Wind Farm Limited (NHWFL) are continuing active discussions in relation to the crossing agreement and the Applicant hopes that it can be agreed before the end of the Examination. The Applicant provided comments on a few remaining points to NHWF on 1 March 2023. The main outstanding points of dispute are:</p> <ul style="list-style-type: none"> • The Applicant considers that the indemnity provided in the crossing agreement should be limited to works undertaken within the vicinity of the cable crossing rather than in consequence of the construction, use, maintenance of the authorised development more widely. NHWFL maintains that the indemnity should cover any loss or damage in consequence of the construction, use, maintenance of the authorised development more widely. • The Applicant considers that the indemnity under the crossing agreement should be capped. • As the crossing agreement covers both the initial crossing works that will be carried out by the Applicant and also any future works in the vicinity of the cable crossing that may be required to be carried out by either party, the Applicant considers the indemnity for loss or damage as a result of any such future works should be mutual. <p>The Applicant considers that these are standard industry provisions and that the position is consistent with the purpose of crossing agreements which is to provide protection for any loss or damage suffered as a result of the carrying out of crossing works by AyM and future work in the vicinity of the cable crossing by either party. They are not intended to provide wider</p>	<p>The parties are still in discussion on the crossing agreement although there remain points in dispute.</p> <p>In relation to the noted points in dispute, NHWFL would comment as follows:-</p> <ul style="list-style-type: none"> • 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. • 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.

compensation for the existence of the rest of the development. The Applicant's position is also consistent with the original template crossing agreement that NHWFL provided to the Applicant as an example of the basis of the form of agreement on which the AyM/NHWFL crossing agreement could be based (and a position that the Applicant is aware NHWFL has agreed with other third parties that have crossed NHWFL's cables previously).

The Applicant does not consider that it is necessary or appropriate to include protective provisions in favour of NHWFL on the basis that the relationship between the parties should be dealt with by a crossing agreement as is standard within the offshore industry. This will include reciprocal obligations on both the Applicant and NHWFL in relation to approval of works which is in both parties' interests. The protective provisions drafted by NHWFL do not contain such reciprocal obligations. 8 Although the Applicant is hoping that the crossing agreement will be finalised and signed before the close of the Examination, it is common practice for crossing agreements to be finalised and signed after the close of the Examination

- 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.

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.

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. 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.

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 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>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.</p>
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