

**WRITTEN SUMMARY OF ORAL SUBMISSIONS FRO RHYL FLATS WIND FARM LTD AT COMPULSORY
ACQUISITION HEARING OF 28 FEBRUARY 2023**

1. Introduction

- 1.1 There are two main issues to be considered in relation to the impact of the proposed development on Rhyl flats. These concern wake loss and the protective provisions which are required to deal with impacts other than wake loss.

2. Protective Provisions

- 2.2 Other than in relation to wake loss there have been productive discussions on protective provisions. A further iteration of the draft protective provisions was received from the Applicant's solicitor on 24 February 2023. At the time if the hearing this draft was under consideration and there were issues to be resolved in relation to the detail of the indemnity provision. Following the hearing, the draft was returned to the Applicant's solicitor on 7 March 2023 and further version received on 13 March. This has satisfactorily resolved the outstanding issues by removing the cap on the indemnity and clarifying payment of compensation for interruption of electricity supply. The protective provisions are now in agreed form (again other than in relation to wake loss).

3.0 Wake Loss

- 3.1 The issues between the parties are fairly well ventilated. The main dispute between the parties is whether the provisions of paragraphs 2.6.176-2.6.188 of NP-EN3 require the consideration of impacts on existing offshore wind farms and the position of the parties is clearly set out in written submissions. The Secretary of State will require to come to a view on this matter and then consider the implications of that decision in relation to the issue of wake loss for the development being examined. In the event that the submission of RFWFL is accepted then the position is that there requires to be an assessment of the impact of the proposed development on Rhyl Flats, including in relation to wake loss. The difficulty is that this work has not been done and the Secretary of State would not be able to be satisfied that the Applicant has sought to minimise the negative impacts of their development on Rhyl Flats to as low a level as reasonably practicable as required by paragraph 2.6.183 of NPS-EN3.
- 3.2 As a fallback, the Applicant's Deadline 6 submission [REP-6-003] claims that compliance with the siting criteria of the Crown Estate is sufficient to demonstrate that impacts have been minimised. This is not sufficient to secure compliance with the requirements of paragraphs 2.6.176-2.6.188 of NPS-EN3. The Crown Estate criteria are set at a high level. It does not follow that compliance with these means that impacts have been minimised. Impacts still require to be assessed and consideration given to how they can be minimised.
- 3.3 The Applicant further suggests at REP-6-003 that it is not possible to take any practical measures to minimise impacts due to the level of reduction in the scale of development which would be required to make a meaningful difference to the level of impact. In support of this position, the Applicant makes reference to an earlier response in REP-1-007 responding to Q1-17-25. However, this earlier submission relates to landscape impacts. It does not follow that, because it would not be practical to modify the development to make meaningful difference to landscape impacts it is similarly not possible to modify the development to minimise wake loss impacts. The Applicant has not provided any evidence to demonstrate this point as far as wake loss is concerned.

- 3.4 In any event, the overall obligation in terms of the relevant provisions of NPS-EN-3 is to minimise negative impacts. Physical modification of the development is only one of the ways in which this can be done. Another way of addressing the impact is through a compensatory provision, which is a mechanism which has been used in relation to wake loss impacts at other offshore wind farms.
- 3.5 At the hearing, although the Applicant accepted that agreements has been reached in relation to other offshore wind farms, they maintained that these provisions were voluntary and that such provision had never been required as part of a DCO. It was suggested that, had the intention been to require compensatory provision between wind farms then this would be clearly expressed in the NPS.
- 3.6 However, wake loss agreements concluded in relation to previous projects have only been voluntary in the sense that the relevant developer has accepted the need to address the issue and has sought to agree appropriate mitigation so that it was not necessary for the point to be debated in examination. It is the Applicant's refusal to engage on this point which has led to the wake loss being given detailed consideration in the current process and the potential for a compensatory mechanism being proposed.
- 3.7 The NPS does not provide detailed guidance on how impacts on particular types of existing offshore infrastructure should be mitigated. It is therefore not surprising that this is lacking in relation to wake loss. Paragraphs 2.6.176 to 2.6.188 clearly do, however, see economic loss to be relevant (see 2.6.183) and require negative impacts to be minimised to as low as reasonably practicable (see 2.6.183). As the ExA has pointed out, paragraphs 2.6.187 and 2.6.186 expect mitigation to be included in the application and contemplate the use of arbitration as means of resolving how adverse impacts on commercial activities will be addressed. A compensatory mechanism would clearly be within the scope of the sorts of measures which might be proposed within arbitration to address commercial impacts. There is therefore nothing unusual in the issues being raised by RFWFL or the proposed use of a compensatory mechanism to resolve the point, particularly in the absence of any proposal from the Applicant. This approach forms squarely within the parameters contemplated by the NPS.

4. Conclusion

- 4.1 In summary sections 2.6.176 to 2.6.188 of NPS-EN3 require the development to assess the impact of their development on existing offshore wind farms. The Applicant has not followed this guidance. In the absence of such assessment from the Applicant, the Secretary of State cannot be satisfied that negative impacts have been minimised as required by the NPS. In order to allow the Secretary of State to grant consent to the application, notwithstanding non compliance with the NPS, what is required is an additional protective provision to set out a mechanism to agree a methodology to assess wake loss, apply that methodology and provide compensation for any wake loss which there may be.
- 4.2 Other than in relation to wake loss, the protective provisions are now in agreed form.