DBS Offshore Wind

Dogger Bank South Examining Authority
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your ref.	EN010125
Our ref.	005405096-01
Contact	Thomas Tremlett
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28th November 2024

Dear Ms Dowling,

Dogger Bank South Offshore Wind Farms
PINS Reference: EN010125
Applicants' Response to ExA's Rule 17 Letter Dated 26 November 2024

The Applicants refer to the Rule 17 letter issued by the Examining Authority on 26 November 2024 (the Rule 17 letter) [PD-008].

The Applicants are extremely disappointed to note the content of the Rule 17 letter, which requests Interested Parties to provide the Examining Authority with their comments on whether the information submitted by the Applicants during the recent pre-examination period is sufficient to enable the application to be examined. Comments are requested to be provided by 16 December 2024.

As stated in the Applicants' previous letter of 25 November 2024 [AS-084] and for the reasons given in that letter, it remains the Applicants' view that further consultation on the offshore ornithology submissions is not necessary in order to allow the examination to re-start immediately. This is in line with the view previously given by Natural England [PDB-011] that the updated offshore ornithology assessments '*should be available for Interested Party (IP) review at the re-start of the Examination*' and that submission of this information in mid-November '*could allow the Examination to re-start promptly*'.

The Application was accepted as being of a satisfactory standard to be examined in accordance with section 55 of the Planning Act 2008. According to Planning Inspectorate guidance (Nationally Significant Infrastructure Projects: The stages of the NSIP process and how you can have your say, August 2024), the pre-examination period is intended to deal with various procedural matters and is expected to be "a maximum of 5 months".

What has happened at and since the Preliminary Meeting is wholly exceptional in procedural terms. The Applicants continue to be deeply concerned by the Examining Authority's approach, which they do not consider to be justified, for the reasons already explained in previous correspondence. The Applicants consider that the offshore ornithology information provided over recent weeks addresses the issues raised by Interested Parties. The Applicants have updated the relevant assessments in line with the SNCB guidance, as requested, and have provided more information on the progress of proposed compensation measures. There is no reason why it is not possible for that information to be considered during the six month examination, as is being done across all other offshore wind developments that are currently in examination. The Applicants do not understand why they are being treated so differently to those other offshore wind applications.

It is fundamental for applicants that the Planning Act process provides predictable timeframes for projects to be examined and determined. This certainty and predictability gives confidence to investors and enables forward-planning, such as the targeting of particular Contract for Difference auction rounds and parallel procurement and other activities in a competitive market. Any unpredictable delays after acceptance of the application have a significant impact on the ability of projects to progress with programme confidence and potentially impact on the timescales of delivery to meet national policy need and maintain commercial competitiveness.

In relation to the re-commencement of the Preliminary Meeting, the Applicants noted in the Offshore Ornithology Assessment Updates Cover Letter [AS-084] that the updated assessments were provided in a manner intended to facilitate efficient and straightforward review of the information to assist the Examining Authority to determine whether SNCB comments had been addressed. The Applicants would submit that the three weeks given to Interested Parties to comment on the adequacy of the information submitted by the Applicants over recent weeks introduces unnecessary delay, particularly when Interested Parties are not being asked to provide any detailed comments on the content of that information. Given that acceptance (in relation to the standard of documentation) is a matter solely for the Planning Inspectorate (in the name of the Secretary of State), the Applicants do not understand why the Examining Authority is placing so much reliance upon the views of Interested Parties when this would ordinarily be a decision for the Examining Authority.

In particular, it is very common for there to be material points of disagreement between offshore wind promoters and Natural England on a range of ornithology and other issues in relation to a given scheme. It is rare for there to be full agreement at the end of an Examination let alone the start. The place for those disagreements to play out and be scrutinised is in the Examination itself. The Examining Authority's procedural decisions have given the appearance of an implicit assumption that Natural England's positions are necessarily correct. In the Applicants' view, the Examining Authority's approach appears to have placed undue reliance on the views of Natural England and other interested parties in relation to the start of the Examination, which has in turn placed undue pressure on the Applicants in their responses to Natural England and others, given the continuing threat of delay to the start of the Examination. This is having the effect of undermining the integrity of the overall process.

In terms of any procedural mechanics of completing the Preliminary Meeting, the Applicants are not aware of any legal requirements or guidance in relation to the notice provisions for re-commenced preliminary meetings. Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 deals with notice requirements for preliminary meetings and requires the Examining Authority to give at least 21 days' notice of the date, time and place of the preliminary meeting to the parties that it is required to invite to that meeting (as set out in section 88 of the Planning Act 2008). There are no provisions in relation to adjourning a preliminary meeting and what notice must be given of its resumption. However, Rule 6(3) does state that where an Examining Authority holds any other meeting for the purposes of the examination, it shall arrange for "such notice to be given of that meeting as appears to the Authority to be necessary". There are no requirements in Rule 6 relating to site notices or publication of notices in newspapers.

In short, the Examining Authority has considerable procedural discretion in relation to fixing the date for completion of the preliminary meeting and there is no requirement to provide 21 days' notice. The Applicants would highlight that there was very low attendance at the preliminary meeting (only East Riding of Yorkshire Council in addition to the Applicants) and very few representations on the Rule 6 letter.

The Applicants requests that the preliminary meeting is completed and the DCO Examination is commenced as soon as possible.

Yours sincerely,

[redacted]

Thomas Tremlett
Senior Consents Manager

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