

**DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)
WRITTEN REPRESENTATION
DOGGER BANK OFFSHORE WIND FARM PROJECT 1 PROJCO LIMITED,
DOGGER BANK OFFSHORE WIND FARM PROJECT 2 PROJCO LIMITED AND
DOGGER BANK OFFSHORE WIND FARM PROJECT 3 PROJCO LIMITED**

INTRODUCTION

1. Dogger Bank Offshore Wind Farm Project 1 Projco Limited (**DBA Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBA Projco has the benefit of development consent for the Dogger Bank A Offshore Wind Farm (**DBA**) which was granted pursuant to The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 as amended (the **DBA/DBB DCO**).
2. Dogger Bank Offshore Wind Farm Project 2 Projco Limited (**DBB Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBB Projco has the benefit of development consent for the Dogger Bank B Offshore Wind Farm (**DBB**) which was granted pursuant to the DBA/DBB DCO.
3. Dogger Bank Offshore Wind Farm Project 3 Projco Limited (**DBC Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBC Projco has the benefit of development consent for the Dogger Bank C Offshore Wind Farm (**DBC**) which was granted pursuant to The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 as amended (the **DBC DCO**).
4. DBA, DBB and DBC are due to commence commercial operation between 2025 and 2027 and so will be operational before construction of the Dogger Bank South (DBS) Projects commence.
5. DBA Projco, DBB Projco and DBC Projco (together the **Projcos**) do not object in principle to the DBS Projects but are making this submission in respect of the Applicant's approach to wake loss in respect of DBA, DBB and DBC and the interaction with the DBA and DBB order limits. This submission builds off of the Projcos' relevant representation (RR-007) and constitutes the Projcos' written representations and a summary of the Projcos' position as stated at Issue Specific Hearing 2 (**ISH2**) held on 16 January 2025.
6. The Applicant's position presented on wake loss at ISH2 was not credible and represented a substantive change in position in respect of wake loss from that presented throughout the pre-application process and the DCO application materials (including the Environmental Statement). This gives rise to concerns around legitimate expectation and procedural fairness.
7. Therefore, we have set out a fuller response as part of our written representation given the Applicant's refusal to engage with wake loss matters at ISH2 and the substantive change in the Applicant's position. We reserve our right to respond to any submissions made by the Applicant at Deadline 1.

WAKE LOSS

8. The key focus of the Projcos' representations is on the potential effects on Annual Energy Production (**AEP**) and viability of other offshore wind farms (being DBA, DBB and DBC) which are within the vicinity of the DBS Projects. The Projcos' position is that a specific assessment of the effect on AEP by the DBS Projects is required and that this should be provided to: 1) the Projcos to allow them to understand the impacts on their infrastructure; and 2) the Examining

Authority and Secretary of State so that they can adequately discharge their duties under the EIA Regulations and the NPS. This information has been requested by the Projcos but has not been provided by the Applicant.

9. Given the discussion at ISH2, we have set out the Projcos' position on the requirements of NPS EN-3 in respect of the impact of the DBS Projects on DBA, DBB and DBC.

What does EN-3 require?

10. Paragraph 2.8.197 of NPS EN-3 provides that: "*Where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by government, the applicant should undertake an assessment of the potential effects of the proposed development on such existing or permitted infrastructure or activities*". This applies to DBA, DBB and DBC.
11. The Applicant sought to assert at ISH2 that the term offshore infrastructure does not extend to other offshore wind farms. There is no basis for this proposition, and it is contrary to the Applicant's position to date.
12. In light of the decision in respect of the Awel y Mor Development Consent Order (DCO), precedent has been set to the effect that paragraphs 2.8.196 to 2.8.203 of NPS EN-3 apply to other offshore wind farms, and it is appropriate to assess wake effects as part of the application process for a new DCO (as acknowledged by the Applicant in their Responses to Relevant Representations (PDA-013) at RR-007:8). This is informative but simply confirms the clear position under the NPS.
13. NPS EN-3 Para 2.8.200 provides that: "*Applicants should engage with interested parties in the potentially affected offshore sectors early in the pre-application phase of the proposed offshore wind farm, with an aim to resolve as many issues as possible prior to the submission of an application*". The Applicant has not discharged this requirement, in spite of the Projcos' submission of consultation responses and the Projcos' attempts to engage with the Applicant to address the wake loss issue at the pre-application and pre-examination stage. At ISH2, the Applicant effectively stated that it would not engage any further with DBA Projco, DBB Projco or DBC Projco.

What does the Secretary of State need in order to reach a decision?

14. Sufficient information must be provided by the Applicant in order to enable the Secretary of State to reach a reasoned conclusion as to the matters set out in NPS EN-3 paragraphs 2.8.344 to 2.8.347. In particular, the assessment under NPS EN-3 paragraph 2.8.197 must be undertaken to inform the decision making pursuant to section 104 of the Planning Act 2008 and the obligation: 1) to have regard to the NPS; and 2) to decide the application in accordance with the NPS.
15. The Applicant's position at ISH2 appeared to be that the assessment required under the NPS can effectively be ignored at the application stage and, if felt necessary, dealt with through a requirement. This is not appropriate as this is a policy test which must be complied with at the application (and determination) stage. A requirement would not address the same fundamental matters that apply now, including the Applicant's unwillingness to share its assessment (including the modelling and methodology).
16. At ISH2, the Applicant sought to argue against the Awel y Mor decision on matters where it did not like the decision (i.e. that the policy applied to wake loss) and rely on the Awel y Mor decision on matters where it did like the decision (i.e. the lack of a requirement for a financial indemnity and the potential fallback of a requirement (albeit the Applicant dislikes the form of requirement)).

What did the Applicant say (Response to RRs and at ISH2)?

17. No evidence of the purported wake loss assessment is provided as part of the Environmental Statement or the application; simply a statement that it has been concluded. There is no statement as to what is considered significant in terms of wake loss in the application materials. There is no evidence of the assessed reduction in AEP for DBA, DBB or DBC being below this level, simply a statement (supported by no evidence) that the impact is negligible for DBA and that no assessment has been undertaken for DBB or DBC. The Applicant's position at ISH2 means that there will be no evidence to demonstrate compliance (or attempted compliance) with the NPS in front of the examination into the Application.

History

18. The Applicant applied for a scoping opinion on 26 July 2022 (Document ref: 004376179). Table 2-38 of the Applicant's request for a scoping opinion expressly scoped into the EIA throughout the construction, operation and decommissioning stages "potential interference with other wind farms". The Planning Inspectorate published its Scoping Report (APP-232) on 2 September 2022. As such, operational impacts on offshore wind infrastructure must be assessed. At ISH2, the Applicant seemed to argue that this does not extend to wake loss even though it is plain that this is a potential interference with other wind farms.
19. The Applicant published its PEIR for the DBS Projects on 24 April 2023 which it consulted on in Summer 2023. The Projcos responded to the consultation on Chapter 16 of the PEIR in 2023 requesting that a full assessment of the potential for wake loss impacts on the Dogger Bank Projects be included as part of the Environmental Statement.
20. Following consultation on the PEIR, in June 2024 the Applicant submitted their Environmental Statement alongside their DCO application. Appendix 16-1 of the Environmental Statement sets out the Projcos' consultation response to the Applicant's PEIR where the Projcos raised the lack of assessment in respect of wake loss as a material issue and where the Projcos identified that insufficient information had been provided to allow the Projcos to understand the impacts of the DBS Projects on DBA, DBB and DBC. The Applicant's response to this consultation comment is that: "*Potential impacts regarding wake loss are assessed in section 16.6.1.1 of the chapter*".
21. Chapter 16 of the Environmental Statement at part 16.6.1.1 identified "*Wake losses for nearby wind farms resulting from the presence of wind turbines for the Projects*" as an impact of the DBS Projects. The Applicant's Environmental Statement concluded that it was necessary for them to undertake an assessment of the potential interference of the DBS Projects on other wind farms, including in terms of wake loss effects. As such, the Applicant has scoped wake loss into the EIA process and committed to an assessment of the operational impact of the Projects on other operational wind farms, including wake loss effects.
22. At paragraph 70 of Chapter 16 the Applicant acknowledges that "*Wind farms located in **close proximity** have the potential to reduce the efficiency of the neighbouring project through wake losses, potentially reducing the Annual Energy Production (AEP) for each project [our emphasis]*". The Applicant considered DBA to be one such wind farm which was in "close proximity" to the DBS Project,s and therefore it has purported to conduct modelling of the potential AEP loss for DBA before concluding that "*the overall AEP loss for Dogger Bank A would be negligible when compared to the wind resource available*". The Applicant did not provide the methodology, modelling data or evidence which led to this conclusion and there is

insufficient information in the Environmental Statement to support this conclusion or allow a reasoned conclusion on this matter.

23. The Projcos submitted a relevant representation (RR-007) on 6 September 2024 regarding the lack of methodology, modelling data or evidence provided to substantiate the Applicant's assessment of the wake loss effect on DBA (DBB and DBC are notably not assessed) which the Applicant responded to on 10 October 2023 in the Applicant's Responses to Relevant Representations (PDA-013). In response RR-007:13, the Applicant refers to section 16.4 of the Environmental Statement as setting out the methodology used to undertake the assessment of wake loss effects. The Applicant does not address the absence of evidence or modelling data which might substantiate their assessment of wake loss effects. The Applicant does not quantify the reduction in the AEP of DBA as a result of the DBS Projects which they consider to amount to a negligible effect when compared to the wind resource available. The information provided is insufficient to allow the Secretary of State to reach a reasoned conclusion on this impact (both in EIA and NPS EN-3 terms).
24. At ISH2 the Applicant went back on their position that they are required (and had committed) to conduct an assessment of the operational impact of the Project on other operational wind farms, including wake loss effects, the position they had maintained at all prior stages of the DCO process. As a result, the Applicant now refuses to conduct this assessment or share with the Projcos the information which informed their wake loss assessment. This approach is plainly incorrect and is contrary to commitments provided throughout the pre-application process.
25. The UK government published its 'Clean Power 2030 Action Plan' in December 2024 which states at page 84: "*New projects with larger and/or a greater number of turbines have an even greater propensity to cause wake effects on existing downstream operational projects. Historically, this has been resolved outside the planning system, but a precedent was set with a wake condition in the 2023 Awel y Mor Development Consent Order, which said "No part of any wind turbine generator shall be erected as part of the authorised development until an assessment of any wake effects and subsequent design provisions to mitigate any such identified effects as far as possible has been submitted"*". This demonstrates: 1) the Government's current position; and 2) reflects the fact that wake is a more material factor than has historically been the case given the greater propensity for new projects to cause wake impacts. This demonstrates why wake loss needs to be addressed through the Application by the Applicant.
26. Separately, the Applicant's position is incorrect in the context of this DCO application as it does not address the fact that the Applicant repeatedly committed to conducting a wake loss assessment as part of the EIA process at each stage prior to ISH2.
27. It is our position that, not only has the Applicant committed to conduct the assessment as part of the Environmental Statement, but that the wake loss assessment should be included within the Environmental Statement as it is directly linked to an impact on offshore wind infrastructure and to the Applicant's greenhouse gas assessment. The assessment of the climate benefits of the DBS Projects will require to be tempered by the potential loss of AEP of other projects in the area including DBA, DBB and DBC as a result of wake loss effects. Without an assessment of the loss of AEP for DBA, DBB and DBC not only are those adverse effects not understood for those projects but the benefits of the DBS Projects in terms of renewable energy generation may be over-stated.
28. Regardless of whether the wake loss assessment is required to form a part of the Environmental Assessment (which it is) or the Applicant's commitment to include it (which it has consistently made), NPS EN-3 paragraph 2.8.197 requires the Applicant to assess wake loss effects. Refusal

to provide this assessment to the Secretary of State will prevent the Secretary of State from being able to make an informed decision on the matters set out in NPS EN-3 paragraphs 2.8.344 to 2.8.347. The Applicant's approach of simply deferring this to a requirement is not appropriate, particularly in the context of a DCO application where the matter has been consistently raised by the Projcos.

Worst Case

29. In respect of the impact of the Project, damage to the cable is identified as the worst-case scenario and the Applicant has reiterated this in their Response to RR. This may be true for the construction / decommissioning phase (when such damage is likely to occur), but there is a material difference for the operational phase when construction activities are not being undertaken. In this phase of the Project, wake loss is likely to be the worst-case scenario. This is demonstrated by the Applicant's statement at Paragraphs 75 and 76 of 16.6.1.1.3 of Chapter 16 (APP-130).
30. The conclusions reached in section 16.6.1.1.4 and 16.6.1.1.5 of Chapter 16 appear to be based on the mitigation identified in Paragraph 71 of 16.6.1.1.1 although given the structure of this part of the Environmental Statement and the lack of detail provided this is quite difficult to follow. That mitigation, in respect of wake loss, appears to be based on the conclusion that "all commercial agreements" are put in place ahead of the commencement of construction of the offshore works.
31. The DCO and EIA process is not intended to be a paper chase for third parties and the onus is on the Applicant to discharge the duties under both the NPS and the EIA Regulations. At this stage, there is simply insufficient information presented to understand the assessment, quantify the impacts and reach a reasoned conclusion. A simple statement that impacts are negligible, without presenting the data and assessment (let alone the methodology used), is insufficient.

Fraser Nash and Leasing Round 4

32. The 2023 Frazer-Nash study post-dates the establishment of the round 4 separation distances and therefore, shouldn't be interpreted as forming the basis for the 7.5km separation distance. The 7.5km distance buffer requirement will not have taken account of the current understanding of what factors influence wake loss. As part of the Outer Dowsing Offshore Wind (Generating Station) DCO application, in their response to the Examining Authority's questions (REP2-080), The Crown Estate acknowledged (when asked about the 7.5km distance and the relationship between the Round 4 Projects and the Frazer Nash report) that factors such as prevailing wind direction and wind farm layout may also be relevant for wake loss (attached as Appendix 1 to this representation).
33. In any case, TCE have advised that the Frazer-Nash study did not "replace the need for project-specific analysis". The study modelled non site-specific scenarios and would not have taken into account the particular factors relevant to the wake loss interaction between the DBS Projects and DBA, DBB and DBC. It is not appropriate for the Applicant to limit assessment of the Dogger Bank projects to only DBA and the Frazer-Nash study does not support such a conclusion; bespoke site-specific assessment of the unique factors which compose the wake loss impact of DBS on DBB and DBC is also necessary as part of the consenting process.

Interpretation of NPS EN-3 on 'Infrastructure' and 'Close' (Round 4 Leasing Round)

34. At ISH2 the Applicant stated that they do not consider DBA, DBB or DBC to be "close" to the DBS Projects for the purposes of paragraph 2.8.197 of NPS EN-3. This represented a change to the Applicant's approach.

35. Our position is that DBA, DBB and DBC are close to the DBS Projects, and no evidence has been submitted by the Applicant to suggest that they are not close.
36. As we stated at ISH2, at Paragraph 70 of Chapter 16 of the Environmental Statement the Applicant has stated that the DBS Projects are in “*close proximity*” to the Dogger Bank A wind farm. The Applicant’s position at ISH2 was inconsistent with this statement in the Environmental Statement.
37. Similarly, at ISH2 the Applicant stated that they do not consider offshore wind farms to fall within the definition of “infrastructure” for the purposes of paragraph 2.8.197 of NPS EN-3. We do not consider this to be a credible argument, as there is no basis for treating offshore wind differently to other infrastructure and the Applicant could provide no evidence for this position at ISH2.
38. The Applicant highlighted that discussions surrounding this issue are ongoing in the examination of numerous other DCO applications. We are not aware of any DCO examination where the promoter (or a third party) has argued a position that these paragraphs of NPS EN-3 do not apply to offshore wind infrastructure. We are aware of other DCO examinations where other promoters, having recognised that the NPS applies to offshore wind, have sought to argue that the circumstances of the relevant projects mean that the policy is not engaged in those circumstance. This is a materially different issue.

Legitimate Expectations and Burden of Proof

39. A DCO application, and an EIA process, is a public process wherein the onus is on the Applicant to satisfy the clear requirements of the consenting regime. Throughout the various stages of the consenting process the Applicant has repeatedly committed to assessing interference from the DBS Projects with other wind farms, including wake loss effects. This has created a legitimate expectation that wake loss will be addressed as part of the DCO process. Failure to address this issue would give rise to a ground of legal challenge.
40. Similarly, this is a matter that DBA Projco, DBB Projco and DBC Projco have raised consistently throughout the consultation process. In failing to address this matter, there is a procedural failing and a matter of procedural fairness that arises which could also give rise to a ground of legal challenge.
41. Whilst the Examining Authority has requested that the Projcos submit their own assessment (which is something that the Projcos can commit to albeit on the basis of assumptions and worst-case parameters given the Applicant’s lack of engagement) this will not address the EIA failings, and the burden of proof should not fall on the Projcos. The Projcos propose to submit their own assessment at Deadline 4 to allow time to fully understand the Applicant’s changed position.

CUMULATIVE EFFECTS

42. The Projcos position was set out in its relevant representation.

PROXIMITY AGREEMENTS

43. In addition to the above, the DBS Projects’ order limits overlap with the order limits for the DBA/DBB DCO offshore and have the potential to interact with the DBA and DBB projects nearshore cables.
44. As noted above, the Environmental Statement notes that the worst-case scenario during construction would be accidental damage to a subsea cable resulting from the wind farm construction activities reducing the cable capacity or making the cable operation redundant. The Environmental Statement identifies that proximity agreements are the required mitigation to regulate this impact.

45. To date, proximity agreements have not been put in place with DBA Projco or DBB Projco to mitigate this risk. If proximity agreements are not in place, a requirement will be necessary to secure this.

NEXT STEPS

46. The Projcos reiterate their request that the Applicant engage with the Projcos and provides the necessary information to allow the Projcos to understand the implications of the DBS Projects on DBA, DBB and DBC in respect of wake loss.
47. The Projcos expect individual agreements to be put in place between the Applicant and DBA Projco, DBB Projco and DBC Projco to regulate the interaction between the DBS Projects and the respective Projcos' project in respect of wake loss.
48. DBA Projco and DBB Projco expect individual proximity agreements to be put in place between the Applicant and the relevant Projco to regulate the interaction between the DBS Projects and the respective Projcos' project in respect of the order limit interaction in the nearshore environment.
49. DBA Projco and DBB Projco expect protective provisions to be put in place between the Applicant and the relevant Projco to regulate the onshore crossing of the DBA and DBB export cable by the DBS Projects' onshore cables.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

29 January 2025

Appendix 1

Response by The Crown Estate (REP2-080) to ExQ1 on Outer Dowsing (EN010130)

Please see below The Crown Estate's response to Outer Dowsing Offshore Wind (Generating Station) Examination - Question ExQ1 OG 1.2 of the Examining Authority's written questions and requests for information, issued on 6th November 2024.

1. Can the Crown Estate clarify if the minimum 7.5km distance requirement between Leasing Round 4 projects takes the potential for wake effects into account?

- The buffer/stand-off between wind farms (unless developers consent to closer proximity) is a separation distance to enable developers to develop, operate and maintain wind farms by allowing for a range of factors including amongst other matters, wake effects, navigation, and safety.
- The 2019 Information Memorandum ahead of Offshore Wind Leasing Round 4 set out the requirement that "Projects may not be located within 7.5 km of an existing offshore wind farm (meaning a wind farm at any stage of development which has been awarded an agreement for lease or lease from The Crown Estate) unless the owner of the existing offshore wind farm has given its written consent".
- This 7.5km was used for the purpose of processing project proposals in the tender only, being higher than the 5km buffers that are specified within the seabed lease agreements (introduced in Round 3); this was for the purpose of de-risking the Round 4 tender by providing additional mitigation and assurance to participants through limiting proximity.
- The Crown Estate acknowledges that inter-farm wake effects can extend beyond these buffer distances. TCE also notes that the spatial and temporal variability of wind speed means that it is complex to accurately predict the wake impact on nearby wind farms, which may depend upon factors beyond distance – e.g. prevailing wind direction and wind farm layout.
- The location of a wind farm within an area of seabed leased from The Crown Estate is for developers to decide and design for, subject to obtaining the necessary consents and The Crown Estate's approval.

2. The Crown Estate is invited to comment on the purpose of the Offshore Wind Leasing Programme Array Layout Yield Study and any implications for the project.

- As outlined in the Introduction section of the Offshore Wind Leasing Programme Array Layout Yield Study by Frazer-Nash published on the Marine Data Exchange in November 2023: "The objective of this present study is to provide generic evidence to support TCE's design of future offshore wind leasing programmes from an aerodynamic loss perspective. Specifically, the influence of key PDA (project development area) design parameters on wind farm production are assessed using an updated engineering wake model with more realistic accounting of farm-to-farm wake and farm blockage effects"
- The report summarises modelling applied to generic/hypothetical wind farms and does not replace the need for project-specific analysis.

- The published report included findings on inter-farm wake effects for generic scenarios. As with any technical evidence, this can be beneficial to the sector to inform decision-making and analysis; appropriate selection and application of this or other studies and evidence to specific projects is for developers to determine.
- As this report was completed during 2023 it has no direct link to the buffer zones set out in the 2019 Information Memorandum for Offshore Wind Leasing Round 4.