

1 Executive Summary

- 1.1 This is a Response, submitted on behalf of Stena Line Limited (“Stena”), to the principal points made by the Applicant at Deadline 6 in its response to Stena Line’s ExQ2 submissions [REP6 -118].
- 1.2 The opportunity has also been taken, however, for the assistance of the ExA, to clarify the position of Stena, its outstanding concerns and its requirements, which include the inclusion of a protective provision in the DCO which Stena considers to be essential if it is to withdraw its objection to the Mona Project.
- 1.3 In this context, the ExA will note that, for the reasons detailed below, Stena does not agree with the Applicant’s stated view that all of the concerns that have been raised by Stena have been, or are being, resolved.

2 Response to Deadline 6 Submissions [REP6-118]

- 2.1 Stena is conscious of the short time available to resolve all of the issues outstanding and in providing this response, in the interests of brevity, it has deliberately not responded to every point made by the Applicant. This does not necessarily mean, however, that every given point is accepted. Stena’s position is that a number of issues remain outstanding and are unlikely to be resolved prior to the close of examination.
- 2.2 The overarching summary of Stena’s concerns is provided in the Statement of Common Ground with the Applicant [REP5-078], which it should be noted – contrary to the implication offered by the Applicant’s response at [REP6-118] – details from Stena’s perspective, a worrying number of outstanding issues. In light of timescales, the ExA should be aware that in the view of Stena, the SoCG is unlikely to be completed before the close of the examination.
- 2.3 Due to the formatting of the Applicant’s Deadline 6 Submissions [REP6-118] being tabular in nature without clear paragraph references, again for the assistance of the ExA, we have decided to provide extracts from the Applicant’s submissions and provide a direct response to these below.
- 2.4 ***ExQ:2.15.2 - Describe the commercial and/or operational implications of increased transit times for Stena Line services as a result of the Mona project cumulatively with other plans and projects in the Irish Sea.***

“The Applicant notes this response and confirms that Stena Line and the Applicant are in agreement that significant adverse impacts are predicted on Stena Line routes... The assessment notes that the 5.5 nm deviation to the north of the Isle of Man referred to by Stena Line in their response relates to the cumulative scenario as a result of Morecambe Generation Assets, Morgan Generation Assets and Moir Vannin Offshore Wind Project and is not a result of the Mona Offshore Wind Project.

...the deviations to the Stena Line route between Liverpool and Belfast west of the Isle of Man in typical conditions as a result of the Mona Offshore Wind Project are between 1.1 nm and 2.2 nm which equate to between 3.4 and 6.8 minutes of deviation on an eight hour timetabled service and are therefore minor but could have an operational and commercial impact.

“The Applicant notes that engagement is ongoing with Stena Line to address residual matters as set out in the Statement of Common Ground submitted at Deadline 5 (REP5-078).”

- 2.4.1 The Applicant acknowledges that the Project will result in an increase in the transit distance between Belfast and Liverpool for Stena, the long-term effect of which has a significant cost impact for Stena (as previously explained by Stena in **[REP5-122]**).
- 2.4.2 Stena agrees that the re-routing required of potentially 5.5 nm (which should in any case be viewed only as a minimum enforced diversion) is a cumulative total calculated on the basis of the information currently available if all four offshore proposed offshore windfarm projects are consented and become operational.
- 2.4.3 As far as the Mona Project is concerned, if consented, constructed and operational the envisaged re-routing required by Stena vessels in order to meet their statutory marine, navigation and H&S obligations, would be between, as the Applicant states, 1.1nm and 2.2 nm.
- 2.4.4 Whilst, however, the Applicant concedes that a re-routing could indeed have operational and commercial impact on Stena, Stena does not agree with the Applicant’s view that such impact is only minor. Indeed, as far as Stena is concerned, in the absence of any mitigation being agreed by the Applicant, the navigational impact of the Project as currently proposed, if consented and implemented, is unacceptable to Stena.
- 2.4.5 It would, without doubt, lead to a considerable increase in the annual operational costs of the business.
- 2.4.6 In light of this, Stena is concerned that the impression being provided by the Applicant to the ExA to the effect that there is nothing to worry about due to their ongoing engagement with Stena is somewhat misleading. Whilst it is the case that Heads of Terms for a mitigation agreement are being discussed by the parties – the terms have not been agreed and almost certainly will not be agreed before the close of the examination.
- 2.4.7 In the absence of any form of agreed mitigation, Stena has no choice but to maintain its standing objection to the Mona Project.

Navigational safety

- 2.4.8 Stena notes the Applicant’s response in the context of ALARP -

“...Whilst the Applicant accepts that any offshore development inherently increases the risk over the current base case, Stena Line agreed that risks of the Mona Offshore Wind Project were reduced to ALARP at Issue Specific Hearing 2 (REP1-010) as concluded in the Applicant’s assessment.”

“Reduced weather routing was assessed through navigation simulations in adverse weather and it was concluded that suitable alternative routes were available but incurred additional transit duration and consequential operational impacts.”

- 2.4.9 **ALARP** - This section reveals an unfortunate lack of understanding by the Applicant as to practical marine issues involved. Whilst the Mona Project may well be ALARP - that is of no relevance whatsoever for Stena which company will be faced with a

major long term infrastructure obstacle directly in the path of its vessels. To render the project ALARP for Stena – Stena will have to divert their vessels away from the

Mona development, which will present as a serious obstacle to navigation. The question as to whether the project is ALARP as far as Stena is concerned, therefore, is irrelevant because the proposed windfarm's mere existence poses a risk to commercial vessels obstructed by the scheme.

Funnelling of marine traffic -

“The Applicant assessed ‘funneling’ of marine traffic and increased vessel encounters ... and concluded that the impacts on collision and allision risk were minor given the volume of traffic and available sea space (as detailed in Volume 6, Annex 7.1: NRA APP-098).”

- 2.4.10 This is, in the view of Stena, a somewhat surprising response. The Mona Outline Traffic Management Plan, even in its still early iteration, is predicting during the four year construction period, up “to a total of 86 construction vessels on site at any one time) and up “to 2,055 installation movements (return trips) during construction”. (para. 2.1.1.4)
- 2.4.11 As far as the operational life of 35 years is concerned, the Applicant is predicting up “to 21 operations and maintenance vessels on site at any one time” and “up to 849 operations and maintenance vessel movements (return trips) each year.” (para. 2.1.1.5).
- 2.4.12 Even with cleared routes, such figures hardly fill Stena with confidence that there will be no risk of collision/allision – thus the need for a protective provision, as noted below, which whilst not removing the risk will at least enable Stena in part to mitigate the very obvious risk posed by the existence of the wind farm.
- 2.4.13 The Applicant has already accepted the obvious, namely that any offshore development inevitably increases the risk for navigation over the current baseline. It can hardly be denied that additional safety risks will arise as a result of the existence of the proposed Project, both alone and cumulatively.
- 2.4.14 The Applicants nevertheless assert that the Project gives rise to a minor risk in respect of collision and allision. What the Applicant seems unable to accept is that any risk is unacceptable and Stena certainly does not agree that the operation of a large offshore wind farm in the proximity of its vessels poses only a minor risk.
- 2.4.15 Whilst alternative routes are certainly available, those routes will be forced upon Stena to render the project ALARP and are neither suitable nor satisfactory. They simply impose additional transit duration and consequential operational effects - as now acknowledged by the Applicant.
- 2.4.16 In addition, there is an undeniable possibility, albeit probably low as a consequence of the technical excellence of the Stena vessels, of incidents aboard vessels resulting in loss of power or propulsion whilst navigating through the channels which the proposed level of ORE's create. This greatly reduces the availability of both sea room and time for the master of that vessel to react and risks the possibility of an allision with a turbine, construction vessels, maintenance vessels or other structure.
- 2.4.17 ***Impact of Radar -***

“...impacts on radar are recognised however they are mitigated by the passing distances of commercial ships and the greater separation between wind turbine generators (WTGs)

which is *believed* to lessen the effects than those currently experienced by Stena Line. The National Academies study referenced by Stena Line notes these points. The MCA have not raised concerns on this matter (REP3-026). The Applicant also notes that Stena Line already operates between “two ORE projects” when transiting between Heysham and Belfast and such impacts are presumably managed.”

- 2.4.18 Stena notes the somewhat casual – and unscientifically justified – response to the concerns raised by Stena in relation to radar interference. The ExA will of course have to decide whether these are concerns upon which further evidence should be presented, but as far as Stena is concerned, the concerns remain and have not been satisfactorily answered.
- 2.4.19 In this context, Stena would suggest that the fact that the Applicant has included Requirement 22 in favour of Great Dun Fell etc Primary Surveillance; Requirement 23 in favour of Warton Aerodrome; Requirement 24 in favour of Liverpool John Lennon Airport; Requirement 25 in favour of Blackpool Airport and Requirement 26 in favour of Isle of Man Airport simply underlines Stena's concerns and does rather speak for itself.

Commercial agreement -

“The Applicant notes that engagement on a commercial agreement is ongoing with Stena Line to address residual matters as set out in the Statement of Common Ground submitted at Deadline 5 (REP5-078).”

- 2.4.20 It is certainly the case that a commercial agreement is being negotiated which if completed to the satisfaction of Stena – together with the inclusion of the proposed protective provision - will enable it to withdraw its objection to the Project. The ExA should be under no misapprehension, however, contrary to the somewhat illusory positivity implied by the Applicant at Q2.15.2 when it states that it “*is confident this [ie agreement] can be achieved prior to the close of the examination*”. The reality is that very little has yet been agreed and negotiations at this late stage are still on the basis of Heads of Terms.
- 2.4.21 Stena believes that is very unlikely that an agreement will be concluded by the close of the examination which would enable it to withdraw its objection to the proposal.
- 2.4.22 **Protective Provision** – It is to this end that Stena has provided to the Applicant, albeit at a late stage, a proposed protective provision which the ExA will see is hardly of a radical nature in that it simply requires the Applicant to provide it with written notice of certain events and consultation on documents relevant to its operations which in reality merely reflect the provisions already proposed in for example the deemed marine licence in terms of the obligations already accepted for the benefit of NRW and Trinity House. Stena's proposed protective provision is included as an Appendix to this Response.
- 2.4.23 The Applicant may wish to argue that a protective provision is not required because a mitigation agreement is being negotiated. That is not the case. The protective provision and the agreement, if satisfactorily concluded, achieve entirely separate outcomes.
- 2.4.24 Stena requires the statutory protection which will be provided by the inclusion of a protective provision, as proposed, in the DCO. The inclusion of the protective provision alone will not enable Stena to withdraw its objection but it will assist Stena

in planning its vessel movement for the safety of its vessels, its crew and its travelling customers.

2.4.25 The ExA should be aware, incidentally, that Sena are being entirely consistent in this approach in that they will be seeking to agree a similar protective provision with the operators of all of the other relevant proposed offshore windfarm.

2.5 **ExQ: Do you consider that the deviations necessary to accommodate the Mona project together with other planned offshore wind farms could threaten the viability of Stena Line's ferry operations? If so, how?**

"The Applicant notes this response and confirms that Stena Line and the Applicant are in agreement that there are impacts on Stena Line routes... The assessment concludes that the deviations to the Stena Line route between Liverpool and Belfast west of the Isle of Man are between 1.1 nm and 2.2 nm which equate to between 3.4 and 6.8 minutes of deviation on an eight-hour timetabled service and is therefore minor and would not threaten the viability of the Stena Line routes in the Irish Sea, but could have an operational and commercial impact."

"The Applicant notes that engagement on a commercial agreement is ongoing with Stena Line to address residual matters as set out in the Statement of Common Ground submitted at Deadline 5 (REP5-078)."

2.5.1 Both Stena and the Applicant acknowledge that, at this time, the impacts on Stena's routes do not threaten the total viability of Stena Line's operations between Liverpool and Belfast. It must be recognised, however, that the existence of the Project will have an operational and commercial impact on Stena's business – and this 'residual impact' has not yet been addressed and requires resolution.

2.5.2 As explained above, the Applicant's reliance on the future existence of a commercial agreement (which is currently in the form of Heads of Terms only) is unsatisfactory. The ExA should not rely on the potential for such agreement to be entered into in the future to be conclusive that Stena's objections have been adequately addressed.

2.6 **ExQ: Is there any further mitigation that you consider should be adopted by the Applicant to further reduce the residual cumulative effects of the Proposed Development on the operations of Stena Line in typical and adverse weather conditions?**

"The Applicant reiterates the definition of sea lanes as used in the National Policy Statement EN-3 and UNCLOS relate to Traffic Separation Schemes as described in Section 1.8.2 of the NRA (APP-098). Therefore, the assessment concludes that there are no significant adverse impacts on sea lanes."

This is agreed with the MCA in the SoCG submitted at Deadline 3 (REP3-026) and confirmed by MCA within the Morgan Generation Assets Examination in its response to ExQ1 SN1.2 at Deadline 3 (EN010136 REP3-036).

The Applicant considers the Stena Line routes to fall under NPS EN-3 Paragraph 2.8.328 as strategic routes and lifeline ferries and have been treated accordingly."

2.6.1 Stena simply does not agree with the Applicant's assertions which unfortunately ignore marine reality. This remains a fundamental area of dispute between the parties.

- 2.6.2 The Applicant is attempting to side-step the issue by relying solely on the wording of the National Policy Statement EN-3. This ignores the practical reality of the provisions of UNCLOS Article 60.7 which provides that:

“Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.”

- 2.6.3 The Applicant is wrong to assert that there is no impact on sea lanes and the fact that it has entered into negotiations with Stena with a view to mitigating that impact does rather speak for itself.

Appendix – Protective Provision

PART 9

FOR THE PROTECTION OF STENA LINE LIMITED

Application

1. For the protection of Stena Line the following provisions, unless otherwise agreed in writing at any time between the undertaker and Stena Line, have effect.

Interpretation

2. In this Part of this Schedule —

“authorised development” has the same meaning as in Schedule 1 of this Order;

“commence” has the same meaning as in article 2 of this Order and commencement is construed to have the same meaning;

“licensing authority” has the same meaning as in condition 1 of Schedule 14;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which is reasonably likely to be situated on, over, under or within 1.5 nautical miles measured in any direction of any route operated by Stena Line;

“Stena Line” means Stena Line Limited, a limited company registered in England & Wales under Company No. 01402237 and having its registered office at First Floor, 6 Arlington Street, London, England, SW1A 1RE; and

“vessel traffic management plan” means the vessel traffic management plan that is submitted in accordance with the outline vessel traffic management plan as required by condition 18(j) of Schedule 14 of this Order.

Consultation and notification

3. The undertaker must inform Stena Line in writing of the intended start date and the likely duration of the carrying out of any specified work at least 28 days prior to the commencement of any specified work and have regard to any response received from Stena Line.

4. The undertaker must inform Stena Line in writing 28 days prior to commencing any maintenance of any specified work.

5. Any operations for the construction of any specified work, once commenced, must be carried out by the undertaker so that Stena Line and Stena Line’s operations in the Irish Sea does not suffer more interference than is reasonably necessary.

6. The undertaker must inform Stena Line in writing at least 28 days prior to the commencement of any works that involve the installation of subsea cable circuits and subsea cable ducts, such written notice to include full details of the location of any subsea cable circuits and subsea cable ducts and any other apparatus, equipment or infrastructure that is to be inserted in the underwater environment.

Indemnity

7.—(1) The undertaker is responsible for and must make good to Stena Line all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred, suffered or occasioned to Stena Line by reason of or arising in connection with –

(a) any obstruction, hindrance or impact to Stena Line’s operations during the construction, operation, maintenance or existence of the specified works;

(b) the undertaking by Stena Line any operations, works or measures to prevent or remedy a danger or impediment to navigation of any of its vessels from the exercise by the undertaker of its powers under this Order;

(c) any damage, cost or loss caused by Stena Line to the undertaker or any third parties arising out of any reasonable emergency procedures undertaken by any of Stena Line's vessels in response to a danger or impediment to navigation of any of its vessels arising out of the construction, operation, maintenance, failure or existence of the specified works; and

(d) any act or omission of the undertaker, its employees, contractors or agents or others relating to the authorised works.

(2) Stena Line must give the undertaker not less than 28 days' notice in writing after becoming aware of any such claim, as is referred to in sub-paragraph (1), providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Stena Line, its officers, servants, contractors or agents.

Vessel Traffic Management Plan

8. The undertaker must consult Stena Line before submitting the vessel traffic management plan to any licensing authority and the undertaker must take regard to any response received from Stena Line in respect of the Vessel Traffic Management Plan.

Co-operation and reasonableness

9. The undertaker and Stena Line must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Stena Line in respect of the authorised development provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.

11. Any dispute arising between the undertaker and Stena Line under this Part of this Schedule is to be determined by arbitration in accordance with article 46 (arbitration).