

# MONA OFFSHORE WIND PROJECT

## Final Position Statement on Statutory Undertakers and Crown Land

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Image of an offshore wind farm

**MONA OFFSHORE WIND PROJECT**

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**MONA OFFSHORE WIND PROJECT**

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**Contents**

**1 FINAL POSITION STATEMENT ON STATUTORY UNDERTAKERS AND CROWN LAND ..... 3**

1.1 Introduction ..... 3

1.2 Position with Wales and West Utilities..... 4

1.3 Position with Network Rail Limited ..... 5

1.4 Position with National Grid Electricity Transmission Plc ..... 5

1.5 Position with Awel y Môr ..... 6

1.6 Position in respect of all other Statutory Undertakers ..... 6

1.7 Position in respect of Crown Land – The Crown Estate Commissioners ..... 6

1.8 Position in respect of Crown Land – Welsh Ministers – A55 plots ..... 6

1.9 Position in respect of Crown Land – Welsh Ministers – woodland plots and Natural Resources  
Wales– Occupiers Consent ..... 7

1.10 Conclusion on Statutory Undertakers ..... 7

1.11 Crown Land ..... 8

# 1 Final Position Statement on Statutory Undertakers and Crown Land

## 1.1 Introduction

- 1.1.1.1 This Position Statement provides the Examining Authority with an update on the Applicant's position in relation to statutory undertakers and Crown land. The position relating to statutory undertakers is set out at sections 1.2 to 1.6 and the position relating to Crown land is set out at sections 1.7 to 1.9 of this statement.
- 1.1.1.2 This statement builds upon, and should be read in conjunction with, the Applicant's response to the Examining Authority's Further Written Question 2.6.9 regarding statutory undertakers (ExQ2) (REP5-081).
- 1.1.1.3 In respect of the statutory undertakers, Parts 1-9 of Schedule 10 of the Draft DCO (C1 F09) deals with protective provisions for statutory undertakers. Schedule 10 includes protective provisions for the following entities:
- (a) Part 1 (Protection of electricity, gas, water and sewerage undertakers);
  - (b) Part 2 (Protection for operators of electronic communications code networks);
  - (c) Part 3 (For the protection of Dŵr Cymru Cyfyngedig (DC));
  - (d) Part 4 (For the protection of SP Manweb as electricity undertaker);
  - (e) Part 5 (For the protection of Wales and West Utilities);
  - (f) Part 6 (For the protection of the Welsh Ministers as Strategic Highway Authority);
  - (g) Part 7 (For the protection of National Grid Electricity Transmission Plc as electricity undertaker);
  - (h) Part 8 (For the protection of Network Rail Limited); and
  - (i) Part 9 (For the protection of Awel y Môr).
- 1.1.1.4 By way of an update to REP5-081, the Applicant is pleased to confirm that an agreed position has been reached with Network Rail Limited regarding the protective provisions included in the Draft DCO for its benefit. Further detail is provided at section 1.3 of this statement.
- 1.1.1.5 There are two statutory undertakers for whom protective provisions have not been agreed; however, the Applicant is confident that agreement can be reached soon. These are National Grid Electricity Transmission Plc and the Applicant is also seeking confirmation from Wales and West Utilities that the protective provisions in the Draft DCO are agreed. Further information is provided at sections 1.2, 1.4 and 1.5 of this statement.
- 1.1.1.6 It is important to note that the Draft DCO (C1 F09) includes powers to acquire a series of land rights and interests in land which will be required, on a permanent and temporary basis. In the event it has not been possible to acquire the land rights and interests by agreement, it will be necessary to compulsorily acquire these for the purposes of developing the Mona Offshore Wind Project. As such, the Draft DCO includes powers to compulsorily acquire land and rights in land. Pursuant to Article 31 of the draft DCO and subject to the protective provisions of Schedule 10, it is confirmed that the Applicant may (a) '*acquire compulsorily*,

## MONA OFFSHORE WIND PROJECT

*or acquire new rights or impose restrictions over, the land belonging to statutory undertakers....'; and (b) 'extinguish or suspend the rights of, or restrictions for the benefit of, or remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land'.*

- 1.1.1.7 Where a statutory undertaker has made a representation about the compulsory acquisition of land or rights over land which has been acquired for the purpose of their undertaking, and this representation is not withdrawn, section 127 of the Planning Act 2008 applies.
- 1.1.1.8 Furthermore, section 138 of the PA 2008 applies to land if there subsists over the land a relevant right or there is on, under or over the land relevant apparatus. It further provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates. Therefore, as the DCO includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, section 138 of the PA 2008 is also engaged and specifically with proposed diversions.
- 1.1.1.9 Inclusion of protective provisions for each of the statutory undertakers adequately covers off the requirements of sections 127 and 138 of the Planning Act 2008. Please also see the Applicant's response to the Examining Authority's Further Written Question 2.6.9 regarding Statutory Undertakers (ExQ2) (REP5-081) for additional submissions on the legal tests. To the extent this submission differs from REP5-081, this submission should be taken as an update to that position.

## 1.2 Position with Wales and West Utilities

- 1.2.1.1 The Applicant is seeking powers of compulsory acquisition and to acquire rights in land in which Wales and West Utilities has interests for the purposes of their undertaking. Wales and West Utilities is a statutory undertaker for the purposes of section 127 of the Planning Act 2008 as they are a gas transporter. Further information on the interaction between the Mona Offshore Wind Project and Wales and West Utilities is provided at section 1.3 of REP5-081.
- 1.2.1.2 The Applicant notes that Wales and West Utilities have not made a representation into the examination and no 'serious detriment' has been alleged by Wales and West Utilities. It is therefore the Applicant's position that section 127 is not engaged. In any case, the protective provisions included at Part 5, Schedule 10 of the draft DCO (C1 F09) provide adequate protection to Wales and West Utilities and would avoid any serious detriment. It is therefore the Applicant's position that the criteria in sections 127 and 138 of the Planning Act 2008 are satisfied.
- 1.2.1.3 Since providing its update to the Examining Authority at Deadline 5 (REP5-081), the Applicant has been in regular communications with Wales and West Utilities regarding the protective provisions. Updates have been made to the protective provisions included for the benefit of Wales and West Utilities at Part 5, Schedule 10 of the draft DCO (C1 F09) in order to bring the parties closer together.
- 1.2.1.4 The Applicant has sought confirmation from Wales and West Utilities that the protective provisions (as updated for Deadline 7) are agreed, however that confirmation remains outstanding. The Applicant will continue to seek

## MONA OFFSHORE WIND PROJECT

confirmation from Wales and West Utilities that the protective provisions are agreed and will provide a further update as applicable.

### 1.3 Position with Network Rail Limited

1.3.1.1 Further to the update provided at section 1.4 of REP5-081, the Applicant is pleased to confirm that an agreed position has been reached with Network Rail Limited. Network Rail's preferred set of protective provisions have been added to the draft Development Consent Order (C1 F09) which have been submitted at Deadline 7.

1.3.1.2 The parties are in the process of final completion arrangements in respect of the Network Rail Framework Agreement. It is anticipated that Network Rail will write to the Examination to confirm withdrawal of its objection to the Application soon after the completion of the Framework Agreement.

1.3.1.3 On the basis that the Network Rail's preferred set of protective provisions are included in the Draft DCO and there are only administrative matters left outstanding to formalise the agreed position, the Applicant does not consider that sections 138 and 127 of the Planning Act 2008 will be engaged.

### 1.4 Position with National Grid Electricity Transmission Plc

1.4.1.1 The Applicant responds to the submissions made to the examination by National Grid Electricity Transmission Plc at Deadline 6 (REP6-136) here.

1.4.1.2 Since those submissions were made, the parties have been in regular communication and have continued to engage in discussions regarding the protective provisions. At Deadline 6, a substantial update was made to the protective provisions included for the benefit of National Grid Electricity Transmission Plc at Part 7, Schedule 10 of the Draft DCO (REP6-016) in order to bring the parties closer together and further update to those provisions is made at Deadline 7 (Draft DCO – C1 F09).

1.4.1.3 As can be seen from these updates, there remain only a small number of outstanding matters between the parties, which are limited to the following:

- Definition of "acceptable security"
- Definition of "acceptable insurance"
- Definition of "Mona project works"
- Paragraph 3 (Interaction with the Bodelwyddan Project and the Connah's Quay Project), subparagraph (a)
- Paragraph 14 (Retained apparatus: Protection of National Grid Electricity Transmission Plc as Electricity Undertaker), sub paragraph (4)(b)
- Paragraph 20 (Arbitration)

1.4.1.4 This set of provisions has not been agreed between the parties and discussions to reach an agreed position are ongoing. The Applicant will continue to engage with NGET in the post-Examination phase and the Applicant believes that the parties are very close to reaching an agreement. The Applicant anticipates being able to confirm to the Secretary of State that matters have been agreed as soon as possible after the close of Examination.

## MONA OFFSHORE WIND PROJECT

### **1.5 Position with Awel y Môr**

- 1.5.1.1 This is a joint position statement agreed between Awel y Môr and the Applicant.
- 1.5.1.2 The parties have agreed a set of protective provisions which are being included in the Mona Draft DCO (C1 F09).
- 1.5.1.3 On this basis, the parties agree there are no outstanding matters in respect of protective provisions.

### **1.6 Position in respect of all other Statutory Undertakers**

- 1.6.1.1 The following protective provisions have been agreed:
  - (a) Part 3 of Schedule 10 (For the protection of Dŵr Cymru Cyfyngedig (DC));
  - (b) Part 4 of Schedule 10 (For the protection of SP Manweb as electricity undertaker); and
  - (c) Part 6 of Schedule 10 (For the protection of the Welsh Ministers as Strategic Highway Authority).
- 1.6.1.2 The Applicant considers that each of these statutory undertakers' statutory operations will not be detrimentally impacted by Mona Offshore Wind Project and in each case the Applicant believes that the protective provisions will provide adequate protection for the statutory undertaker.
- 1.6.1.3 The Applicant can confirm that no other statutory undertakers (excluding those mentioned elsewhere in this statement) have made representations with regards to this application. Moreover, any other statutory undertakers will be able to rely on Part 1 (Protection of electricity, gas, water and sewerage undertakers) and Part 2 (Protection for operators of electronic communications code networks) of Schedule 10 of the draft DCO for protection.

### **1.7 Position in respect of Crown Land – The Crown Estate Commissioners**

- 1.7.1.1 The Applicant can confirm that it is liaising with The Crown Estate Commissioners in relation to obtaining Crown's consent to the inclusion of powers in the DCO relating to Crown land under section 135 of the Planning Act 2008. It is understood that The Crown Estate Commissioners should be in a position to issue a consent letter shortly following the close of the examination.
- 1.7.1.2 The above statement has been agreed between Solicitors for the Applicant and the Crown Estate Commissioners.

### **1.8 Position in respect of Crown Land – Welsh Ministers – A55 plots**

- 1.8.1.1 The Applicant and Welsh Ministers have resolved the outstanding points of difference and the Applicant received signed heads of terms for the voluntary rights sought on the 14th January 2025. The Applicant will instruct their respective solicitors to negotiate and settle formal agreements accordingly.
- 1.8.1.2 The land rights tracker will also be updated for today's deadline to reflect the agreement on the terms.

## MONA OFFSHORE WIND PROJECT

1.8.1.3 The Applicant also separately received on the 14<sup>th</sup> January 2025 a signed section 135 consent letter on behalf of the Transport division of the Welsh Ministers, to cover the operational and non-operational extents of the A55, relating to plots 02-026; 02-027; 02-029 and 02-030.

### **1.9 Position in respect of Crown Land – Welsh Ministers – woodland plots and Natural Resources Wales– Occupiers Consent**

1.9.1.1 The Applicant was advised by the Welsh Ministers on the 7<sup>th</sup> January 2025 that separate section 135 consent would need to be issued for plots 02-034 and 02-036, relating to the woodland.

1.9.1.2 Since that date, there has been liaison between the Applicant and the Forestry division of the Welsh Ministers as regards the requested section 135 consent letter and the Applicant has been responding to queries raised. There will continue to be ongoing liaison to close off any outstanding queries by the Welsh Ministers, so that a consent letter can be issued as soon as possible following the close of the examination.

1.9.1.3 The Applicant has also been separately liaising on voluntary rights and issued an occupiers consent document to Natural Resources Wales, who the Applicant understands manage the land on behalf of the Welsh Ministers, on the 15<sup>th</sup> July 2024 following the progress of the voluntary terms with the freeholder of the land.

1.9.1.4 Since the issue of the terms there had been ongoing dialogue and Microsoft Teams calls for the Applicant to provide further information on the Mona Offshore Wind Project's intention for the installation of the cables in this location and to provide clarity on the various trenchless methodologies that could be considered during detailed design.

1.9.1.5 The Applicant has agreed heads of terms with the freeholder and is also liaising with NRW as occupier.

### **1.10 Conclusion on Statutory Undertakers**

1.10.1.1 The Applicant confirms that an agreed position has been reached with Network Rail and it is anticipated that Network Rail will write to the examination to confirm withdrawal of its objection to the application once the Framework Agreement has been completed.

1.10.1.2 The Applicant also confirms that the protective provisions included at Part 3, Part 4, Part 6, Part 8 and Part 9 of the Draft DCO (C1 F09) are agreed.

1.10.1.3 There are 2 statutory undertakers with whom Protective Provisions have not yet been agreed. These statutory undertakers are 1. Wales and West Utilities, 2. National Grid Electricity Transmission Plc:

(a) In respect of Wales and West Utilities, the Applicant is awaiting confirmation that the protective provisions (as updated for Deadline 7) are agreed and will continue to seek this confirmation.

(b) In respect of National Grid Electricity Transmission Plc the Applicant is in regular communication National Grid Electricity Transmission Plc and is confident that agreement can be reached shortly.



## MONA OFFSHORE WIND PROJECT

The Applicant acknowledges that the Mona Offshore Wind Project would impact upon each of these statutory undertakers but considers that these impacts would not be sufficiently significant to constitute 'serious detriment' within the meaning of section 127 of the PA 2008 and furthermore, that both section 127 and section 138 of the PA is satisfied given the inclusion of the Protective Provisions within Schedule 10 of the draft DCO.

- 1.10.1.4 No additional representations have been made by other statutory undertakers with regards to this application and any other statutory undertakers will be able to rely on Part 1 and Part 2 of Schedule 10 for protection.

## 1.11 Crown Land

- 1.11.1.1 In respect of the Crown land:

- (a) **The Crown Estate** - It is understood that The Crown Estate Commissioners should be in a position to issue a section 135 consent letter shortly, following the close of the examination.
- (b) **Welsh Ministers – A55 plots** - The Applicant received signed heads of terms from the Welsh Ministers for the voluntary rights sought on the 14th January 2024 and a signed section 135 consent letter. The Applicant will instruct their respective solicitors to negotiate and settle formal agreements accordingly.
- (c) **Welsh Ministers – woodland plots and Natural Resources Wales– Occupiers Consent** - The Applicant is in discussions regarding the section 135 consent letter, with an update to follow as soon as possible following the close of examination and also hopes to finalise the voluntary agreement sought.

- 1.11.1.2 The Applicant will continue to engage with the Crown Estate, Welsh Ministers and NRW regarding the Crown land. The Applicant will provide updates to the Secretary of State as soon as possible after the close of examination.