

MORGAN AND MORECAMBE OFFSHORE WIND FARMS: TRANSMISSION ASSETS

Statutory Nuisance Statement



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Glossary

Term	Meaning
Morgan Offshore Wind Project: Generation Assets	The offshore generation assets and associated activities for the Morgan Offshore Wind Project.
400 kV grid connection cable corridor	The corridor within which the 400 kV grid connection cables will be located.
Applicants	Morgan Offshore Wind Limited (Morgan OWL) and Morecambe Offshore Windfarm Ltd (Morecambe OWL).
Cumulative Effects	The combined effect of the Transmission Assets in combination with the effects from other proposed developments, on the same receptor or resource.
Development Consent Order	An order made under the Planning Act 2008 granting development consent.
Effect	The term used to express the consequence of an impact. The significance of effect is determined by correlating magnitude of the impact with the importance, or sensitivity, of the receptor or resource in accordance with defined significance criteria.
Environmental Impact Assessment	The process of identifying and assessing the significant effects likely to arise from a project. This requires consideration of the likely changes to the environment, where these arise as a consequence of a project, through comparison with the existing and projected future baseline conditions.
Environmental Statement	The document presenting the results of the Environmental Impact Assessment process.
Morecambe Offshore Windfarm: Generation Assets	The offshore generation assets and associated activities for the Morecambe Offshore Windfarm.
Morgan and Morecambe Offshore Wind Farms: Transmission Assets (Transmission Assets)	The offshore and onshore infrastructure connecting the Morgan Offshore Wind Project and the Morecambe Offshore Windfarm to the national grid. This includes the offshore export cables, landfall site, onshore export cables, onshore substations, 400 kV grid connection cables and associated grid connection infrastructure such as circuit breaker compounds. Also referred to in this report as the Transmission Assets, for ease of reading.
Morgan Offshore Wind Project: Generation Assets	The offshore generation assets and associated activities for the Morgan Offshore Wind Project.
National Grid Penwortham substation	The existing National Grid substation at Penwortham, Lancashire.
Nationally Significant Infrastructure Project (NSIP)	Large scale development including power generating stations which requires development consent under the Planning Act 2008.
National Policy Statement(s)	The current national policy statements published by the Department for Energy Security and Net Zero in 2023 and adopted in 2024.

Term	Meaning
Onshore substations	The onshore substations will include a substation for the Morgan Offshore Wind Project: Transmission Assets and a substation for the Morecambe Offshore Windfarm: Transmission Assets. These will each comprise a compound containing the electrical components for transforming the power supplied from the generation assets to 400 kV and to adjust the power quality and power factor, as required to meet the UK Grid Code for supply to the National Grid.

Acronyms

Acronym	Description
CoCP	Code of Construction Practice
DCO	Development Consent Order
EIA	Environmental Impact Assessment
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
NPS	National Policy Statement
OSP	Offshore Substation Platform

Units

Unit	Description
dB	Decibel
kV	Kilovolts
km	Kilometres

1 Statutory nuisance statement

1.1 Introduction and Executive Summary

- 1.1.1.1 This Statutory Nuisance Statement (the Statement) has been prepared on behalf of Morgan Offshore Wind Limited (Morgan OWL), a joint venture of bp Alternative Energy Investments Ltd (bp) and Energie Baden-Württemberg AG (EnBW), and Morecambe Offshore Windfarm Limited (Morecambe OWL), a joint venture between Zero-E Offshore Wind S.L.U. (Spain) (a Cobra group company) and Flotation Energy Ltd (together, the Applicants). It forms part of the application (the Application) for a Development Consent Order (DCO), submitted to the Secretary of State pursuant to the Planning Act 2008.
- 1.1.1.2 The Applicants are seeking development consent for the construction of two electrical transmission systems connecting two nationally significant infrastructure projects - the Morgan Offshore Wind Project: Generation Assets and the Morecambe Offshore Windfarm: Generation Assets - to the National Grid Penwortham substation (the Transmission Assets). Following a request from the Applicants, on 4 October 2022 the Secretary of State issued a direction under section 35 of the Planning Act 2008 that the Transmission Assets should be treated as development for which development consent is required (the Section 35 Direction). As such, a DCO is required to authorise the Transmission Assets in accordance with Section 31 of the Planning Act 2008.
- 1.1.1.3 The purpose of this Statement is to comply with Regulation 5(2)(f) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) which states that any application for a DCO should be accompanied by a statement setting out whether the development proposed could cause a statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA 1990). This Statement provides an explanation of the matters set out under section 79(1) of the EPA 1990, considers the potential impacts of the Transmission Assets and the proposals for mitigation of any statutory nuisances identified, including references to where these are more fully explored in the Environmental Statement.
- 1.1.1.4 The Transmission Assets have the potential to cause statutory nuisance, however it is not expected to arise. The relevant chapters of the Environmental Statement (Volume 3, Chapter 9: Air quality and Volume 3, Chapter 8: Noise and vibration) (document references F3.9 and F3.8) conclude that there will be no significant effects arising from the Transmission Assets in relation to noise, vibration or dust emissions during the construction, operation and maintenance, or decommissioning phases.
- 1.1.1.5 Nevertheless, the draft DCO (document reference C1) that accompanies the Application contains a provision at Article 8 (Defence to proceedings in respect of statutory nuisance) that would provide a defence to proceedings for statutory nuisance under the terms of the DCO. Given the Transmission Asset's status pursuant to the Section 35 Direction, it is appropriate that the

Transmission Assets are protected from proceedings under Section 79 of the EPA 1990 for construction and subsequent continued operation.

1.2 Proposed Development and Key Components of the Transmission Assets

1.2.1.1 The Transmission Assets will consist of the construction of two electrical transmission systems connecting the Morgan Offshore Wind Project: Generation Assets and the Morecambe Offshore Windfarm: Generation Assets to the National Grid Penwortham substation, and will facilitate the delivery of almost 2GW of new renewable energy capacity. In summary, the Transmission Assets consist of the following:

- Offshore:
 - offshore export cables: these export cables will bring the electricity generated by the Generation Assets to the landfall for onward transmission.
- Landfall:
 - landfall site: this is where the offshore export cables are joined to the onshore export cables via the transition joint bays (TJBs). This term applies to the entire area between Mean Low Water Springs (MLWS) and the TJBs.
- Onshore elements:
 - onshore export cables: these export cables will be jointed to the offshore export cables via the TJBs at the landfall site, and will bring the electricity generated by the Generation Assets to the onshore substations;
 - onshore substations: the two electrically separate onshore substations will contain the components for transforming the power supplied via the onshore export cables up to 400 kV; and
 - 400 kV grid connection cables: these export cables will bring the electricity generated by the Generation Assets from the two electrically separate onshore substations to the existing National Grid substation at Penwortham.
 - environmental mitigation areas – temporary and/or permanent areas, including accesses identified to provide environmental mitigation only.
 - biodiversity benefit areas - temporary and/or permanent areas, including accesses identified to provide biodiversity benefit only.

1.2.1.2 Further details of the key components of offshore and onshore infrastructure can be found in ES Volume 1, Chapter 3: Project Description (document reference F1.3) with further information as to the Project contained within the Draft DCO and Works Plans – Onshore and Offshore (document references C1 and B7).

1.3 The Purpose and Structure of This Statement

- 1.3.1.1 The purpose of this Statement is to comply with Regulation 5(2)(f) of the APFP Regulations which states that any application for a DCO should be accompanied by a statement setting out whether the development proposed could cause a statutory nuisance pursuant to Section 79(1) of the EPA 1990. If such a nuisance could occur, the Statement must set out how the Applicants propose to mitigate or limit the effects.
- 1.3.1.2 Section 4.15.1 to 4.15.4 of the ‘Overarching National Policy Statement for Energy EN-1’ (NPS EN- 1) (designated in January 2024) states that: *“Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a Development Consent Order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority’s duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is “prejudicial to health” and not a nuisance”*.
- 1.3.1.3 Furthermore, paragraph 4.15.6 of the NPS EN-1 states that: *“At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be considered by the Secretary of State so that appropriate requirements can be included in any subsequent order granting development consent”*.
- 1.3.1.4 This Statement explains that, whilst it is not expected that the construction, operation and maintenance, or decommissioning of the Project would engage Section 79(1) by causing a statutory nuisance, the Draft DCO (document reference C1) contains a provision at Article 8 (defence to proceedings in respect of statutory nuisance) to provide a defence to proceedings for statutory nuisance where those arise as an inevitable consequence of the authorised project, should proceedings be initiated against the Applicants. This protection is provided by the Planning Act 2008 and reflects the position that the Project is one for which development consent is required.
- 1.3.1.5 This Statement first describes the legislative context for the identification of matters which constitute statutory nuisance and the methodology for the assessment of these. This is followed by a summary of the assessment of the statutory nuisances, where appropriate, informed by the Environmental Statement, including any relevant mitigation measures and residual effects, whether embedded within the design of the Transmission Assets or secured through requirements within the DCO.

1.4 Identification and Assessment of Statutory Nuisance

1.4.1 Legislative Framework

1.4.1.1 Section 79(1) of the EPA 1990 identifies the matters which are considered to be statutory nuisance as follows:

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road and
- (h) any other matter declared by any enactment to be statutory nuisance.

1.4.1.2 The EPA 1990 provides some exceptions to what is considered a statutory nuisance, however, none of these are relevant to the Transmission Assets.

1.5 Assessment of Significance

1.5.1.1 The Environmental Statement, which has been prepared by the Applicants in accordance with The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations), has assessed the potential significant effects of a number of elements specified in Section 79(1) and the likelihood of those arising.

1.5.1.2 It is considered that the Transmission Assets has the potential to give rise to complaints from local communities under sub-paragraphs (g) and (ga) of

Section 79(1) in relation to noise. This Statement also considers air quality (sub-paragraph (d)) and construction lighting (sub-paragraph (fb)). As the onshore substations for Morgan OWL and Morecambe OWL will not be occupied on a regular basis operational lighting will be limited and will be controlled at each onshore substation through operational artificial light emissions plans to be approved by Fylde Council, which is secured through requirements 17 of Schedule 2A and Schedule 2B (Control of operational artificial light emissions) of the draft DCO (document reference C1). Operational lighting is therefore not considered further in this Statement.

1.5.1.3 Chapter 8: Noise and Vibration of the Environment Statement (document reference F3.8), Chapter 9: Air Quality (document reference F3.9) and their associated appendices provide detailed assessments of these potential impacts and identify mitigation measures where necessary.

1.5.1.4 The Applicants consider that none of the matters specified in Section 79(1) are engaged by the offshore elements of the Transmission Assets, principally because the works only include subsea cables. As such, the offshore aspects are not considered further within this Statement.

1.5.2 Noise and Vibration

1.5.2.1 Section 79(1) of the EPA 1990, subsections (g) and (ga) refer to:

- g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road.

1.5.2.2 The potential noise and vibration impacts and mitigation are assessed in Chapter 8: Noise and Vibration of the Environment Statement (document reference F3.8). Overall, this chapter concludes that there will be no significant effects arising from the Transmission Assets during the construction, operation and maintenance, or decommissioning phases. This includes noise associated with the operation of the onshore substations. In addition to this, the assessment concludes that there will be no significant cumulative noise and vibration effects from the Transmission Assets alongside other relevant projects.

Construction noise and vibration management

1.5.2.3 Construction noise will be managed in accordance with the Construction Noise and Vibration Plan for each project, which will be secured as part of the Code of Construction Practice for each stage of each project's onshore works. Each Code of Construction Practice must be approved by the relevant planning authority prior to the commencement of construction, for the onshore substation this will be Fylde Council. An Outline Code of Construction Practice and Outline Construction Noise and Vibration Management Plan (document references J1 and J1.3) are included in the Application and will form the basis of their respective detailed plans.

1.5.2.4 In addition, onshore construction hours for each project are generally limited through requirement 14 (Construction hours) of Schedule 2A and 2B of the draft DCO (document reference C1) to the hours of 7am to 7pm Monday to Saturday with no working hours on Sundays or bank holidays. This excludes the works identified in requirement 14(2) and these works are subject to a 48 hour notice requirement. The only exceptions to this notice are emergency works or works involving trenchless techniques that require continuous periods of construction (as assessed in the Environmental Statement), or as agreed with the relevant planning authority through the Code of Construction Practice.

Operational noise and vibration management

1.5.2.5 Operational noise for the onshore substations shall be controlled through Operational Noise Management Plan(s) in accordance with requirement 18 (Control of noise during operational stage) of Schedule 2A and Schedule 2B of the draft DCO (document reference C1). The design of the onshore substations will incorporate noise control measures, where practicable or feasible, to ensure compliance with the operational noise limit.

1.5.3 Dust Emissions

1.5.3.1 Section 79(1) of the EPA 1990, sub-section (d) refers to:

- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance

1.5.3.2 Dust emissions are anticipated during onshore construction works for the Transmission Assets. Further details of these effects are provided in Chapter 9: Air Quality of the Environmental Statement (document F3.9).

1.5.3.3 In the construction phase, as there will be no demolition, the overall dust impact risk during demolition phase is considered to be negligible. During the earthworks, construction and trackout phases, the overall dust impact risk is considered to be high. However, further to the implementation of dust control measures, the dust impact risk is considered to be negligible, which is not significant.

1.5.3.4 Overall, it concluded that there will be no significant air quality effects arising from the Transmission Assets during the construction or decommissioning phases. Air quality effects during the operation and maintenance phase have been scoped out.

1.5.3.5 Therefore, a statutory nuisance in relation to construction dust is unlikely to occur.

Construction dust emission management

1.5.3.6 Dust emissions during construction will be managed in accordance with the dust management plan which will be an appendix to the detailed Code of Construction Practice(s). Each Code of Construction Practice must be approved by the relevant planning authority prior to the commencement of

construction. An Outline Code of Construction Practice and Outline dust management plan (document references J1 and J1.2) are submitted with the application for development consent.

1.5.4 Artificial Light Emissions

1.5.4.1 Section 79(1) of the EPA 1990, sub-section (fb) refers to:

- fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance

1.5.4.2 Artificial Light will only operate where required. It may be needed during construction to provide safe levels of light necessary where night working is unavoidable.

Construction artificial light emissions management

1.5.4.3 External lighting of the construction work areas and temporary construction compounds will be in line with the construction artificial light emissions plan as secured by requirement 8 of Schedules 2A and 2B (as an appendix of the Code of Construction Practice) of the draft DCO (document reference C1). An outline construction artificial light emissions plan is included in the DCO application (document reference J1.11)).

1.5.4.4 Construction site lighting will only operate when required and will be positioned and directed to avoid unnecessary illumination to residential properties, sensitive ecological receptors and footpath users, and minimise glare to users of adjoining public highways. Construction site lighting will be designed in accordance with latest relevant available guidance and legislation and the details of the location, height, design and luminance of lighting to be used will be detailed within the Outline Construction Artificial Light Emissions Management Plan, as part of the Outline CoCP (document references J1.11 and J1).

1.5.4.5 Construction lighting will be designed and positioned to minimise light spillage, pollution, disturbance to adjoining residents and to wildlife.

1.5.4.6 Conclusion

1.5.4.7 The Applicants have designed the Transmission Assets in such a way as to minimise environmental effects and have also included a variety of measures to mitigate any remaining impacts further still.

1.5.4.8 These measures are secured by the requirements contained in Schedule 2A and Schedule 2B to the draft DCO (document reference C1), which cover a number of relevant matters including:

- Codes of Construction Practice and associated management plans in relation to each project's onshore works, covering a wide range of matters including construction noise and vibration, dust management and artificial light emissions;
- Limits on standard onshore construction hours;

- Limits on operational noise arising from the onshore substation, as measured at specific residential locations; and

1.5.4.9 Following adherence to the measures set out in the plans described no significant residual impacts are predicted in relation noise, air quality and light emissions therefore, they are not expected to engage Section 79(1).

1.5.4.10 Notwithstanding the above conclusion, the draft DCO (document reference C1) that accompanies the Application contains a provision at Article 8 (Defence to proceedings in respect of statutory nuisance) that would provide a defence to proceedings for statutory nuisance under the terms of the DCO. Given the Project's status pursuant to the Section 35 Direction, it is appropriate that the Project is protected from proceedings under Section 79 of the EPA 1990 for construction and subsequent continued operation.

1.6 References

Department for Energy Security & Net Zero (designated 17 January 2024) Overarching National Policy Statement for Energy (NPS EN-1). Available:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147380/NPS_EN-1.pdf Accessed 11 September 2024.