THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

East Anglia ONE North Offshore Wind Farm

Appendix G3 to the Natural England Deadline 5 Submission

Natural England's Advice on Non-Material Changes and Headroom

For:

The construction and operation of East Anglia ONE North Offshore Wind Farm, a 800MW wind farm which could consist of up to 67 turbines, generators and associated infrastructure, located 36km from Lowestoft and 42km from Southwold.

Planning Inspectorate Reference: EN010077

3rd February 2021

Natural England's Advice on Non-Material Changes (NMC) and Headroom

This document is applicable to both the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23rd December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again for the other project.

Summary

At Issue Specific Hearing 3, held on January 19th 2021, Natural England's advice regarding concerns on incorporating Non-Material Changes (NMC) to East Anglia Project ONE (EA1) and East Anglia Project THREE (EA3) was raised and a request for clarification of Natural England's position regarding whether these NMCs could be considered legally secured.

Detailed Advice

1. Firstly, Natural England would advise that we are currently working with industry to look at standardising the approach to headroom and into legally secured approaches to releasing headroom once projects have constructed. This work may conclude during the current examination process. If so, Natural England would advise that any standard approach agreed with industry at that point should be considered for East Anglia ONE North (EA1N) and East Anglia TWO (EA2). However, we would advise at this stage that we see this as unlikely during the current examination timetable.

2. With regard to whether the NMC are considered legally secured, Natural England would advise that currently they are not legally secured as no determination has been made by the Secretary of State on the NMC for EA3 and that no NMC application has yet been made for EA1. The EA3 NMC could be refused, withdrawn or amended. While the EA1 application may not in the end be submitted, or may be amended. As neither application has been determined the Secretary of State may decide the proposed changes are material and this would lead to requirement for a material change process. While Natural England notes the likely outcome for the proposed NMCs would be for them to be granted, until the decision is made there is uncertainty that this would be the case.

3. It should be noted that Case C-127/02 Waddenzee, the European Court spelled out that a

national authority may authorise a plan or project “only where they have made certain it will not adversely affect the integrity of the site. That is the case where no reasonable scientific doubt remains as to the absence of such effects”. Therefore, due to the uncertainty remaining in the NMCs, Natural England’s advice remains that the in-combination assessment should include figures for EA1 and EA3 without reduction for the proposed NMCs.

4. However, if the Secretary of State makes a determination on the EA3 NMC and the EA1 NMC is applied for and determination is granted then this would be considered legally secured and certain. However, this would also require the wording of the DCO and DMLs for EA3 and EA1 to be appropriately changed to reflect not just the number of turbines, but to reflect any changes to other parameters relevant to collision risk (such as blade length, minimum clearance height etc). If appropriate changes were made to the DCO and DML then they could be considered legally secured and certain.

5. Furthermore, Natural England would advise that any reduction of impact from EA1 and EA3 should not be a simple proportional reduction based on the reduction of the number of turbines. A wide range of factors are used to model collision impacts, such as rota swept area, blade pitch, blade speed etc. The actual headroom created by these NMC should be based on updated collision risk modelling accounting for the actual turbines deployed.

6. If the applicant was to submit updated figures for EA1 and EA3 assuming the NMC are approved, Natural England could provide comment on a without prejudice basis. Thus, should EA3 and/or EA1 NMCs be granted prior to determination the Secretary of State could consider the legally secured figures at that time. We consider this a pragmatic way forward on this issue.