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DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)

DEADLINE 8

CLOSING STATEMENT

on behalf of

**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**

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1. INTRODUCTION

- 1.1 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**).
- 1.2 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.
- 1.3 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**).
- 1.4 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.
- 1.5 DBA Projco, DBB Projco and DBC Projco (together the **Projco IPs**) are making this submission in respect of the Applicants' 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 the Projcos' previous submissions at Examination, including:
 - 1.5.1 Relevant representation (RR-007);
 - 1.5.2 Deadline 1 Submission (REP1-071);
 - 1.5.3 Deadline 2 Submission (REP2-071);
 - 1.5.4 Deadline 3 Submission and Response to the Examining Authority's (**ExA**) First Written Questions (REP3-063);
 - 1.5.5 Deadline 4 Submission (REP4-117);
 - 1.5.6 Deadline 5 Submission and Response to the ExA's Second Written Questions (REP5-071);
 - 1.5.7 Wake Loss Assessment Report submitted by the Projco IPs (REP5-070);
 - 1.5.8 Deadline 6 Submission (REP6-081);
 - 1.5.9 Deadline 7 Submission (REP7-139);
 - 1.5.10 Updated Wake Loss Assessment Report submitted by the Projco IPs (REP7-140); and
 - 1.5.11 Deadline 8 Submission.

2. EXECUTIVE SUMMARY

- 2.1 DBA, DBB and DBC are projects which will contribute to the government's 2030 clean power targets. They are nationally significant infrastructure projects themselves, which will deliver 3.6GW of clean energy to Great Britain and which have been subject to billions of pounds of investment.
- 2.2 The Projco IP's position is that the Projects cause adverse effects to DBA, DBB and DBC which should be afforded substantial weight in the planning balance and which necessitate the incorporation of protective provisions in the draft DCO to secure mitigation, including or in the form of financial compensation. The Projco IP's position is that this is the correct application of NPS EN-3.
- 2.3 The Applicant has not complied with the requirements of NPS EN-3 in respect of engagement with the Projco IPs. The Projco IPs have sought to engage on wake loss matters throughout the development of the Project and the Applicant has refused to engage in those discussions, refusing to engage with wake loss until deadline 4 of this examination.
- 2.4 In policy terms, the Projco IPs have demonstrated that the Projects cause a significant negative effect to DBA, DBB and DBC and that substantial weight must be afforded to the wake loss impacts. The Projco IPs have demonstrated that the Projects are likely to affect the future viability of DBA, DBB and DBC, a test that the Applicant characterises as requiring the Projco IPs to demonstrate a "*meaningful threat to the ongoing operation of DBA, DBB and / or DBC*". The evidence before this examination demonstrates that it is likely that there will be such a meaningful threat in the future, and identifies a number of scenarios in which these threats arise.
- 2.5 The Projco IPs position is that the impact on DBA, DBB and DBC is 353 times greater than the impact caused to Rhyl Flats in the Awel y Mor decision and that even on the Applicant's assessment the impact on DBA, DBB and DBC is 160.5 times greater than the impact caused to Rhyl Flats in the Awel y Mor decision. The Applicant seeks to dismiss the Awel y Mor decision, but it is a clear precedent and given the far greater impacts to DBA, DBB and DBC than the impacts to Rhyl Flats in the Awel y Mor case it would be irrational for the Secretary of State not to afford greater weight to the impacts to DBA, DBB and DBC and not to impose greater protection to DBA, DBB and DBC, particularly given the scale and contribution of DBA, DBB and DBC to Clean Power 2030 targets. DBA, DBB and DBC have secured CfDs, been through financial investment decisions and are all in construction and are (absent the impact of the Projects) certain to deliver those benefits, whereas the Projects are not, given that they need to secure consent and subsequently achieve all such milestones.
- 2.6 In EIA terms, the Projco IPs have demonstrated (applying the correct methodology from the Environmental Statement) that the Projects give rise to moderate or major adverse effects on DBA, DBB and DBC. These effects are significant in EIA terms. These effects also require mitigation or compensation in EIA terms.
- 2.7 The Applicant's position is that these impacts cannot be mitigated. Therefore, compensation is required in accordance with Paragraph 2.1.8 of NPS EN-3. The Applicant resists compensation, but on the basis of its own justification as opposed to principle and without engaging with this policy requirement. The Applicant's position has been that it is questionable that the mitigation hierarchy applies, but given that NPS EN-3 does apply to wake loss matters there is no justification.
- 2.8 The Projco IP's have submitted protective provisions to the examination at Deadline 5. The Applicants have not engaged on the substantive drafting and have not provided their own form of

protective provisions even on a without prejudice basis. The Applicants have raised a number of general comments in responses to questions and asserted to the ExA that the protective provisions are unworkable but have not engaged with the Projco IPs and in any event the Projco IPs have comprehensively addressed each comment and demonstrated that the protective provisions are workable. These protective provisions allow for compensation to be paid on an annual process as opposed to via a lump sum or through an indemnity.

3. ENGAGEMENT AND PRE-APPLICATION PROCESS

- 3.1 The Projco IPs have consistently sought to engage with the Applicant in respect of wake loss matters during the development of the Projects. In spite of the legal and policy requirements obliging the Applicant to engage with the Projco IPs, the Applicant did not meaningfully engage with the Projco IPs at the pre-examination stage and has only engaged on technical matters (and not solutions) late in the examination process. This is addressed in further detail in section 4: National Planning Policy below.
- 3.2 The Projco IPs raised wake loss with the Applicant through statutory consultation, and requested further engagement with the Applicant at numerous points. The draft statement of common ground (REP2-056) shows a consistent pattern of the Projco IPs seeking to engage with the Applicant on this issue without response from the Applicant: see reference to the unanswered requests for updates on 13 May 2024, 1 August 2024, 6 August 2024, 29 August 2024 and 23 December 2024. In spite of these requests, no substantive response was received until 14 January 2025 and the confirmation that wake loss modelling would not be shared. The Projco IPs have also fully engaged with the examination, including addressing requests for information from the ExA on a without prejudice basis which the Applicant has not engaged with.
- 3.3 The Applicant is under a legal duty to have regard to consultation under section 49 of the Planning Act 2008 and the Applicant's initial pre-application responses provided a legitimate expectation that this matter would be addressed through engagement. In spite of this, the Applicant reversed its position on wake loss at ISH1 in spite of precedent and emerging policy.
- 3.4 The Applicant's failure to engage is fundamental to a number of points and the Projco IPs have emphasised this in all previous submissions to this examination.

4. NATIONAL PLANNING POLICY

- 4.1 The Projco IPs position on wake loss and the application of the suite of energy NPSs has been consistent throughout the pre-application and examination process; wake loss is a planning matter, and the NPS does apply to wake loss such that the policy requirements must be complied with by the Applicant. By way of a summary, the Projco IP's position on NPS EN-3 is set out below.

Engagement

- 4.2 Paragraph 2.8.200 of NPS EN-3 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 complied with this policy requirement given that it did not seek to resolve the wake loss issue with the Projco IPs, as evidenced by the engagement identified in section 3.
- 4.3 Paragraph 2.8.203 of NPS EN-3 provides that: "*Such engagement should be taken to ensure that solutions are sought that allow offshore wind farms and other users of the sea to co-exist*

successfully.” The Applicant has not complied with this policy requirement given its refusal to engage with the Projco IPs, as evidenced by the engagement identified in section 3.

- 4.4 Paragraph 2.8.261 of NPS EN-3 provides that: “*Detailed discussions between the applicant for the offshore wind farm and the relevant consultees should have progressed as far as reasonably possible prior to the submission of an application. As such, appropriate mitigation should be included in any application, and ideally agreed between relevant parties.*” The Applicant has not complied with this policy requirement given its refusal to engage with the Projco IPs, as evidenced by the engagement identified in section 3.

Assessment

- 4.5 Paragraph 2.8.196 of NPS EN-3 provides that: “*The scale and location of future offshore wind development around England and Wales means that development has occurred, and will continue to occur, in or close to areas where there is other offshore infrastructure.*” This is the case with the Projects and DBA, DBB and DBC.
- 4.6 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*”. The Applicant did not seek to comply with this requirement until Deadline 4 of the examination. The Projco IPs position is that DBA, DBB and DBC are close for the purpose of this policy (and indeed are almost as close as it is possible to be within the leasing framework).
- 4.7 Paragraph 2.8.344 of NPS EN-3 provides that: “*In such circumstances, the Secretary of State should expect the applicant to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable.*” The Applicant has not complied with this policy requirement given its refusal to engage with the Projco IPs, as evidenced by the engagement identified in section 3. The Applicant has not worked with the Projco IPs in the evolution of the Projects and has not sought to minimise negative impacts as it has not engaged in discussions regarding compensation.
- 4.8 Paragraph 2.8.345 of NPS EN-3 provides that the: “*Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries.*” The Secretary of State cannot be so satisfied in this case, as the site selection process does not demonstrate consideration of the wake loss impacts and does not demonstrate an attempt to minimise disruption or economic loss. NPS EN-3 makes clear provision for economic loss suffered by third parties to be an important and relevant matter in the determination of the Application with the Secretary of State having to be satisfied that the design of the Projects has been made with a view to “*minimising economic loss*” (NPS EN-3 2.8.345) and recognition that “*available wind resource is critical to the economics of a proposed offshore wind farm*” (NPS EN-3 2.8.28).
- 4.9 Paragraph 2.1.8 of NPS EN-3 expressly states that: “*Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy*”. The Applicant’s position is that the significant negative effect on DBA, DBB and DBC cannot (at this stage) be mitigated through design measures. Therefore, that leaves compensation. The Applicant does not address why compensation would not apply to wake loss effects pursuant to this policy. In terms of mitigation, the Applicant has relied on a concept of “net positive” (which is actually expressed as being no significant harm to the net generated

renewable energy) in assessing mitigation and this has no basis in law; it reflects the Applicant's approach in project design, which has been to maximise energy generation from the Projects without consideration (in the design and project development phase) of the impact on DBA, DBB and DBC. The Projco IPs recognise that the NPS emphasises the need to maximise capacity but this is subject to the technological, environmental, and other constraints of the development (NPS EN-3 2.8.2) and is not at the cost of compliance with the mitigation hierarchy. The Projco IPs note that the Applicant has made a number of other commitments to mitigation which will impact maximum generating capacity, as is standard practice.

- 4.10 Paragraph 2.8.342 of NPS EN-3 provides that: "*Where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the Secretary of State*". Notwithstanding the policy non-compliance and given that the final impacts on DBA, DBB and DBC will be contingent on the final design of the Projects (including any mitigation measures which may come forward in such design), a pragmatic approach which would allow for consent to be lawfully granted whilst providing the necessary protection to DBA, DBB and DBC would be to impose the protective provisions sought by the Projco IPs.
- 4.11 There has been consistent reference to the policy being contested throughout this examination. However, there is a clear application and interpretation of the NPS which aligns with the Projco IP's position and this is demonstrated by the:
 - 4.11.1 Awel y Mor decision;
 - 4.11.2 current NPS EN-3 has been adopted (post-Awel y Mor), which was designated in January 2024 without changing the wording of the policies to exclude offshore wind;
 - 4.11.3 Clean Power 2030 Action Plan;
 - 4.11.4 draft NPS EN-3. The consultation document which accompanies the draft NPSs makes this clear by referring to the additional policies in draft EN-3 as providing "*greater clarification*"; and
 - 4.11.5 Mona Offshore Wind Farm and Morgan Offshore Wind Farm consultations by the Secretary of State, where the Secretary of State (under the current policy framework, but noting draft EN-3) has requested without prejudice proposals from promoters.
- 4.12 Whilst the Applicant's position throughout has been that it disagrees with the Awel y Mor decision, its arguments amount to no more than a rehashing of the unsuccessful arguments in the Awel y Mor case. In that recommendation report, the ExA clearly recognised that the requirement would set precedent (see 5.14.86) but recognised that the precedent was needed to control the final design and to ensure policy compliance. The previous Secretary of State endorsed that opinion, and the current Secretary of State recognises that precedent and is issuing consultations expressly referring to the current NPS. The Projco IP's position is consistent with this.
- 4.13 In respect of draft EN-3, the Projco IPs have set out their position at Deadline 5, Deadline 6 and Deadline 7.
- 4.14 The Projco IP's position is that the Applicant cannot demonstrate that it has complied with, or even sought to comply with, the majority of the relevant policies in NPS EN-3 or the policies in draft NPS EN-3.

5. EFFECT ON FUTURE VIABILITY

- 5.1 The Projco IPs have demonstrated that there will be a likely effect on the future viability of DBA, DBB and DBC as a consequence of the adverse effects caused by the Projects in its Deadline 6 and Deadline 7 submissions.
- 5.2 By way of a summary, the Updated Wake Loss Assessment Report (REP7-140) identifies the reduction in expected energy production across DBA, DBB and DBC to be approximately 312 GWh and 9,170 GWh on an annual and lifetime basis, respectively.
- 5.3 The financial impact of the wake losses at DBA, DBB and DBC are significant. In indicative financial terms, and considering undiscounted 2025 CfD power prices, the Projco IPs expect the impact across DBA, DBB and DBC to be approximately £17 and £499 million on an annual and lifetime basis respectively. In terms of financial impact, it is also important to note that:
- 5.3.1 the projects were awarded CfDs in AR3 which at the time was the most competitive auction round. The strike prices were the cheapest for offshore wind to that point; the next round resulted in slightly lower Strike Prices but the only subsequent round which attracted any bids from industry was AR6 in which the winning Strike Prices were materially higher, i.e. seeing an increase in the price of offshore wind; and
- 5.3.2 the CfD contract covers a period of 15 years, after which the financial position becomes less certain.
- 5.4 An impact in the region of £499 million across the operational lifetime is demonstrably significant.
- 5.5 When the financial impact of the wake losses at DBA, DBB and DBC is based on the Strike Prices during the CfD period and thereafter on wholesale prices as forecast by DESNZ then the financial impacts are estimated to be an average of £23 million on an annual basis and £669 million on a lifetime basis.
- 5.6 Paragraph 2.8.347 of EN-3 provides that where a proposed development is likely to affect the future viability of a scheme then the Secretary of State should give such adverse effects substantial weight in its decision-making. The test is whether such future viability is likely to be affected in a significant manner. The Projco IPs position is that losses at the scale identified represent a material risk to the future viability of the projects.
- 5.7 With respect to the policy test set in NPS EN-3 para 2.8.347, the Projco IPs have presented evidence that clearly demonstrates that the financial impacts are likely to be in the region of £499 million to £669 million (based on 2025 prices) and the Projco IPs position is that this represents a material risk to the future viability of DBA, DBB and DBC.
- 5.8 Paragraph 2.8.347 of EN-3 does not require that the Projco IPs demonstrate that DBA, DBB or DBC are unviable, and does not require that a full viability assessment is submitted to the examination. It requires a conclusion that the Project is likely to affect future viability.
- 5.9 The Applicants, who do not accept that the policy applies, characterise this as a need to demonstrate a “*meaningful threat to the ongoing operation of DBA, DBB and / or DBC*”. The Projco IPs have demonstrated through the level of impact that there is likely to be such a meaningful threat in the future, and identifies a number of scenarios in which these threats arise.
- 5.10 This policy goes to the weight to be afforded to the negative effect, and directs that the Secretary of State must place substantial weight on adverse effects where such a likely effect on future viability is found to exist.

- 5.11 Even if the Secretary of State were to conclude that there were no likely effect on future viability such that it was not directed that it must apply substantial weight to those adverse effects and was free to prescribe the weight it considered appropriate, the Secretary of State would need to give significant or substantial weight to the adverse effects given the scale of impact. This is addressed further in sections 11: Weight and 12: Consistency of Decision Making below.
- 5.12 The approach that the Projco IPs have undertaken in their financial analysis is to identify a realistic worst case in terms of financial impacts (reflecting the impacts on AEP and quantifying those to identify a realistic loss of revenue) based on a realistic worst case set of parameters for the design of the Projects to allow for a reasoned conclusion on significance. This has included presenting a case on the lower of two potential financial impacts (being those based on the CfD strike price throughout as opposed to the CfD strike price and the subsequent merchant price). As explained in the Deadline 8 submission, the Applicant has adopted an artificial exercise in an apparent attempt to downplay such financial impacts.
- 5.13 The Applicant has made a number of speculative comments and assumptions in respect of the financial impact of the Projects on DBA, DBB and DBC in respect of matters on which it has no detailed or specific knowledge such as the terms of loans and shareholder investment. No weight should be afforded to this analysis. It has not engaged with the Projco IP's in an attempt to seek to understand the financial impact of the Projects on DBA, DBB or DBC.
- 5.14 On a without prejudice basis, the Projco IPs have also demonstrated that even on the basis of the Applicant's wake loss assessment there will be a likely effect on the future viability of DBA, DBB and DBC which necessitates the application of substantial weight (Deadline 6 (REP6-081)).
- 5.15 The importance of this is set against the context of precarious finances in the offshore wind sector, as demonstrated by Orsted's decision to withdraw from the Hornsea Four project at the current time.
- 5.16 The Applicant has not demonstrated that the payment of compensation would have consequences for it from a financial perspective, and it can factor such compensation into its business case ahead of major financial milestones such as its CfD process in due course and for design measures (should they come forward) to be factored into their project design. The Projco IPs have demonstrated throughout that the balance of favour rests with the affected projects in this analysis.

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 The Clean Power 2030 Action Plan is a material consideration. The Clean Power 2030 Action Plan was introduced in December 2024.
- 6.2 The Secretary of State recognises in the Clean Power 2030 Action Plan that new projects (such as the Project) have an "*even greater propensity to cause wake effects on existing downstream operational projects*". This is a recognition by the current Secretary of State that wake loss is even more significant than historically and reflects the fact that there are now a significant number of offshore wind farms (such as DBA, DBB and DBC) which are high value receptors for new projects to consider.

7. THE CROWN ESTATE LEASING PROCESS

- 7.1 The Projco IPs have demonstrated throughout that The Crown Estate leasing process is a separate process to the planning process and that the Applicant's continued reference to the 7.5km buffer distance as fundamental to consideration of wake loss in this examination is misplaced: see Deadline 5 and Deadline 6.

- 7.2 The Crown Estate has acknowledged to this examination that inter-farm wake effects can extend beyond these buffer distances. The Crown Estate has also noted 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 (see REP6-078). The Crown Estate also acknowledge that the location of a wind farm is for a developer to decide, design and obtain the necessary consents.
- 7.3 The Frazer Nash Report which the Applicant refers to throughout this examination, which as the document identifies was compiled by Elliott Lindsay (the Projco IP’s wake loss expert who appeared on behalf of the Projco IPs at ISH6 and who has authored the wake loss assessment and the Updated Wake Loss Assessment) represents a generic study and does not (and cannot) comprise a project specific assessment of the impact of the Projects on DBA, DBB and DBC.

8. THE WAKE LOSS ASSESSMENTS

- 8.1 The Projco IPs position is that the Updated Wake Loss Assessment Report (REP7140) should be preferred in terms of the determination of the extent of the adverse effects of the Projects.
- 8.2 However, even on the conclusions of the Applicant’s assessment, the Projco IP’s position is that these are adverse effects at a scale which require compensation and the imposition of the protective provisions.
- 8.3 The Applicants identified three material issues in respect of the Projco IP’s original wake loss assessment. The Projco IP’s Updated Wake Loss Assessment addressed two of these issues, and the Deadline 8 submission demonstrates why (on the third issue, related to blockage models, the Projco IPs use of an industry-wide model as opposed to the Applicant’s use of an in-house proprietary model which has not been subject to review and which has not been agreed as an appropriate methodological input) the Projco IP’s assessment is to be preferred. The Projco IPs also identified a concern in respect of the long term mean wind speed (**LTMWS**) used by the Applicant which the Applicant has not addressed. The Projco IP’s assessment of LTMWS has been undertaken by SSE (an experienced offshore wind developer) and this has been reviewed by Equinor (another experienced offshore wind developer and shareholder in the Projcos). Based on this review, Equinor share the concerns regarding the Applicant’s approach to LTMWS raised by SSE on behalf of the Projco IPs.
- 8.4 In REP4-086, the Applicants state that “*the Dogger Bank Projcos are better placed to assess wake impacts on their own projects than the Applicants. This is particularly the case because they will have a deep understanding of the wind conditions affecting their projects*”. The Projco IP’s position that its assessment should be preferred is consistent with the Applicant’s written submissions, particularly given the Projco IP’s identified concern on LTMWS.
- 8.5 The same analysis is true in respect of the financial impacts identified and assessed in the respective wake loss assessment, and the Projco IP’s analysis in respect of financial impacts should be preferred.
- 8.6 The Applicant has characterised the Orsted IPs acceptance of their wake loss assessment as demonstrating that its analysis should be preferred over the Projco IPs analysis. This is not correct, as the Orsted IPs have consistently reiterated that the wake assessment should be an independent wake assessment. The Orsted IPs have only accepted the Applicant’s assessment in respect of the impact on the Orsted assets because it demonstrates that the impact is material such that protective provisions are justified and given its late submission into the examination. This is not an endorsement of the modelling or assessment itself.

- 8.7 The Applicant has sought in its Deadline 7 submission to discredit the Projco IPs and their modelling expertise. The Projco IPs acknowledge that the Applicant's parent company (RWE) and the Projco IPs parent companies (SSE and Equinor) have a number of very experienced individuals in their resource assessment teams. At this stage, the Projco IPs do not believe it will be possible to reach agreement on one set of wake loss figures and note that this is not uncommon in such a technical area. It is for this reason that the protective provisions (addressed in section 13 below) allow for independence in the final wake loss assessment which is used to quantify the wake loss impact and then the quantification of compensation, and so would address the current disparity in front of this examination at the point at which final design of the Projects is known.

9. EIA ASSESSMENT OF SIGNIFICANCE

- 9.1 The Projco IPs have set out how the assessment of significance of the wake loss impact on DBA, DBB and DBC should have been assessed in applying the methodology identified by the Applicant pursuant to the ES: see Deadline 4.
- 9.2 In applying this methodology, it is clear that the Projects give rise to moderate or major adverse effects on DBA, DBB and DBC. These effects are significant in EIA terms. These effects also require mitigation or compensation in EIA terms.
- 9.3 The Applicants have not demonstrated that the wake loss impacts are not significant in EIA terms.

10. THE PRINCIPLE OF COMPENSATION

- 10.1 The Projco IPs have clearly set out the legal framework and rationale which justifies the inclusion of compensation within a draft DCO: see Deadline 4. The Applicants do not dispute the application of the legal framework, and the Applicant has not identified any legal or in principle reason why compensation could not be included in a draft DCO or why this could not extend to revenue or economic loss.
- 10.2 The draft DCO already includes indemnification for loss of revenue which is contained within protective provisions in favour of another party: see Deadline 4 and Deadline 7.
- 10.3 Paragraph 2.1.8 of NPS EN-3 expressly states that: "*Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy*". The Projco IPs have demonstrated a likely significant negative effect on DBA, DBB and DBC.
- 10.4 The Applicant's position is that the likely significant negative effect on DBA, DBB and DBC cannot (at this stage) be mitigated through design. Therefore, that leaves compensation as a means of addressing this likely significant negative effect.
- 10.5 The Applicant does not address, in policy terms, why compensation would not apply to wake loss effects pursuant to this policy and does not address why, in policy terms, it would be "*Wednesbury unreasonable*" to impose such compensation. The Applicant relies on its interpretation of *Awel y Mor* and the draft EN-3 (which does not have effect in respect of this application) to assert that the Secretary of State has rejected (in principle) compensation. That is an incorrect reading of *Awel y Mor*, (which does not in any event prevent compensation being agreed) and an incorrect interpretation of a draft policy which does not apply.
- 10.6 The Applicant has also stated that the application of the mitigation hierarchy is questionable. In this respect, NPS EN-1 (which applies to the determination of the application) provides as follows:

- 10.6.1 Paragraph 4.1.5: “*In considering any proposed development, in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account.....as well as any measures to avoid, reduce, mitigate or compensate for **any adverse impacts**, following the mitigation hierarchy*”. In this case, the impact on DBA, DBB and DBC is an adverse impact to be weighed accordingly;
- 10.6.2 Paragraph 4.2.10: “*Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS and the relevant technology specific NPS, applying the mitigation hierarchy*”. In this case, this cannot be demonstrated; and
- 10.6.3 Paragraph 4.2.11: “*Applicants must apply the mitigation hierarchy and demonstrate that it has been applied*”. In this case, this cannot be demonstrated.
- 10.7 The imposition of compensation through the protective provisions would plainly not be *Wednesbury* unreasonable and follows the application of the suite of energy NPSs. The fact that wake loss is a planning matter, the scale of the impacts to DBA, DBB and DBC, the fact that the policy provides for compensation and the direction of travel in policy is sufficient to demonstrate that a reasonable person should impose such protective provisions and compensation. Indeed, a failure to do so would be irrational given the precedent in *Awel y Mor* and the policy position; see section 12 below.

11. WEIGHT

- 11.1 The Projco IP’s position is that the adverse effects to DBA, DBB and DBC should be afforded substantial weight in the planning balance.
- 11.2 The Applicant has advanced a position that the adverse effects to DBA, DBB and DBC should be afforded no more than limited weight in the planning balance. The Projco IP’s position is that this is not credible within the current policy matrix and given precedent.

12. CONSISTENCY OF DECISION MAKING

- 12.1 It would be irrational for the Secretary of State to: 1) prescribe less weight to the impacts DBA, DBB and DBC than the Secretary of State prescribed to the impacts to Rhyl Flats in the *Awel y Mor* decision; and 2) provide lesser protection to DBA, DBB and DBC than the Secretary of State provided to Rhyl Flats in the *Awel y Mor* decision. This is especially the case given the prominence of wake loss as a matter to be resolved in the Clean Power 2030 Action Plan, the recognition within Clean Power 2030 Action Plan for new projects to have an “*even greater propensity to cause wake effects*”) and on the basis that the planning policy is substantively the same.
- 12.2 The Projco IPs have clearly set out the greater level of significance of the impact on DBA, DBB and DBC by the Projects in comparison to that caused to Rhyl Flats in the *Awel y Mor* decision.
- 12.3 The Applicant set out at Deadline 4 the comparative analysis in respect of the impact for DBA, DBB and DBC versus the impact on Rhyl Flats (26GWh) which led to moderate weight against the *Awel y Mor* project and the need for mitigation to protect Rhyl Flats. On the Projco IP’s assessment in this case, the lifetime impact on DBA, DBB and DBC is 9,170 GWh. This impact is 353 times greater than the impact on Rhyl Flats in the *Awel y Mor* case. Even on the Applicant’s assessment in this case, the lifetime impact on DBA, DBB and DBC is 4,173GWh. This impact is 160.5 times greater than the impact on Rhyl Flats in the *Awel y Mor* case.
- 12.4 In the *Awel y Mor* decision, the impact was:

- 12.4.1 afforded moderate weight. Given the significantly greater impact on DBA, DBB and DBC, it would be irrational to place the same weight on such impacts (let alone less weight, as the Applicant suggests); and
 - 12.4.2 so significant that mitigation was required. Given the significantly greater impact on DBA, DBB and DBC, it would be irrational not to secure mitigation or (in the absence of mitigation) compensation.
- 12.5 In the *Awel y Mor* decision, the principle of compensation (in terms of reasonableness) was not rejected. The two discernible reasons for rejecting compensation in the form of the requirement were precision and vagueness, and the tests for requirements in Paragraph 4.1.6 of NPS EN-1. In this case, the Projco IPs have provided protective provisions (which it is agreed between the Projco IPs and the Applicants are not strictly subject to the tests in Paragraph 4.1.6 of NPS EN-1) which are precise and which are not vague. This addresses the concern in the *Awel y Mor* decision.
- 12.6 The Applicant has not identified any sound rationale for the Secretary of State reaching a conclusion contrary to the precedent in the *Awel y Mor* decision. Instead, the Applicant's position has simply been that the Secretary of State's decision was incorrect. Once that argument fails, which it must, so does the Applicant's position on weight and the justification in respect of the protective provisions.

13. THE PROTECTIVE PROVISIONS

- 13.1 Given the non-compliance with NPS EN-3 by the Applicant, the likely significant negative effect identified in respect of DBA, DBB and DBC, the direction in Paragraph 2.1.8 of NPS EN-3 and the precedent of protection in circumstances where far lesser impacts have been identified in respect of other projects, there is a clear requirement for protection for DBA, DBB and DBC.
- 13.2 The Projco IPs have clearly set out the legal framework and rationale for the imposition of the protective provisions in the draft DCO: see Deadline 4. The Applicants have accepted that Paragraph 4.1.6 of NPS EN-1 does not apply to the imposition of protective provisions. Notwithstanding this, the Projco IPs have considered these guidelines in the drafting of the protective provisions.
- 13.3 The Projco IPs have drafted protective provisions that are necessary, relevant to planning, relevant to the Projects, enforceable, precise, and reasonable in all other respects.
- 13.4 Importantly, the protective provisions have been in-front of this examination since Deadline 5. The Applicant has not engaged with the precise drafting of the protective provisions in the examination (save to note that references to the third-party expert may be more suitable as references to the Secretary of State). The Applicant has not engaged with the Projco IPs on the protective provisions outside of the examination.
- 13.5 The protective provisions that have been proposed allow for an independent third-party expert assessment of the impacts at the point of design and the quantification of financial assessment. This ensures that, at the point of final design when the wake loss impacts are known, there is one assessment which addresses this impact.
- 13.6 This approach is reasonable, and ensures that the Applicant is not exposed to a lump sum payment in terms of compensation now (as had been sought by the wake affected party on *Awel y Mor*). Instead, the protective provisions allow for an annual payment (with further mitigation measures such as design measures) taken into account at that point in time.

13.7 The Projco IPs submit that the protective provisions are included in the draft DCO in the form submitted by the Projco IPs at Deadline 5 and that without the inclusion of these protective provisions the DCO cannot be lawfully made.

14. CONCLUSION

14.1 The Projco IP's position remains that there is an adverse effect on DBA, DBB and DBC which policy directs attracts substantial weight in the decision-making process and which is far more significant than the impact on Awel y Mor where the Secretary of State considered mitigation necessary. The Applicant's position is that there is no mitigation that can be imposed now, and so applying the mitigation hierarchy this only leaves compensation as a means of addressing this issue.

14.2 The Projco IPs submit that the protective provisions are included in the draft DCO in the form submitted by the Projco IPs at Deadline 5 and that without the inclusion of these protective provisions the DCO cannot be lawfully made.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

3 JULY 2025