

3 JULY 2025

DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)

DEADLINE 8 SUBMISSIONS

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**

comprising

**COMMENTS ON ANY FURTHER INFORMATION/SUBMISSIONS RECEIVED AT
DEADLINE 7**

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
cms.law

**DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)
DEADLINE 8 SUBMISSION**

**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**

INTRODUCTION

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**).
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.
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**).
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.
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:
 - a. Relevant representation (RR-007);
 - b. Deadline 1 Submission (REP1-071);
 - c. Deadline 2 Submission (REP2-071);
 - d. Deadline 3 Submission and Response to the Examining Authority's (**ExA**) First Written Questions (REP3-063);
 - e. Deadline 4 Submission (REP4-117);
 - f. Deadline 5 Submission and Response to the ExA's Second Written Questions (REP5-071);
 - g. Wake Loss Assessment Report submitted by the Projco IPs (REP5-070);
 - h. Deadline 6 Submission (REP6-081);
 - i. Deadline 7 Submission (REP7-139); and
 - j. Updated Wake Loss Assessment Report submitted by the Projco IPs (REP7-140).
6. The Projco IP's comments on further information and submissions received at Deadline 7 is at **Appendix 1** to this submission.
7. The Projco IP's comments on the Applicant's updated wake loss assessment report submitted at Deadline 7 is at **Appendix 2** to this submission.

POSITION SUMMARY

8. 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.
9. The Projco IPs reiterate their request that the protective provisions submitted at Deadline 5 are included in the draft DCO.

APPENDIX 1

Document Reference	Projcos' Responses
REP6-081: 2	<p>The Projco IPs are not relying on Paragraph 2.8.347; they are applying it. If the Applicants were correct and Paragraph 2.8.347 did not apply then there would still be a significant adverse effect which requires mitigation and (failing mitigation) compensation. Paragraph 2.8.347 simply prescribes the weight that must be afforded to that impact once it is identified.</p> <p>The Applicant states that compensation is not supported by policy. The Applicant has not engaged with Paragraph 2.1.8 of NPS EN-3 which sets a clear mitigation hierarchy to any significant negative effect and which identifies the need for compensation. The Applicant's position that the NPS "<i>could only require financial compensation in a case like this with an express policy basis</i>" is not clear, but in any event Paragraph 2.1.8 of NPS EN-3 and Paragraph 4 of EN-1 provide that policy basis. Paragraph 2.1.8 of NPS EN-3 refers to the general assessment principles in Paragraph 4 of NPS EN-1, which contain the following of note:</p> <ul style="list-style-type: none"> • Paragraph 4.1.5: "<i>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</i>". In this case, there is an adverse impact to be weighed accordingly; and • Paragraph 4.2.10: "<i>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</i>". In this case, this cannot be demonstrated; • Paragraph 4.2.11: "<i>Applicants must apply the mitigation hierarchy and demonstrate that it has been applied</i>". In this case, this cannot be demonstrated. <p>The Applicant has stated in this response that it is questionable if the mitigation hierarchy applies in a case like this. Given the precedent in Awel y Mor that wake loss is a planning matter which is subject to NPS EN-3 and the existence of Paragraph 2.1.8 of NPS EN-3 (plus Paragraphs 4.1.5, 4.2.10 and 4.2.11 of NPS EN-1) there is a clear policy basis for this; again, this matter rests on the Applicant's case that wake is not (or rather should not be) a planning matter. Any other interpretation would need to specifically exclude matters from this hierarchy, which the relevant paragraphs do not do (and which they do not do in draft EN-3 in respect of wake loss either).</p> <p>There is a policy basis for the imposition of compensation, draft EN-3 recognises that compensation is a measure that can be used to address impacts and the Projco IPs have demonstrated in this examination that compensation is an appropriate measure which is lawful, policy compliant and workable.</p> <p>The imposition of financial mitigation would plainly not be <i>Wednesbury</i> irrational in this context, and the Applicant's argument is predicated on its position that the policy is</p>

	<p>not engaged and that there is not a policy justification for compensation. The Projco IP's position is that the policy is engaged and that EN-3 applies, and this has been set out in previous submissions. Given the policy framework and extent of precedent, it would be irrational not to secure provision for compensation in a circumstance where the Applicant asserts that there is no mitigation to address the substantial adverse effects.</p> <p>The Projco IP's do not repeat their assessment of draft EN-3 (which does not mean that compensation is "effectively ruled out") and the Awel y Mor decision (where compensation was not rejected on a policy but on a precision ground); this is set out in the Projco IP's Deadline 7 submission (REP7-139).</p>
REP6-081: 3	<p>In respect of the timeline for consideration of the Projects, the Projco IPs set out the relevant timeline at Deadline 7 (REP7-139). The Projco IPs timelines sets out the critical stages in respect of the Projects, including when layout information became known (which post-dates the points set out in this response such as 2021 when the Applicant asserts that the Projco IPs should have assessed the Projects). The Applicant's case ignores the fact that wake loss is a planning matter to be addressed through the planning process, and that the Applicant had not commenced that process in 2021.</p> <p>Again, the Applicant does not engage with the critical point which is that the onus is on it to discharge its engagement requirements under EN-3 and the Applicant cannot address the fact that the Projco IPs have sought to engage and have been met with a refusal to engage (save on technical matters) by the Applicant. Again, the Applicant ignores the fact that it is the Applicant (not the Projco IPs) which changed its position in respect of wake loss at the outset of this examination, seeking to align itself with other developers and moving away from its commitment to assess wake loss in its application documentation.</p> <p>In respect to the Sheringham and Dudgeon Extensions DCO, this has no relevance to the determination of this Application and the assessment of the impact of the Projects on DBA, DBB and DBC. It is not clear what point the Applicant seeks to make save to seek to undermine the credibility of other entities which it has previously identified as commercial competitors. This does not assist this examination.</p>
REP6-081: 4	<p>The statement that the Secretary of State "<i>does not explain the reasons for the proposed changes in the consultation document</i>" is not correct. The consultation document clearly identifies that the proposals are included to provide "<i>greater clarity</i>" on addressing wake loss through the planning process. That is clearly needed given that some (not all) applicants continue to challenge the application of national policy in spite of clear precedent.</p>
REP6-081: 5	<p>The reference to speculative steps that the Projco IPs could have taken in relation to a separate process to the planning process is not relevant to the determination of this Application, where the burden of demonstrating compliance with policy within EN-3 (which necessitates engagement rests with the Applicant and where the Applicant has failed to discharge that burden) falls to the Applicant as part of the planning process. No weight should be attached to these comments.</p>

	<p>As has been made clear throughout and in detailed submissions, the Projco IPs have consistently sought to engage on wake loss and the Applicants have not engaged with the Projco IPs.</p> <p>The Applicant's approach to EIA and planning matters has not been consistent with that of other developers as the Applicants assert. This is clear from the short extract of the Dogger Bank D PEIR document that the Applicant submitted. The Applicant's approach has not even been consistent throughout the pre-application and application process.</p>
REP6-081: 6	<p><u>Timeline</u></p> <p>The timeline that the Applicant sets out ignores the fact that in 2021 (when it asserts that the Projco IPs could have assessed the Projects) the same problem that it identifies in Table 2.1 from September 2019 continued to apply (this being that the "<i>exact location and configuration of DBS was not yet known</i>").</p> <p>The Applicant's timelines fails to note that in 2021 the plan-level HRA for Round 4 had not concluded (this did not occur until 2022), that the Applicants had not been awarded an agreement for lease (this did not occur until 2023) and the Applicants had not commenced scoping in respect of the Projects (this did not occur until 2022). The Projco IPs set out the relevant timeline, with the most important dates for the development of the Projects and the consideration of this examination properly incorporated, at Deadline 7 (REP7-139 in response to IOU.2.13).</p> <p>This demonstrates that it is incorrect to make statements such as: "<i>FID for DBC took place in the full knowledge of the Projects. Any future loans would have taken into account the Projects' impact on AEP</i>". The Projects were not in planning at this stage in time, did not benefit from an agreement for lease and any layout etc. was not known.</p> <p><u>Speculative Steps</u></p> <p>The reference to speculative steps that the Projco IPs could have taken in relation to a separate process is not relevant to the determination of this Application where the burden of demonstrating compliance with policy (which necessitates engagement) rests with the Applicant and where the Applicant has failed to discharge that burden. As has been made clear throughout and in detailed submissions, the Projco IPs have consistently sought to engage on wake loss and the Applicants have not engaged.</p> <p><u>Speculative Statements - Finances</u></p> <p>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 which it has no detailed or specific knowledge such as the terms of loans and shareholder investment. No weight should be afforded to the Applicant's purported financial 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.</p> <p>The Applicants have not assessed the position post-CfD and presented an analysis of the likely losses in that scenario, and so the financial figures presented by the Applicant (which are not accepted as representing an accurate analysis) are considered to be over conservative.</p> <p><u>Three Phases</u></p>

	<p>The Projco IPs have explained why the three phases of DBA, DBB and DBC should be treated as one and reiterates that if the Applicant had engaged on this issue at the pre-application stage or during the examination it would have understood this and the implications for DBA, DBB and DBC. No weight should be afforded to the Applicant's analysis.</p> <p><u>Additional Projects (Greater Gabbard, Galloper etc.)</u></p> <p>The Applicant again makes reference to various other projects which the Projco IPs have no interest in, and it is not clear what point the Applicant seeks to make save to seek to undermine the credibility of other entities which it has previously identified as commercial competitors. This does not assist this examination. The Projco IPs have no responsibility for the steps that other entities may or may not have taken in respect of their different projects (which are not the subject of this examination) and this is not relevant to this examination or the impact of the Projects on DBA, DBB and DBC. The issue that the Applicant does not address is that in respect of this Application it is the Applicant that did scope such matters in and it is the Applicant that did treat such matters as subject to environmental and planning consideration (albeit without engaging with third parties) until it reversed its position at ISH1.</p> <p><u>Viability</u></p> <p>The Projco IPs note the Applicant's position that 2.8.347 does not apply. If the Applicant were to be correct on that matter, then the Projco IPs position would still be that substantial weight would need to be afforded to the impacts to DBA, DBB and DBC given the significant negative effect that the Projco IPs have identified and that this would still necessitate compensation through the application of Paragraph 2.1.8 of NPS EN-3 which would continue to apply.</p> <p>In respect of viability, the Projco IPs note that the Applicants characterise this as a <i>"meaningful threat to the ongoing operation of DBA, DBB and / or DBC"</i>. The Projco IPs have demonstrated through the level of impact and the identification of the consequences of those impacts that there is likely to be such a meaningful threat in the future.</p> <p>The Projco IPs have identified in their Deadline 6 submission the potential consequences of this risk, including impacts on the future operation of the project (which may materialise through earlier decommissioning of DBA, DBB and DBC which would occur when operating expenditure towards the end of life exceeds revenue) and the risk of impact on future investment in any lifetime extension.</p>
REP6-081: 7	<p>The Applicants have not made an overwhelming case against the inclusion of the protective provisions.</p> <p>The Applicants have not assessed the position post-CfD and presented an analysis of the likely losses in that scenario, and so the financial figures presented by the Applicant (which are not accepted in any event) are considered to be over conservative.</p>
REP6-081: 8	<p>The Applicants do not set out a reason why the protective provisions are unworkable. The Projco IPs have substantively addressed all of the points raised by the Applicant in respect of the protective provisions at Deadline 7. The Applicants submissions here go to the reasonableness of the imposition of compensation and justification.</p>

	<p>The protective provisions would plainly not be Wednesbury unreasonable. The fact that wake loss is a planning matter, the scale of the impacts to DBA, DBB and DBC and the fact that the policy provides for compensation 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.</p> <p>The draft EN-3 language does not reject the principle of financial compensation as the Applicant has continued to assert and as set out in the Projco IPs' submissions to date.</p>
--	--

APPENDIX 2

Comment	Projcos' Responses
Critique of the Projco IP's Assessment	<p>The Applicant's criticism of the Projco IPs original wake loss assessment have been addressed through the Updated Wake Loss Assessment Report which explains in respect of:</p> <ul style="list-style-type: none"> • Hornsea, these projects have been included (see section 2.2 and Table 1 of the Projco IP's Updated Wake Loss Assessment Report) and this does show a reduction in the AEP impacts which has led to the Projco IPs updating their assessment in terms of both the AEP and financial impact of the Projects on DBA, DBB and DBC accordingly. This was noted in the Deadline 7 submission; • PyWake, the bug referenced has been fixed and this is explained at section 2.4 of the Projco IP's Updated Wake Loss Assessment Report; and • blockage modelling, the Applicant's assessment relies on an in-house model which has not been subject to industry scrutiny. The Projco IPs approach to blockage modelling (which is based on a model available to the wider industry and which has been carried out by SSE (an experienced offshore wind developer)) should be preferred. This is a methodological issue, and if the Applicant seeks to rely on a non-industry model which only it has access to then it should have sought to agree that as part of pre-application engagement on wake modelling. Equinor, a partner in the GLOBE project referred to by the Applicant, have not had access to the proprietary model used by the Applicant but, using a model with the same level of complexity, have not been able to replicate the Applicant's results. Therefore, Equinor agree with SSE that an industry-wide methodology is more appropriate to use in this case. <p>The Projco IPs have addressed these matters in their Deadline 7 submission.</p>
Credibility and Preference of Wake Loss Assessment	<p>The Applicant's updated wake loss assessment seeks to attack the credibility of the Projco IP's and their approach whilst seeking to establish that the Applicant's updated wake loss assessment should take precedence (in spite of previous written evidence to the contrary).</p> <p>As identified above, the Deadline 7 submission appears to be an attempt to discredit the Projco IP's credibility. The Applicant fails to substantiate how much of its rhetoric aids the decision-making process in this case, but seems to seek to attack the Projcos themselves in a bid to undermine the seriousness of the risk to future viability of DBA, DBB and DBC.</p> <p>The Projco IP's acknowledge that the Applicant's parent company (RWE) and the Projco IP's 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</p>

	<p>one set of wake loss figures and note that this is not uncommon in such a technical area.</p> <p>However, the Projco IP’s position remains that the Projco IP’s wake loss assessment should be preferred on the basis of the:</p> <ol style="list-style-type: none"> 1. Applicant’s identification of three material issues in respect of the Projco IP’s original wake loss assessment, all of which are addressed in the Projco IP’s Updated Wake Loss Assessment Report (REP7-140); 2. Projco IP’s assessment of LTMWS (addressed below in the sub-section headed Assessment), which has been undertaken by SSE (an experienced offshore wind developer). Equinor share the concerns regarding LTMWS raised by SSE on behalf of the Projco IPs and consider that SSE’s approach is preferable; and 3. Applicant’s own evidence from its technical experts which confirmed that the affected parties’ assessment is preferable due to its knowledge of site conditions. <p>The Orsted IPs have consistently reiterated that the wake assessment should be an independent wake assessment. The Projco IPs understand that 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.</p>
Table 2.1	<p>Table 2.1 does not confine itself to the evolution of technical assessment in respect of wake. There are a number of material omissions from the timeline which are relevant to this examination, and a number of matters included which have no relevance to this examination.</p> <p>The timeline that the Applicant sets out ignores the fact that in 2021 (when it asserts that the Projco IPs could have assessed the Projects) the same problem that it identifies in Table 2.1 from September 2019 applied (this being that the “<i>exact location and configuration of DBS was not yet known</i>”). As such, the Projco IPs could not have assessed the Projects.</p> <p>The Applicant’s timeline fails to note that the plan-level HRA for Round 4 had not concluded (this did not occur until 2022), that the Applicants had not been awarded an agreement for lease (this did not occur until 2023) and the Applicants had not commenced scoping in respect of the Projects (this did not occur until 2022 and did not identify the turbine layout). The Projco IPs set out the relevant timeline, with the most important dates for the development of the Projects properly incorporated, at Deadline 7 (REP7-139). Until such time as the Projects could proceed, and information in respect of the layout of the Projects became public, the Projco IPs could not assess the Projects.</p> <p>The entirety of Section 2 of the Wake Loss Report ignores the fact that: 1) the burden of discharging engagement under the policy rests with the Applicant;</p>

	and 2) the obligation to assess impacts in respect of the Projects rest with the Applicant.
Assessment	<p>The Applicant has not addressed the material concern raised by the Projco IPs in respect of long term mean wind speed (LTMWS). This concern was raised following the technical discussion between the Applicant and the Projco IPs and was set out at Paragraph 13 of the Projco IP's Deadline 7 submission (REP7-139). The Projco IP's consider that this may explain some of the difference between the respective assessments.</p> <p>The Projco IPs have updated their assessment to address comments from the Applicant where those comments are considered to be valid and this is addressed in Appendix 1 and above in respect of the three material issues the Applicant identified.</p> <p>The Projco IP's assessment has been undertaken by SSE (an experienced offshore wind developer) and this has been reviewed by Equinor (another experienced offshore wind developer). Based on this review, Equinor share the concerns regarding LTMWS raised by SSE on behalf of the Projco IPs and consider that SSE's approach is preferable.</p>
Financial Impacts	<p>The financial impacts that have been set out by the Projco IPs relate to the potential lost revenue based on the design parameters which the Applicant seeks consent for. 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) to allow for a reasoned conclusion on significance. This has included presenting a case on the lower of two numbers (being those based on the CfD strike price throughout as opposed to the CfD strike price and the subsequent merchant price).</p> <p>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 which it has no specific or detailed knowledge such as the terms of loans and shareholder investment. No weight should be afforded to the Applicant's purported financial analysis. It has not engaged with the Projco IPs in an attempt to seek to understand the financial impact of the Projects on DBA, DBB or DBC.</p> <p>The Projco IPs have set out a number of matters, in respect of which they do hold the relevant knowledge, which demonstrate that it is likely that there will be an effect on future viability and that there is likely to be such a meaningful threat to DBA, DBB and DBC in the future.</p> <p>The Applicants have not assessed the position post-CfD and presented an analysis of the likely losses in that scenario, and so the financial figures presented by the Applicant (which are not accepted as representing an accurate analysis) are considered to be over conservative.</p> <p>The Applicants have also sought to adopt an approach of applying net present value (NPV) in quantifying the financial impacts in an apparent attempt to downplay these financial impacts by identifying artificially low financial impacts. This has led to the Applicant applying inappropriately high discount</p>

	<p>rates and using figures which do not include inflation (which would need to be included), which is not appropriate or required in this case. Unlike the Projco IPs analysis, this does not present this examination with a realistic worst-case assessment of financial impacts. In terms of the protection sought in the protective provisions, the protection sought allows for an annual payment as opposed to the payment of a lump sum and so the approach of adopting NPV and applying discounts is not appropriate in this respect either.</p> <p>The Projco IPs note that the protective provisions provided to Network Rail in Part 5 of Schedule 15 to the draft Order provide an indemnity in respect of the loss of revenue.</p>
Mitigation	<p>The Applicant has not undertaken sufficient work to demonstrate that mitigation in respect of the Project impacts could not be deployed in order to minimise the impacts on DBA, DBB and DBC. The Applicant has relied on studies for hypothetical scenarios or other offshore wind farms instead of undertaking a site-specific assessment (as the Projco IPs outlined in its response at Deadline 7).</p>

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

3 JULY 2025