

Secretary of State for Energy Security and
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Dear Secretary of State,

DBS East and DBS West Offshore Wind Farms ('the Projects')

PINS Reference: EN010125

**Update following close of Examination regarding Protective Provisions for National Grid
Electricity Transmission (NGET)**

The Examination in respect of the above Application for a Development Consent Order (DCO) for the Projects closed on 11th July 2025. In their closing submissions [\[REP8-042\]](#) the Applicants noted a number of matters that had not yet been resolved at the close of Examination and were subject to ongoing discussions between the Applicants and the relevant stakeholders (paragraph 7 and section 4 of the Executive Summary). Since the close of the Examination, the Applicants have continued discussions with Interested Parties and write to update specifically in regard to Protective Provisions for the benefit of NGET.

Protection of NGET apparatus and projects

The following submissions are made in support of a proposed change by the Applicants to the Protective Provisions for the benefit of NGET. As a reminder, the Applicants' position on Protective Provisions to date has been that what it contends is "standard" drafting should apply, that protects any pre-existing apparatus of NGET at the point of construction of the Dogger Bank South (DBS) works. NGET's contrary position is that the protective provisions in addition to protecting existing assets at the point of construction should also protect a series of three named prospective projects.

The following submissions should be read as a development of the Applicants' submissions in its Case on Section 127 and 138 Planning Act 2008 [\[REP8-044\]](#) in section 5.3] and its submissions at Deadline 9 [\[REP9-021\]](#), at page 99] made in response to NGET's submissions on protective provisions made at Deadline 8 [\[REP8-050\]](#). Those earlier submissions by the Applicants are not repeated here. The opportunity is also taken below to respond to NGET's position statement on these issues submitted to the Secretary of State on 10th October 2025, where those contain additional material that has not so far been the subject of response by the Applicants.

The revised text attached, supplied in clean and track changed versions, is suggested on a without prejudice basis to the Applicants' submissions to date, in the sense that they can be considered as

optional drafting that can be adopted by the Secretary of State if considered preferable to the present drafting submitted by the Applicants at Deadline 3 [REP3-034]), although for the avoidance of doubt, the Applicants maintain that the Deadline 8 version of the Protective Provisions included by the Applicants in the draft DCO remains an acceptable basis on which the DCO can be granted.

The revised text:

- adopts the NGET drafting from its preferred form of protective provisions to include Birkhill Wood and Wanlass Beck as named projects that, in effect, must be accommodated by DBS works; and
- introduces clarificatory drafting to protective provision 6 of the NGET preferred wording, that only consideration relating to those two named projects can be reasons for NGET refusal, or attaching conditions to approval, of DBS proposed works in the overlap area between the projects.

The Examining Authority (ExA) is asked to note that this clarification to protective provision 6 should also be made even in the event that the NGET preferred protective provisions are supported by the decision maker, to make clear that works for as yet unidentified and unconsented projects cannot be used as justification for approval of DBS works, which would be an entirely unreasonable burden to place on any developer.

As is apparent from the submissions referred to above, the continuing issue between the Parties being addressed here is the extent to which Protective Provisions in favour of NGET should protect assets that are not yet in existence and may not be in existence at the point the Dogger Bank DCO Undertaker is ready to commence work.

Despite continuing negotiation between the Parties, it has not been possible to agree a position on this. NGET maintains that all three of its proposed projects, the Birkhill Wood and Wanlass Beck substations and the North Humber to High Marnham Overhead Line (NHHM) should be the subject of protections. The Applicants believe standard DCO protective provision drafting, to protect any NGET asset in existence at the time the Undertaker's works are to be carried out is adequate protection (reflected in the Applicants' DDCO drafting up to this point) but is now offering, on a without prejudice basis that the Birkhill Wood and Wanlass Beck substation projects can, in effect, be treated as existing assets.

The Applicants make this suggestion on the basis that Birkhill Wood is the substation into which the Dogger Bank South DCO development will connect and that the Wanlass Beck substation development involves only the same access works and footpath diversion as are required for Birkhill Wood, with no other possible interactions between Dogger Bank South and Wanlass Beck.

The critical additional consideration for the Applicants in making this suggestion is that NGET has confirmed that the Birkhill Wood project is being progressed without reference to any other NGET projects (including the NHHM project) and so provides a sufficient level of confidence that the access and footpath diversion elements of the Birkhill Wood works that pose the greatest risk of being delaying factors in progressing the Dogger Bank South works will have been completed by November 2026.

Despite extensive attempts to do so, it has not been possible to define a level of possible overlap between the Dogger Bank South DCO and the NHHM project with NGET that is reasonable to anticipate and so to include in the protective provisions. The protection sought by NGET is not limited to the same works that are required for Birkhill Wood (i.e. creation of the access road and associated footpath diversion) and doing so would serve no meaningful purpose as it would be envisaging the NHHM project building the access road in advance of the Birkhill Wood substation,

into which it would be connecting. That is not a credible sequence of events for which provision needs to be made. The protections sought by NGET for NHHM relate to any construction work that could impact on the shared work area.

The most important distinguishing feature with the NHHM works, in comparison to those for Birkhill Wood, is that the information supplied by NGET shows that the NHHM project will not start construction before 2028 and has a minimum three year build period. The practical consequence of this is that Dogger Bank South would face a delay of at least 2 years if it were required to await confirmation of the detail of the NHHM works before it could finalise the detail of its works in the overlap area and commence construction.

To extend protection to NHHM by treating it as an existing asset would be to allow any future design of that OHL to take precedence over the DBS scheme, regardless of the effect upon DBS (i.e. NGET Deadline 6 protective provision drafting would enable NGET consent to DBS works to be withheld in order to provide for safe, economic and efficient construction of the NGET asset – with no similar balancing considerations in favour of, and to mitigate adverse effect upon, DBS).

This would be an unprecedented level of protection for assets that are not yet in existence and indeed not only unconsented but only at a formative stage of the consent process, with the NHHM project as yet only in pre-application statutory consultation.

To offer protective provision drafting greater than the Applicants are proposing here would introduce an unacceptable level of uncertainty to moving ahead with DBS. The critical issue is in relation to delay in getting NGET approval both to works and to use of DBS compulsory acquisition CA powers (via protective provisions 3 to 6 and 11). That possible delay is manageable in relation to Birkhill Wood because of its early delivery and because risk of change of design for Birkhill Wood is low given how advanced the project is and the fact that it would need to be accommodated by DBS in any event as its point of connection. Accommodating Wanlass Beck presents no delay risk to DBS either from construction works or design change as it involves only the provision of the access works and footpath diversion. However, the NHHM works risk the DBS project being unable to progress with critically important connection works while any element of the NHHM project in that overlap area is still in design or potentially awaiting construction. This could also require DBS to seek an amendment to its authorised scheme outside of its authorised scheme boundary, with obvious programme consequences if that was required.

The Applicants wish to stress again that this is not a situation where the DBS and NHHM projects are in any way mutually exclusive. The protective provision drafting being offered by the Applicants will meet any application of the s127 test of *no serious detriment* to that Statutory Undertaker undertaking. This is simply a question of two new energy infrastructure assets having clearly set out steps to follow that allow a logical sequencing of development and allow the development that is ready to develop first to proceed and for the development that is not yet ready to proceed to adapt its development to the known set of facts that will by then exist.

NGET's submission of 10 October 2025 refers to the Awel y Mor and Mona DCO decisions as decisions taken that support the protective provisions it seeks here. The Applicants disagree.

Awel y Mor (AyM) did provide for protection of the Bodelwyddan substation extension project (which also included diversion of a gas main and upgrade of overhead lines) which was necessary for AyM to connect into the substation. There was no additional protection for any other NGET projects.

Mona, had specific protective provisions protection for the NGET Bodelwyddan substation extension works and overhead line works. The extension was TCPA and overhead line was section

37 consent. Both were well in contemplation during the examination, largely because they were required to be delivered before Mona could connect into the grid.

In respect of both these examples advanced on the basis that protective provisions were agreed with the Applicants in those cases cannot be fully understood without access to any side agreement entered between the parties modifying the effect of protective provisions on the face of the confirmed DCO. As that information is confidential to the contracting parties and not before the ExA it is not safe to rely upon these examples.

A more appropriate example to the case NGET is making relating to DBS is the Viking Carbon Capture and Storage (CCS) pipeline. Throughout the Viking Examination NGET sought to have the protective provisions include protections for various Nationally Significant Infrastructure Projects that had not yet been submitted: the Eastern Green Link 3 and 4 Projects and the Grimsby to Walpole Project. Those were transmission line projects that would cross the Viking pipeline and NGET's position was that Viking's detailed design should take account of them, require NGET approvals, have suitable standoff distances etc. The parties reached no agreement on protective provisions and so the existence of any side agreement becomes irrelevant to that issue. The decision maker had to consider which form of protective provisions should apply.

On the basis that Viking was in examination in Summer 2024 and these NGET projects had target application submission dates of 2026 and 2027 the ExA Report at paragraphs 6.8.23 – 2.8.25 concluded:

"6.8.23 PPs for NGET are in Schedule 9 Part 3 of the dDCO. At DL5, NGET stated that it could not agree to the PPs in the current written form, citing several reasons being [REP5-080] a need to protect future NSIPs that NGET is planning in the area;

6.8.24. NGET has emerging plans for two NSIPs in the area being the Eastern Green Link 3 and 4 Projects and the Grimsby to Walpole Project. NGET say that these projects are crucial in upgrading the UK's electricity system. NGET has provided a copy of its own preferred PPs for ExA and SoS consideration, which it says would allow its objections to be withdrawn [REP5-081]. It confirmed that whilst many points had been agreed between the parties, there still remained a few areas of disagreement as outlined above.

6.8.25. The Applicant points out that the submission dates for the DCO applications for these two projects are still some time away and it would, as a result, be premature for PPs to be included in the dDCO for the Proposed Development. The ExA accepts this position and takes the view that future projects which will not be determined for some time yet should not impinge on this DCO."

The same prematurity argument applies for DBS as it did in Viking. The most that can be said of NHHM is that it would be convenient for DBS to be required to accommodate that project but not that it is necessary for it to do so or that there is any programme dependency for NHHM in doing so. NHHM is categorised by NGET as essential infrastructure to be provided for the UK, but NGET has not shown that inclusion of NHHM in the DBS NGET protective provisions is essential for delivery of that project, at all or to any programme timescale.

The position between the Parties is that no further negotiation is being pursued and accordingly no separate agreement is to be entered between the Parties regulating these developments. The Secretary of State is accordingly invited to make the decision on the appropriate format of protective provisions to appear on the face of a confirmed DCO.

For the reasons set out above (and in the following section in relation to Security and Insurance) the Applicants contend that the appropriate wording for the NGET protective provisions should be as

set out in these submissions by the Applicants, or on the basis of its original suggested wording submitted at Deadline 8 [\[REP8-003\]](#).

Security and Insurance

The Applicants note the position taken by NGET in relation to the need for “acceptable security” and “acceptable insurance” in the protective provisions and has responded to NGET’s Deadline 6 submissions at Deadline 7 [\[REP7-131\]](#) (see Table 2-13) and Deadline 8 [\[REP8-044\]](#) (see section 5.2).

As noted in these previous submissions, the nature of the interaction between NGET and the Applicants requires an agreement to facilitate responsible and cooperative phasing of development that is mutually dependant. It is therefore not considered appropriate in the circumstances to include a requirement for the Applicants to obtain acceptable security and acceptable insurance before being able to commence works.

The DBS Projects will be adequately funded as set out within the **Funding Statement (Revision 5)** [\[REP8-012\]](#). The Applicants are being jointly developed by RWE Renewables UK Swindon Limited (“RWE”) (with a share of 51%) and the Abu Dhabi Future Energy Company PJSC (“Masdar”) (with a share of 49%) both with substantial financial resources and stable credit ratings.

RWE has substantial financial resources in its own right, plus, as a wholly owned subsidiary, it has the financial backing of RWE AG which is one of Europe’s five leading electricity and gas companies. Masdar also has significant resources and has a proven record of advancing the commercialisation and deployment of renewable energy and clean technologies. Both RWE and Masdar has a stable outlook according to both Moody’s and Fitch ratings agencies.

NGET will therefore be able to recover any losses via the indemnity provided in the protective provisions. In the Applicants’ preferred version of the NGET protective provisions, an indemnity clause has been included which will require the Applicants to indemnify NGET for any expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by NGET as a result of the delivery of the DBS Projects. Although this is subject to standard caveats, the Applicants have not included a cap on the amount that can be claimed by NGET. This is considered to be sufficient to ensure NGET’s position is adequately protected and the Applicants maintain that it is unnecessary for obligations to be added to the NGET protective provisions which would require both security and insurance to be provided up to a value directed by NGET.

Furthermore, there are various recent examples of DCOs being granted without an obligation for “acceptable security” and “acceptable insurance” in the protective provisions. For example, the Hornsea Four Offshore Wind Farm Order 2023, the A122 (Lower Thames Crossing) DCO 2025 and the Sunnica Energy Farm Order 2024 all include protective provisions in favour of NGET without an obligation for the applicant to obtain “acceptable security” and “acceptable insurance”.

It is also notable that on other recent projects, NGET submitted its preferred set of protective provisions without including a need for security and insurance. This includes the protective provisions submitted by NGET in relation to the Five Estuaries Offshore Wind Farm DCO on 10th March 2025 (see examination document reference [\[REP8-048\]](#)) and the Net Zero Teeside Order 2024 on 23rd March 2023 (see submission made during the post-examination consultation undertaken by the Secretary of State).

The Applicants also note that the Rampion 2 Offshore Wind Farm DCO decision issued in April 2025 provided justification for why both security and insurance is unnecessary and excessive. Paragraph 7.6.24 of the Rampion 2 recommendation report found that an obligation for insurance and security

was excessive and was deemed to be “overkill” and is in effect “an insurance to protect against the insurance”.

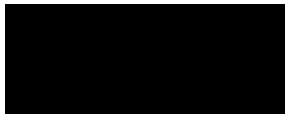
Given that some of these projects are similar in nature to the DBS Projects and include a comparable level of interaction with NGET assets, it is unclear why a different approach is required by NGET for the DBS projects and the Applicants submit that insufficient justification has been provided by NGET.

The nature of the interactions, the inclusion of an uncapped indemnity coupled with the financial backing of the Applicants and the precedent set in other similar recent DCOs means that the Applicants consider that there is no basis or justification for including a requirement for “acceptable security” and “acceptable insurance” in the NGET protective provisions included in the final DCO.

Conclusion

Given the fact that the position between the Parties is that no further negotiation is being pursued and accordingly no separate agreement is to be entered between the Parties regulating these developments, the Secretary of State is accordingly invited to make the decision on the appropriate form of protective provisions for the benefit of NGET to appear on the face of a confirmed DCO.

Yours sincerely,



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Table 1-1 List of new documents.

| Reference | Document Name |
|-----------|---|
| 21.1 | SoS Cover Letter (this document) |
| 21.2 | The Applicants' preferred Protective Provisions for National Grid Electricity |