The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Hearing Transcript

Project:	Outer Dowsing Offshore Wind Project
Hearing:	Issue Specific Hearing 5 (ISH5) Part 4
Date:	12 February 2025

Please note: This document is intended to assist Interested Parties.

It is not a verbatim text of what was said at the above hearing. The content was produced using artificial intelligence voice to text software. It may, therefore, include errors and should be assumed to be unedited.

The video recording published on the Planning Inspectorate project page is the primary record of the hearing.

TRANSCRIPT_OUTERDOWSING_ISH5_SESSION4_12022025 (1080p)

Thu, Feb 13, 2025 8:40AM • 43:54

SPEAKERS
Speaker 4, Speaker 1, Speaker 3, Speaker 2

Speaker 1 16:42
Okay, Okay. Welcome back. It's 20 past four now, and this issue specific hearing is now resumed.

Speaker 2 16:42
request a summary from the applicant. Okay, welcome back. It's 20 past four now. And this issue, specific hearing is now resumed. request a summary from the. Okay, welcome back. It's 20 past four now. And this issue, specific hearing is now resumed. Thank you, sir. Emma Moyer, on behalf of the applicant, in terms of the parties with whom protected provisions are agreed with, that remains, as was stated at the last issue specific hearing as being the general protective provisions for electricity, gas undertakers and electronic communications, code operators, as well as angling water and the board of Boston limited as the harbor authority. However, the position has moved on with a number of the interested parties in respect of coming closer to agreement on assessor protector provisions, so taking each in turn as they appear in schedule 18, the Environment Agency, which is set out in part four of schedule 18, the applicant and the Environment Agency are continuing to be actively engaged on a negotiation of the Protect provisions and a side agreement which relates to the cooperation of the beach works agreement. Beach works that the Environment Agency are progressing alongside the applicants works, so negotiations are progressing well on those and on the protective provisions themselves. From our perspective, there remain two principal points at issue between the parties, and that is the definition of specified work as it's set out in the schedule and and the last turn of the draft that we received from the Environment Agency, they proposed an amendment to include within that definition any works that would involve any interference with the ability of the Environment Agency or its contractors to carry out their beach nourishment works or access to its existing compound at Roman bank. So. Okay, welcome back. It's 20 past four now. And this issue, specific hearing is now resumed. I'm going to proceed at this stage to to request. a summary from the applicant of its progress in agreeing protective provisions. Please at issue specific hearing one the applicant noted that it had agreed protective provisions with electricity, gas, water and sewage, undertakers, electronic communications, code networks, Anglian Water Services Limited and the harbor authority with whom agreement includes the disapplication of local legislation, the applicant noted at issue specific here and one that protected provisions with the following were still in negotiation, the Environment Agency, drainage authorities, National Grid, national gas transmission, cadent gas network, rail, perenco, and the examining authority notes the deadline for submission from perenco, which includes its preferred protective provisions, and that is examination, library, reference, Rep, 4148, and shell. So the

examining authority requests that the applicant provides an update on progress towards agreement with these parties. And in addition, I'd like to invite the applicant to comment on whether it believes that protective provisions will also need to be agreed with the or stood IPS with with that, I'll hand over to the applicant, please. The applicant's position is that it's unnecessary to deal with these and the protected provisions as the applicant in the EA have been discussing the terms of cooperation agreement that deals with the coordination of the EAS beach nourishment works and the applicant's works for which the principals working together to coordinate those works have been agreed in principle and is subject to the detailed drafting being agreed. So the amendment as proposed would require the EAS consent for any works which could interfere with beach nourishment, works which does go further than the principles of co operation. For example, the applicant has always accepted the position that as it's hdding under the beach under existing defense, it would need the environment agency's consent on the protection provisions for that technical detail. However, any works that could impact the beach work, beach nourishment works could also encapsulate works further offshore, for example, where an installation vessel is in the area where the environment agency's vessel for the beach and urgent works also wants to be present at the same time. So it really to our mind as a point of principle on coordination of timings, rather than actual impact to a defense. Therefore we feel that the most appropriate place to deal with that would be in the Cooperation Agreement, which sets out the principles of working together and trying to find a solution, either where both parties can be there at different times, or if that's not possible, can work in cooperation with each other so as not to get in each other's way, essentially. So that is essentially where we are on that point. And then the other point that's remaining outstanding is over the indemnity provisions and the protected provisions, EA have requested this is widened out to apply to the the authorized development as a whole, rather than just the specified works. The applicant has pushed back on that on the basis that the protected provisions deal with the specified works and feel it's appropriate that the indemnity covers those works rather than anything wider. But that is a point that we are considering and under discussion with the A on that. Moving on to the drainage authorities. The protected provisions with the drainage authorities are set out in part five that is the applicant's preferred drafting. Negotiation of the protection is fairly well progressed, and the developed drafts are currently with the internal drainage board solicitor for their review and any comments. In turn, there's a side agreement being discussed alongside the Protect provisions, and the applicant has received engagement from the idbs on that, and discussions are ongoing at the moment. I will skip over the port of Boston limited as those are agreed.

Speaker 1 22:52
Just before you move on, can I just ask whether Mr. Braddy is still with us, and whether this is there anything that you'd like to add on that point?

Speaker 3 23:17
Are with the board solicitors, but there was a recent request that the planning performance agreement was originally intended to be in more of the form of a memorandum of understanding, and so as such, not legally binding. And I think the PPA can be amended reasonably easily to ensure that it's not legally binding, because we feel that puts the board in a particularly awkward position because of vested interests with landowners and rateable payers. And again, I think slightly relevant to that is that the protected provisions in terms of any designs would not be warranted by the drainage boards. And now,

obviously speaking on behalf of with and forth, but I know that we are dealing on behalf of several boards. The board sisters are working on that it's a really recent amendment that's been put forward.

Speaker 1 24:16
Thank you, Mr. Brady, would the applicant like to respond in

Speaker 2 24:21
relation to any proposed amendments to the project revisions. We've not had sight of what those might be yet, but we are happy to consider any amendments that are put forward and consider those and revert to the idbs as soon as we receive those. And then on the point about the agreement, I'm afraid I don't have instructions on that point. That might be something we'll have to take away and come back to you in writing on or we can revert directly to the idbs, if that's preferable.

Speaker 1 24:49
I think at this stage, our our preference is that protected provisions are agreed and are agreed as soon as possible. I. And to that extent, Mr. Bradley, do you have a timescale for submitting the information that the applicant seeks at this stage? Do you know when that is likely to be ready to be seen by the applicants?

Speaker 3 25:13
The review by the board solicitors has taken place, and as far as I know, comments have been sent, but it's literally only in the recent few days, I believe I'll double check that, and I can speak with the applicant and confirm that, but I'm aware that the comments regarding that review have been passed back as far as I know.

Speaker 1 25:35
Thank you, Mr. Body. It sounds from that point of view, that or maybe in your court. But nonetheless, at this stage, our interest is, as I say, that the protective provisions are agreed and that they are agreed as soon as possible. I'm very well aware that these things tend to run until the very last possible deadline to trend I'd love to buck if that's possible, but yeah, I will. I'll leave that with you, and then please do go on to I think the national grid is is next on your list. Thank

Speaker 2 26:09
you, sir. Emma Moyer, on behalf of the applicant, the position with national grid electricity transmission PLC has moved on well since the last set of hearings, the protector provisions are down to a couple of principal points now, and those relate to definition of acceptable insurance. So the applicant has taken advice from its insurers and has amended the terms of what would be required under the acceptable insurance definition based on its advice that it's received of what is industry standard practice. Those amendments have been put to national grids team, and as far as being aware they are seeking their own advice from their own insurers to be able to respond on that point, and we await their response on that and then the other key point of difference at the moment is the restriction in the protected provisions on the use of the compulsory acquisition powers. The applicant has proposed an amendment to end gets preferred protected provisions at paragraph six, which, rather than restrict the use of compulsory acquisition powers over all land which forms part of the proposed N Get project

sites. It proposes to restrict this to only the connection area which is defined by reference to a plan and that in get protected provisions. Plan was submitted at deadline four. The reason for this is that the definition of proposed N Get project sites is land on which any proposed end get projects apparatus is situated, and land on which proposed end get projects apparatus is anticipated to be situated. And so far as the same has at any time notified by national grid to the undertaker. This relates to the future projects, being the Grimsby wallpaper project and EGL three and four that National Grid is promoting. And given the uncertainty at the moment of the final location for both of these projects, the applicant doesn't consider it be reasonable or proportionate to restrict the use of its compulsory acquisition powers over an unidentified or undefined area, which then get has broad scope to determine and which it may not, in fact, need in the future, depending on the final layouts of each project. So we think that the suggestion of restricting that to just the connection area is more proportionate and certain and is based on N gets written representation, which is rep 1041, and in particular paragraphs one point 29 to one point 31 in which our interpretation of their submission is that the area of most concern from them in relation to this matter is the connection area. So the applicant has suggested a compromise position that they'd be willing to restrict that paragraph to that area, in the hopes that that will satisfy national grids concerns. In that matter, the proposal is currently with National Grid. We've not received a response yet, and we are hoping to get that very soon. And if we can agree those two outstanding points, we do feel there's a good chance of getting protected provisions agreed before the close of the examination. Just to note as well and get initially submitted their preferred set of protected provisions with their written representation. They didn't take the opportunity to update that at deadline four. But we do understand that the position that we have presented is understood by both parties to be the current position, and we have moved matters on in terms of agreement on other points in the Protect points in the protected provisions, and moving on to national gas transmission, similar to the end gap protect provisions, we're actively engaged on those, and we're down to one. Remaining point of difference, which is the same point as discussed in relation to the insurance acceptable insurance definition, and the end get protected provisions. So we consider that once that point is resolved in one set of protected provisions, it will be resolved in the other as they're represented by the same agents. And then moving on to cadent gas, which is set out currently in part nine of schedule 18, the applicant and cadent gas are actively engaged on the negotiation of protect provisions and a side agreement. There remains two principal points issued between the parties, along with some other minor drafting points, and those principal points are in the indemnity provisions. So at the applicant and Caden disagree on whether the exclusion of liability of the undertaker for any loss which is not reasonably foreseeable ought to be included in the protected provisions. The applicant's position on this is at the exclusion of an indemnity for loss which is not reasonably foreseeable as an appropriate provision to include in the protected provisions, and this aligns with the general principles of recovery under tort law. The applicant and cadent gas disagree on whether there should be an overall cap on the Undertaker's liability in the protected provisions. The applicant's view on this is that the overall cap on liability is appropriate so that it can have relative certainty on the level of financial exposure under the protector provisions. And the proposed cap of 50 million in the aggregate is substantially in excess of any likely claim that could be made by cadent gas, in light of the minor nature of the interactions between the applicants proposed works and cadent gasses assets, the applicant is content for this to be dealt with in a side agreement rather than face protect provisions, and that the matter that's under discussion in the side agreement discussions. And then the other point outstanding on the cadent gas protect provisions is again, insurance provisions. The applicant and cadent gas disagree on the insurance requirements that

should apply to the specified works. And in particular, the applicant disagrees that cadent should be named as a co insured, that there needs to be a cross liabilities clause, or that there needs to be a waiver in subrogation in favor of cadent. And this is again based on advice that the applicant has had from its own insurers. The applicant cadent gas continues to negotiate, to discuss and agree the drafting in relation to these two principal issues, and this is with a view to having finalized text being agreed prior to the close of the examination. The Turning now to Network Rail, which are set out in part 10 of schedule 18, set of protect provisions are fairly advanced. With Network Rail, there just remains one point of difference between the parties at this point, which is the subject of ongoing discussions, and that is that the applicant considers there should be a time limit of 24 months after completion of the project works within which Network Rail would need to identify and require the carrying out of additional works as a consequence. And the applicant is actively engaging with Network Rail to try and agree that final point with them, with a view to providing agreed form of protected versions before the close of the examination. Turning now to the parenco protected provisions, negotiations are also progressing well on these protected provisions, there remains three principal points at issue between the parties based on the drafts submitted at the most recent deadline. So these points are to do with the radius of the communications corridors. So the applicant has proposed a 50 meter radius from the communication line between different platforms that would essentially not include any turbine blades. We're waiting confirmation from perenco that this is agreed or an alternative figure that would work for them. And second point of difference is what infrastructure would actually be permitted within the communications corridor, the applicant is of the view that towers only of wind turbine generators need to be excluded on the basis that turning blades are not expected to interfere with the line of sight, whereas Pengo disagrees with this and wants to ensure that no part of any wind turbine generator can be erected in the communications corridor. And apologies. I think I referred to blades in my first point when I meant to refer to towers. So just want to correct

34:46
that, or towers, if it helps, but the

Speaker 2 34:48
one before that. And then the final point of outstanding difference between the parties is the infrastructure that to be permitted in the marine corridors, which, again. Is a corridor proposed in which certain infrastructure would be excluded to ensure that prerenco can access its platforms with vessels. So prerenco have requested an amendment paragraph three of the protected provisions to allow for mining corridors to be free from any other permanent or temporary infrastructure unless with their agreement. And the applicant disagrees with this, as it would impose unnecessary controls in respect to installing the cables across the marine corridor, which would not unreasonably hinder the ability of prereco to use the marine corridor for vessel access. And the protective provisions do already provide for a mechanism to agree a cooperation agreement if the applicant is working within 500 meters of any of the Galahad assets, malady assets, or pickerel assets. Therefore we do consider that that could be dealt with under that provision. Discussions are ongoing with prerenko on those particular points, and we're seeking to find a way to reach a compromise position as far as we can. But those remain the points outstanding at the moment. And then finally, you'll be pleased to hear shell is the final set of protected provisions in Part 12 of schedule 18. The draft that is in the protected provisions in the DCO at the moment was most recently submitted to shell in January, meetings have been held with Shell to

discuss the commercial terms of an agreement with them and the applicant, and with that the protected provisions will hopefully form part of those negotiations. We have not received any detailed comments from them yet on the protected provisions themselves, but we await, we wait to hear from them on that as part of the wider negotiations. And both the applicant and shell are engaged constructively on that, and I will hand over to my colleague, Mr. Philpott, to pick up the next one. Thank

Speaker 1 37:02
you. I may, just before you just to conclude that those points I'm presuming you may come on to be you may be coming on to speak about the Orsted IPs, and just before you do any anticipated timeframes for the completion of those protective provisions that you, that you went through

Speaker 2 37:24
Emma Moyer on behalf of the applicant, it's difficult to gage, because we are relying a lot on responses from third parties, and those responses are not always forthcoming very quickly, and given the nature of other commitments that those parties have, we would hope to have agreement as far as we can with as many parties as we can by the COVID examination. We will obviously endeavor as best we can to bring forward agreed protect provisions much earlier than that, if we can perhaps update again at deadline five. If that would be of assistance, I think

Speaker 1 38:00
that would be helpful. The applicant is no doubt aware that as part of the revised timetable in our rule eight, three letter, we have also requested final protective provisions at design six, from from all parties that have not agreed. But I'm hoping that that's a small submission. Mr. Philpott, thank

Speaker 4 38:21
you, sir. Harry wood Philpot on behalf of the applicant, so far as the altered IPs are concerned, the applicant doesn't consider that protected provisions will be either necessary or appropriate for the altered IPs. Broadly speaking, there are two main points to make about this. The first is that the distances involved and the limited degree of interaction between the projects are such that there are no impacts or potential impacts that would warrant specific protected provisions on the face of the order. The second point is that nevertheless, proximity agreements are being discussed with some of the Orsted IPs in particular, in relation to the links offshore wind farm and the race bank offshore wind farm, those are considered to be an appropriate legal mechanism and a more appropriate legal mechanism to deal with any issues that might arise as a result of the construction of the proposed project. But we don't consider that protected provisions are warranted, but we're in discussion to see if we can agree proximity agreements, which hopefully will allay any concerns that the Orsted IPS might have,

Speaker 4 39:49
and that I'm also reminded, hopefully, that those who are acting on behalf of Orsted are due to attend tomorrow's here. Thing, and so there'll be an opportunity to potentially provide an update then, and they'll be able to explain their their view of matters at that stage.

Speaker 1 40:09

Thank you, Mr. Philpott, again, you took the words out of my mouth I was going to say pretty much exactly that. So yeah, we will. We will hear from your state IPS tomorrow, and if, if a reminder is needed, we will remind them that if they can respond to your comments today during their submissions tomorrow, that would be helpful. Is the applicant aware of any other IPS interested parties with which it may need still to agree protective provisions at this stage. Very

40:46
good. Phil, but on behalf of the applicant, sir, no

Speaker 1 40:50
great. Thank you very much. Is there? Are there any other comments on the subject of protective provisions that anybody would like to make at this stage, I'm seeing no hands in the room or online, in which case we will move on to Agenda Item 3.8 which is actions arising from the issue specific hearing. Now I think at last count, we had 35 or 36 action points recorded, given the number and given the time. I don't propose that we force you to sit through a read through of those, those action points. Rather, the examiner authority will issue these as soon as possible after the close of this hearing, and, and, and that's it, we will issue them then. I think there's not much more to say on that. At this stage, I will just put out a final call for any other matters regarding this agenda item or any other agenda item which is which has been covered today, that anybody would like to raise before we close. And again, I'm seeing no hands in the room or online. So I will move on to next steps. Agenda item four. So if you've, if you have spoken today, it would assess it would assist us. If you could please provide a written version of your submissions by deadline for a which, as a reminder, is Wednesday, the 26th of February, and also a reminder that the recording of this hearing and the action points arising from the matter discussed will be published on our website as soon as practical after the hearing closes. It only therefore remains for me to say a big thank you to everybody for your participation today and in advance of your timely submissions, which will assist the examining authority in making our recommendation to the Secretary of State. I'd like to remind everybody here that tomorrow's issue specific, hearing six on offshore environmental matters starts promptly at 10am and it only remains for me to say then that the time is 447 and this issue specific, hearing five on onshore environmental matters and The draft DCO is now closed. Thank you all. Applause.