Ørsted IPs' – Closing Submissions

Introduction

This submission is made on behalf of Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (together, the "**Hornsea 2 Companies**"), Orsted Hornsea Project Three (UK) Limited, Orsted Hornsea Project Four Limited, Lincs Wind Farm Limited, Westermost Rough Limited and Race Bank Wind Farm Limited (together or in any combination, the "**Ørsted IPs**").

This submission comprises the Ørsted IP's closing submissions in relation to the examination of the Outer Dowsing Offshore Wind Project (the "**Outer Dowsing Project**") and provides an update on the outstanding matters (which are relevant to the Ørsted IPs) that remain before the Examining Authority for consideration. The Ørsted IPs note that a meeting took place with the Applicant on 25 March 2025 to discuss some of these matters, as was requested by the Examining Authority during Issue Specific Hearing 8 ("**ISH8**").

In summary, the Ørsted IPs have provided, within this submission, their interpretation of the Overarching National Policy Statement for Energy ("**NPS EN-1**") and the National Policy Statement for Renewable Energy Infrastructure ("**NPS EN-3**"). Such interpretation leads, in a multi-faceted manner, to the conclusion that the protective provisions sought by the Ørsted IPs, as submitted to the Examining Authority as Appendix 2 of the Ørsted IPs' Submission between Deadlines 5 and 6 **[AS-037]**, should be included on the face of the Applicant's Development Consent Order ("**DCO**"). As previously stated, the Ørsted IPs would prefer to enter into a separate commercial agreement with the Applicant as a solution to the impacts on the Ørsted IPs' assets and have sent the Applicant a document comprising the high-level 'fundamentals' that this agreement should cover. However, the Applicant stated in the aforementioned meeting with the Ørsted IPs that it does not consider this agreement to be necessary, which the Ørsted IPs note is contrary to the established norms of the industry; therefore, the Ørsted IPs seek the protective provisions.

These closing submissions also address outstanding matters in relation to the various assessments and agreements that have been covered during this examination.

Policy Position

Joint Statement with the Applicant

Before setting out the policy position from the perspective of the Ørsted IPs, the Ørsted IPs note Action Point 3 from ISH8 **[EV13-008]**, which required the Ørsted IPs to have further engagement with the Applicant regarding policy tests and protective provisions and to provide an agreed final statement by Deadline 6. The Ørsted IPs met with the Applicant on 25 March 2025, in which meeting it was agreed that the parties hold fundamentally differing positions regarding the policy tests and the need for protective provisions, with both parties intending to set out their positions in writing at Deadline 6 for the Examining Authority's consideration.

Introduction

The Ørsted IPs have addressed the position on policy in the order of first rebutting some of the Applicant's position outlined at ISH8, before turning to wider considerations regarding co-existence and the offshore wind industry.

The Applicant's position set out during ISH8 is that paragraph 2.8.347 of NPS EN-3, which states that "*where a proposed development is likely to affect the future viability or safety of an existing or approved/licensed offshore infrastructure or activity, the Secretary of State should give these adverse effects substantial weight in its decision-making*", is not engaged for two reasons: (1) because the "*adverse effects*" referred to are not significant; and (2) because the "*future viability*"

of the Ørsted IPs' assets is not "*likely*" to be affected. The Ørsted IPs will rebut these points in turn, the substance of which will address Action Points 1 and 2 respectively from ISH8 **[EV13-008]**.

Significance

The Ørsted IPs agree with the position set out by the Applicant in ISH8 that "*adverse effects*" in the context of Environmental Impact Assessment ("**EIA**") development must be likely and significant in order to be afforded weight in the decision-making process.

In relation to the significance, the Ørsted IPs note that there is no established methodology for showing significance, in EIA terms, in relation to wake impacts on other offshore wind farms (and, indeed, for many other forms of economic impact that proposed offshore wind farms may impose on other sea users). In the case of wake effects, this is due to the established norm in the industry of reaching commercial agreements, outside the planning system, to manage wake effects.

Paragraph 2.8.28 of NPS EN-3, relating to an applicant's assessment in the context of factors influencing site selection and design, states that "*available wind resource is critical to the economics of a proposed offshore wind farm*". Thus, where the wind resource available to an offshore wind farm is disrupted and reduced by an outside factor, in this case by a proposal for another new offshore wind farm, it is implicitly acknowledged in policy that this will likely affect its economics. Furthermore, given this critical correlation between the availability of wind resource and project economics identified in NPS EN-3, it follows that any disruption to another offshore wind farm's available wind resource has the potential to cause a significant effect on that wind farm. Further, paragraph 2.8.345 of NPS EN-3 requires the Secretary of State to "*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*", which, for the reasons set out below, the Ørsted IPs do not consider has been done.

There are two points to draw out in relation to these paragraphs of NPS EN-3. Firstly, the use of the word "*critical*" in paragraph 2.8.28 represents a sensitive word from an EIA perspective, which furthers the Ørsted IPs' original position that an assessment is required (given that the Ørsted IPs' assets are clearly pertinent to considerations regarding "*available wind resource*") and which was eventually undertaken by the Applicant. Secondly, and more pertinently, it is clear that the adverse effects on the Ørsted IPs' assets as a result of the Outer Dowsing Project are significant. One only has to read the Ørsted IPs' Updated Financial Analysis in Appendix 1 of the Ørsted IPs' Submission between Deadlines 5 and 6 **[AS-037]** to see this. The financial analysis uses the findings presented in the independent assessment of wake impact conducted by Wood Thilsted at Deadline 5 **[REP5-152]** (the "**Wood Thilsted Report**") to show a potential financial impact of between £55m and £199m (depending on the lifetime assumed and the discount rate applied).

Whilst the Applicant will argue that these figures represent an insignificant impact on Annual Electricity Production ("**AEP**") of less than 1% in relation to each asset[1], the revenue impact is undeniably large (as the figures demonstrate) – it cannot be the case that estimated financial losses of either £55m or £199m are deemed insignificant in EIA terms. Indeed, the Applicant asserted at ISH8 that the compensation sought by the Ørsted IPs via its proposed protective provisions is disproportionate because it would require the payment of very large sums of money – this statement only serves to assist the argument put forward by the Ørsted IPs that the adverse effects on their assets are significant. The Ørsted IPs consider it obvious that no other sea user identified within NPS EN-3, including the owners of other offshore infrastructure, navigation and shipping stakeholders and commercial fisheries stakeholders, would accept that an economic impact of tens or hundreds of millions of pounds can be insignificant in this (or any) context.

[1] In any event, the Ørsted IPs note that in AEP terms, the combined wake losses incurred at the three Ørsted assets (as derived from the Wood Thilsted Report and the Applicant's assumption of AEP) equate to the electricity consumption of approximately 32,600 UK homes.

The Ørsted IPs also consider that they have already taken a reasonable approach to the significance of wake impacts on their assets via the withdrawal (in the Ørsted IPs Deadline 4a Submission **[REP4a-125a]**) of the objections to the Outer Dowsing Project, with regard to wake impacts only, for Hornsea 3, Hornsea 4, Lincs and Westermost Rough – i.e. the Ørsted IPs are only focusing on, and continuing to object in relation to wake impacts for, their assets (Hornsea 1, Hornsea 2 and Race Bank) that are significantly impacted by the Outer Dowsing Project.

Likely to Affect Future Viability

Turning to the second limb, the Applicant's position is that the "*future viability*" of the Ørsted IPs' assets is not "*likely*" to be affected by the Outer Dowsing Project. Indeed, during ISH8, the Applicant asserted that paragraph 2.8.347 of NPS EN-3 should be considered as a binary test of whether the wake effect of the Outer Dowsing Project would be likely to render the Ørsted IPs' assets to be rendered completely and immediately unviable or not. The Ørsted IPs disagree with this position.

Paragraph 2.8.347 of NPS EN-3 should not be interpreted as requiring the Ørsted IPs' assets to be rendered completely and immediately unviable as a result of the Outer Dowsing Project (as that would place the evidence bar at an unreasonably high level), nor should it be interpreted as requiring that the future viability of these assets *will* be affected. The test is whether such future viability is *likely* to be affected in a significant manner (as addressed above), and if this is demonstrated then the Ørsted IPs assets must be worthy of protection (and such effects must be afforded substantial weight in the decision-making process in accordance with paragraph 2.8.347 of NPS EN-3).

The Ørsted IPs submit that the future viability of their assets is likely to be affected by the Outer Dowsing Project. The AEP impact is likely to impact the decisions around timing of decommissioning for these assets (i.e. bringing decommissioning forward). Whilst this impact may not necessarily result in the termination of the Ørsted IPs' projects immediately upon suffering the wake effects, permitting this impact to remain unmitigated and/or uncompensated would set a precedent in favour of premature decommissioning of such assets across UK waters (given that any new projects would also be subject to the same likelihood of premature decommissioning as future offshore wind farm projects are subsequently consented and installed). Given that government policy supports an increase in installed offshore wind capacity from the current level of 15 gigawatts to approximately 100 gigawatts by 2050, the magnitude of inter-wind farm wake effects will inevitably increase as this planned build-out is realised – this makes any such precedent-setting particularly dangerous, as it effectively incentivises new projects to significantly impact the most valuable (from a sustainability perspective[2]) aspect of existing projects (i.e. the operational tail-end).

As it is the late life of these assets that is being impacted, which coincides with asset ageing and hence increased operating expense ("**OPEX**"), the reduction in revenue as a result of the Outer Dowsing Project is likely to hamper the ability of the Ørsted IPs to keep operating their assets (i.e. as long as originally intended, closer to the planned decommissioning). At the point at which market support for these assets ends, there is an imminent risk of profitability being adversely impacted, due to market price volatility coupled with the aforementioned higher OPEX costs – thus leaving the Ørsted IPs assets vulnerable. The presence of the Outer Dowsing Project only serves to bring this point forward, given the significant economic loss posed to the Ørsted IPs assets due to wake impacts.

[2] At this point, these assets have already paid back their carbon investment; continuing to operate them provides electricity 'for free' in terms of embedded carbon emissions. Pages 21-24 of The Crown Estate's UK Offshore Wind Report 2023 sets out the benefits, noting that "*while new developments contribute highly to security of affordable energy, a life extended project scores much higher in terms of the efficiency of materials and space, and minimising environmental impact."* and that "*a typical life extended project could: avoid an additional 136 tonnes steel, 8 tonnes glass and 4 tonnes polymer per MW; avoid an additional 470 tonnes CO2 per MW; and have negligible marine environment impact to benthic habitats, fish and shellfish, and marine mammals*".

It is clear, therefore, that the Outer Dowsing Project is likely to impact the future viability of the Ørsted IPs assets.

Compensation

For the reasons set out above, the Ørsted IPs consider that paragraph 2.8.347 of NPS EN-3 is engaged, because the impact of the Outer Dowsing Project on the Ørsted IPs' assets is both significant and likely to affect their future viability.

Therefore (but noting the Ørsted IPs arguments on the requirement for compensation in the context of wider considerations regarding co-existence that are set out below on a without prejudice basis to any conclusions drawn on the significance and likelihood points above), the Ørsted IPs' assets must be protected via the measures (including compensation) set out in the Ørsted IPs' proposed protective provisions. These protective provisions are further discussed in the corresponding section below, but two rebuttals regarding the Applicant's submissions at ISH8 are necessary in the first instance.

Whilst the Ørsted IPs agree with the Applicant's assertion at ISH8 that compensation is not directly referred to in the relevant paragraphs of NPS EN-3, there is a broader consideration regarding co-existence (as set out in the section below) that also brings compensation into play. In addition, paragraph 4.3.4 of NPS EN-1 states that "*to consider the potential effects, including benefits, of a proposal for a project, the applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for*" (emphasis added).

Further, the Applicant referred to the Ørsted IPs as "*commercial rivals*" during ISH8 and stated that compensation relating to wake impacts would amount to the Applicant unfairly subsidising the Ørsted IPs. This argument cuts both ways, however, as the Applicant *not* compensating the Ørsted IPs would set a precedent whereby a "*commercial rival*" developing a new project is enabled to devalue existing operational assets by tens or hundreds of millions of pounds without consequence, i.e. without having to shoulder the burden of, or in any way share the pain of, coexistence.

The Ørsted IPs note that even if their arguments in relation to "*substantial weight*" being afforded under paragraph 2.8.347 of NPS EN-3 in the context of the likelihood of affecting future viability are not deemed to be persuasive, there is still a clear case for compensation under general EIA principles. This is because it is clear that the wake effects alone (setting aside considerations of future viability) on the Ørsted IPs' assets are both significant (for the reasons set out above) and likely (indeed, the wake effects are guaranteed to be present as a result of the Outer Dowsing Project). Therefore, it is still incumbent upon the Applicant to mitigate these wake impacts in some fashion, and there is nothing to suggest that compensation could not constitute this mitigation. The policy driver for this position is set out in further detail below, but in summary the requirement for applicants to implement best efforts to work with owners of existing infrastructure to ensure adverse effects are addressed and/or resolved could include compensation; indeed, this is a perfectly valid form of mitigation for economic impacts, as it can reduce an economic impact from a significant level to an acceptable level (or at least to a not significant level) and is often the only form of mitigation that is available and/or practicable in relation to human environment impacts.

Co-existence

Without prejudice to the Ørsted IPs' position above, paragraph 2.8.347 of NPS EN-3 should not be viewed in isolation, as it forms part of the context of the wider policy requirements throughout section 2.8 of NPS EN-3 (applying to other offshore infrastructure and activities). For example, paragraphs 2.8.197 and 2.8.203 of NPS EN-3 require assessments of the impacts on other infrastructure to be undertaken with the aim of establishing successful co-existence (a general point, which this section considers). That, in turn, flows through to later paragraphs of NPS EN-3, such as paragraph 2.8.345 which concerns what the Secretary of State indicates should be done

when there are impacts which occur to such other offshore infrastructure, and refers to measures being taken with a view to avoiding or minimising disruption and economic loss, amongst other things. Considerations regarding paragraph 2.8.347 are reached at the end of the 'journey' of NPS EN-3 (and, indeed NPS EN-1), and it is the context of that overall relationship between the various paragraphs of the NPSs which forms the basis of the Ørsted IPs' argument regarding co-existence, which the Applicant has ignored (and, indeed, the Applicant has therefore breached the direction of NPS EN-3 to engage appropriately to ensure that the Outer Dowsing Project can co-exist with existing infrastructure, including the Ørsted IPs' assets).

Even in the scenario where the Ørsted IPs' arguments above regarding the need for protective provisions (including compensation) fail in the context of significance and likelihood regarding paragraph 2.8.347 of NPS EN-3 set out above, it is clear that the policy drive – which ensures that an applicant must implement best efforts to work with the owners of existing infrastructure to ensure that adverse effects are addressed and/or resolved – has been ignored by the Applicant.

The policy drive of the relevant sections of NPS-EN3 is for new offshore wind development to engage with existing sea users to ensure that the effects of proposed developments are appropriately mitigated, such that co-existence is possible. In summary, where a proposal may impact existing assets:

- "*Applicants are encouraged to work collaboratively with those other developers and sea users on co-existence/co-location opportunities, shared mitigation, compensation and monitoring where appropriate*" (paragraph 2.8.48).

- The Applicant is directed to "*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*" (paragraph 2.8.200), and such engagement "*should be taken to ensure that solutions are sought that allow offshore wind farms and other uses of the sea to co-exist successfully*" (paragraph 2.8.203).

- The Applicant should "*work with the impacted sector to minimise negative impacts*" (paragraph 2.8.344) and the Secretary of State should be satisfied that site selection/design has "*been made with a view to avoiding or minimising disruption or economic loss*" (paragraph 2.8.345).

- The Secretary of State may consider using arbitration to resolve how adverse effects on commercial activities may be addressed (paragraph 2.8.260).

- In respect of decision-making, provided schemes have been carefully designed and early consultation has taken place "*mitigation measures may be possible to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the Secretary of State to grant consent*" (paragraph 2.8.348).

While compensation is not specifically mentioned in the relevant paragraphs of NPS EN-3 (though it is in NPS EN-1, per the above), the expectation of the NPS-EN3 is clearly that applicants for new development will implement best efforts to engage with existing sea users on adverse effects and identify solutions. For example, this is how fisheries coexistence has typically been managed – and, in addition, Fisheries Liaison and Co-Existence Plans usually provide for compensation payments for commercial losses (the Fishing Liaison with Offshore Wind and Wet Renewables Group published best practice guidance in 2015, which includes disruption settlements, and the Applicant has indeed provided such a mechanism through its Outline Fisheries Liaison and Co-Existence Plan **[PD1-060]** at section 4.4, the provisions of which are secured through the deemed marine licences). The expectation is that applicants take a broad approach to addressing adverse effects, and there is no reason why this cannot include compensation. If the Secretary of State is not satisfied with the approach taken, it may refer the parties to arbitration, which could deal with adverse economic effects. The mitigation of economic loss is routinely secured within DCOs,

whether in the form of a requirement (for example, in the Awel y Mor Offshore Wind Farm DCO 2023) or protective provisions (see examples below).

The Ørsted IPs note that it is routine in consenting processes for parties to discuss and resolve issues regarding a proposed development privately (indeed, the UK Government notes in the Clean Power 2030 Action Plan that issues with wake have historically been dealt with outside of the planning process). If a party's concern is resolved through private discussions, it is standard to update decision makers in that respect. Decision makers will take account of and may rely on such agreement in reaching a determination, and can refer an issue to a third party to resolve if it is unhappy with the level of effect/residual effect. The Ørsted IPs also refer to Policy GOV2 of the East Inshore and East Offshore Marine Plans 2014, which (for example) states that "*opportunities for co-existence should be maximised wherever possible*". For reference, paragraph 2.8.18 of NPS EN-3 flags the relevance of marine plans during site selection including in relation to existing activities by stating that "m*arine plans will help applicants understand generic potential impacts of their proposal at an early stage e.g., in relation to other activities, or where there are marine protected areas*".

Industry-Wide Considerations

Furthermore, industry-wide targets and intentions will be impacted if co-existence is not prioritised in line with the position set out above, between existing and new assets – practically, within the industry, it should not be the case (as proposed by the Applicant) that a new project is permitted to pull the rug from underneath existing assets (that are already operational and are currently benefitting the UK) without adequate mitigation and/or compensation. As set out above, that would set a precedent of effectively incentivising new projects to significantly impact the most valuable (from a sustainability perspective) aspect of existing projects (i.e. the operational tail-end). If implemented, the position advocated by the Applicant would disincentivise co-existence, which is contrary to how the relevant policies should be interpreted. The protective provisions proposed by the Ørsted IPs prevent the setting of this dangerous precedent.

There is also a system-wide argument that is pertinent to the Ørsted IPs' case. Retaining access to an established wind resource is key to establishing project economics, in line with policy per paragraph 2.8.28 of NPS EN-3, and what developers should not be encouraged to do (and, therefore, what the Ørsted IPs did not reasonably do when maturing their own projects) is attempt to price-in the wake effects associated with unknown future offshore wind farm projects being brought forward at some unknown point and disrupting that available wind resource. If that were the case, it would undermine the policy imperatives of maximising capacity and the Contracts for Difference ("**CfD**") regime (i.e. delivering cost effective projects for the consumer, as a wake risk premium would be added to CfD bid prices). The burden must be placed on the incoming, new project, as that developer (i.e. the Applicant) can more accurately value the impact upon existing wind farms and, through certainty regarding future compensation from newer projects, can secure a more predictable revenue stream and also address the likelihood of premature decommissioning in the way that the Ørsted IPs are seeking to do. The Applicant can therefore rest assured that the business case it establishes will be protected against future wakes coming from unknown new projects in the future.

<u>Protective Provisions</u>

Given the policy position outlined above (either in the context of significance and likelihood regarding paragraph 2.8.347 of NPS EN-3, or the wider points regarding co-existence, or both), the Ørsted IPs consider that protective provisions for their benefit are included on the face of the Applicant's DCO to afford necessary and proportionate protection to their assets. As previously stated, the Ørsted IPs would prefer to enter into a separate commercial agreement with the Applicant as a solution to the impacts on the Ørsted IPs' assets and have sent the Applicant a document comprising the high-level 'fundamentals' that this agreement should cover. However, the Applicant stated in the aforementioned meeting with the Ørsted IPs that it does not consider this agreement to be necessary; therefore, the Ørsted IPs seek the protective provisions.

The Ørsted IPs note that protective provisions for the benefit of statutory undertakers regularly require a developer to pay a commuted/capitalised sum (as is proposed in the Ørsted IPs' protective provisions) for the future payment of apparatus that has been modified to accommodate the impact of authorised works. There is a simple formula (commonly used within the industry) for calculating the commuted sum proposed:

> *Market price for electricity, forecast or in arrears*
>
> *x*
>
> *Wake loss, agreed in advance through independent expert determination, with a provision allowing either party to pay for additional (replacement) wake loss assessment(s) in the event that design refinements associated with the waking offshore wind farm justify this*
>
> *x*
>
> *AEP at the waked offshore wind farm, determined at the end of each calendar year, based on a publicly available data source*

In addition, the protective provisions sought by the Ørsted IPs are based on a precedent in relation to loss of revenue, per paragraph 16(4) of Schedule 6 to the Scarweather Sands Offshore Wind Farm Order 2004 and paragraph 72 of Schedule 14 to the Associated British Ports (Immingham Green Energy Terminal) Order 2025. The precedent of these examples provides further justification for the approach adopted in the drafting of the Ørsted IPs' protective provisions to ensure that such loss of revenue is recouped through payment of a commuted sum.

The Ørsted IPs note that they received a separate set of protective provisions for the benefit of Lincs Wind Farm Limited (with the contents proposed to be replicated for the protection of Race Bank Wind Farm Limited) from the Applicant. The Ørsted IPs provided comments back to the Applicant on these protective provisions without prejudice to the position that the fuller set of protective provisions is required.

<u>Cumulative Assessment / Carbon Payback Sensitivity Analysis</u>

The Ørsted IPs also wish to provide some further comments on the Wood Thilsted Report and the Carbon Payback Sensitivity Analysis on Wake Effects **[REP5-100]** (the "**Carbon Payback Analysis**") presented by the Applicant at Deadline 5.

Firstly, the Ørsted IPs consider that the Wood Thilsted Report (only submitted into the examination at Deadline 5) ought to have considered and assessed the cumulative wake effect on the Ørsted IPs' assets, including from the Dogger Bank South Offshore Wind Farm, as a reasonable estimate of cumulative effect. Having noted that the Applicant had not replicated the cumulative approach to wake assessment adopted by Wood Thilsted in relation to the Mona, Morgan and Morecambe examinations as expected, the Ørsted IPs suggested that the Applicant update the Wood Thilsted Report accordingly on the call on 25 March 2025 between the parties, but understands that the Applicant does not intend to update the Wood Thilsted Report to this effect. The Ørsted IPs have, however, undertaken internal modelling which indicates that the combined wake effect on the Ørsted IPs' assets of the Outer Dowsing Project and the Dogger Bank South Offshore Wind Farm will be greater than 1% AEP, which provides further emphasis to the Ørsted IPs' arguments regarding significance of effects presented above.

In relation to the Carbon Payback Analysis, the Ørsted IPs consider this to be a very high level assessment that is based on a best case scenario whereby the wake impact on the Ørsted IPs' assets stops after 24/25 years. In particular, the Ørsted IPs disagree with the statement in the Carbon Payback Analysis that "*two net benefit assessments were conducted on the basis of highly conservative hypothetical scenarios where the wake effect of the Project results in either a*

0.5% or 1% loss of energy production from a number of neighbouring OWFs". The Ørsted IPs submit that this is a deficiency in this assessment for the following reasons: (1) such assessments should be based upon realistic worst case scenarios, which in this situation would include considering the Lifetime Extension of the Ørsted IPs' assets and the possibility of these assets being forced into early decommissioning as a result of the Outer Dowsing Project; and (2) the Ørsted IPs have made it clear to the Applicant that it is more likely than not that the Ørsted IPs' assets will continue to be in operation beyond 24/25 years. Again, the Ørsted IPs suggested that the Applicant update the Carbon Payback Analysis accordingly on the call on 25 March 2025 between the parties, but understands that the Applicant does not intend to update the Carbon Payback Analysis to this effect.

Assessment Timings

The Ørsted IPs note the points made by the Examining Authority and the Applicant during ISH8 regarding a fair opportunity for all parties to respond to submissions made. The Ørsted IPs therefore met with the Applicant, as requested by the Examining Authority, to discuss several matters following ISH8.

On this topic, the Ørsted IPs wish to note that one of the reasons for these matters only being fully addressed at a late stage in the examination is the Applicant's initial refusal to conduct the assessments required of it (which the Ørsted IPs had been requesting since the beginning of the examination). The Applicant was unable to arrive at its conclusion regarding the AEP impact on the Ørsted IPs' projects not being significant in EIA terms before its internal assessment was undertaken (which the Applicant delayed until Deadline 4) and then using an independent assessor (which the Applicant delayed until Deadline 5 and which produced figures that completely disagreed with those presented by the Applicant and more closely aligned with those presented by the Ørsted IPs). The lateness of the submission of a valid wake assessment has also led to a very limited time to assess whether wake effects could be adequately mitigated, with the Applicant not engaging at all with the Ørsted IPs regarding possible mitigation (nor has the Applicant demonstrated that mitigation measures for wake effects have been explored, in contrast to what is required under NPS EN-3 – it is not appropriate to simply assert that mitigation is not possible).

The Ørsted IPs also note that the Applicant provided them with an updated Wood Thilsted Report at 19:47 on 3 April 2025 – the day before Deadline 6. This updated report slightly increases the wake loss estimates for Hornsea 1 (from 0.67% to 0.68%) and Hornsea 2 (from 0.68% to 0.70%), but principally serves to demonstrate the lateness in the process with which the Applicant is providing the information required of it.

Therefore, the timing of the Ørsted IPs' submissions in relation to this matter is largely attributable to the Applicant's unwillingness to engage with the Ørsted IPs and undertake the assessments requested until late in the process. As such, the Ørsted IPs submissions at Deadline 6 should not be given limited weight purely as a result of any timing considerations.

Agreements

The Ørsted IPs note that negotiations are ongoing with the Applicant regarding a draft proximity agreement in relation to the Outer Dowsing Project's export cable corridor and the offshore array area for the Lincs Offshore Wind Farm. The Ørsted IPs sent their latest comments on this agreement to the Applicant on 2 April 2025 and will continue to engage with the Applicant on this agreement (and the subsequent proximity agreement for the Race Bank Offshore Wind Farm, which will use the general terms of the Lincs agreement as a starting point for negotiations). Pursuant to paragraph 7 of the Ørsted IP's proposed protective provisions, these agreements must be entered into either prior to: (1) 6 months following the DCO being made by the Secretary of State; or (2) the commencement of the authorised scheme (as defined in the protective provisions), whichever is earlier.

As for the cooperation agreement regarding underwater noise between the Applicant and Orsted Hornsea Project Four Limited, the Ørsted IPs and the Applicant have continued to negotiate, most recently meeting on 28 February 2025. The Applicant subsequently provided a draft cooperation agreement to the Ørsted IPs for review on 3 April 2025.

Other Matters

The Ørsted IPs were asked during ISH8 to confirm details of the time periods of 24 years (for the minimum lifetime) and 10 years (for the lifetime extension) used in the Ørsted IPs' financial analysis. On the minimum lifetime of 24 years, the Ørsted IPs' most recent decommissioning plans submitted to the Secretary of State for approval state that operational lifetime of Hornsea 1 and Hornsea 2 is at least 24 years, with the period being 25 years for Race Bank (hence the references to '24/25 years' throughout these submissions. The corresponding environmental statements also reference the same timeframes. As for the lifetime extension of 10 years, this is a reasonable assumption made by the Ørsted IPs.

The Ørsted IPs note that Deadline 6 of the examination requires Interested Parties to comment on submissions made at Deadline 5 by the Applicant. The Ørsted IPs have nothing further to say on these documents that has not been provided above.

The Ørsted IPs also wish to note that they have been engaged in positive discussions with the Equinor IPs regarding protective provisions, policy interpretation and closing submissions. As is evidenced by the closing submissions of both the Ørsted IPs and the Equinor IPs, the parties are in alignment with their position.

Conclusion

For the reasons set out above, the Ørsted IPs consider that the adverse effects on their assets as a result of the Outer Dowsing Project are significant and likely to affect their assets, including the future viability of their assets. Therefore, paragraph 2.8.347 of NPS EN-3 is engaged (and, in any event, the wider points regarding co-existence apply). The Ørsted IPs' assets therefore require necessary and proportionate protection, in the form of the protective provisions submitted by the Ørsted IPs (in the absence of engagement from the Applicant on a separate commercial agreement) that provide for appropriate and precedented compensation.