



DEADLINE 6 SUBMISSIONS ON BEHALF OF ØRSTED EAST IRISH SEA TRANSMISSION LIMITED (REF NO: MMTA-OP010) AND MOOIR VANNIN OFFSHORE WIND FARM LIMITED (REF NO: MMTA-OP009)

IN CONNECTION WITH THE Application by Morgan Offshore Wind Limited and Morecambe Offshore Windfarm Limited for an Order Granting Development Consent for the Morgan and Morecambe Offshore Wind Farms Transmission Assets

## 1. Introduction

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- 1.1 This submission is provided in accordance with Deadline 6 of the examination timetable for the application made by Morgan Offshore Wind Limited and Morecambe Offshore Windfarm Limited (the “**Applicants**”) for an order granting development consent for the Morgan and Morecambe Offshore Wind Farms Transmission Assets (“**Project**”).
- 1.2 We represent Ørsted East Irish Sea Transmission Limited (“**OEIST**”) and Mooir Vannin Offshore Windfarm Limited (“**MVOWFL**”) (together, “**Ørsted**”), which filed relevant representations (accepted as additional submissions) in respect of the Project.
- 1.3 This document contains Ørsted’s comments on submissions made by the Applicants at examination deadline 5, namely, the Applicants’ Response to Deadline 4 submissions from Statutory Consultees and other organisations [REP5-118] and the Applicants’ Response to the Examining Authority’s Written Questions (ExQ2) [REP5-130].
- 1.4 Ørsted is pleased that engagement with the Applicants is now underway. Ørsted is committed to working effectively with the Applicants. However, given the short amount of time left in the examination, Ørsted considers it is unlikely that its concerns will be resolved before the examination closes. That being the case, in the absence of an agreement with the Applicants, Ørsted would expect a formal framework to be included in any development consent order (“**DCO**”) issued for the Project which would facilitate the necessary engagement on behalf of the Applicants.

## 2. Response to key matters in Applicants’ deadline 5 submissions

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### *Compliance with national policy*

- 2.1 In its deadline 4 submission [REP4-169], Ørsted outlined in detail how the relevant policy framework (primarily, National Policy Statement EN-1 (“**EN-1**”) and National Policy Statement EN-5 (“**EN-5**”)) sets a clear expectation that developers will coordinate in order to facilitate the achievement of the UK’s clean energy targets.
- 2.2 In response to these submissions, the Applicants stated that they have complied with EN-1 and EN-5 by coordinating with each other in respect of the Project and that “*It is simply not possible for that level of co-ordination to take place with a further project at the early stage of development that EIST is at*” [REP5-118].
- 2.3 Demonstrating coordination with one other developer is not sufficient to comply with the policy framework and to deliver the goals of the UK Government, as outlined in [REP4-169], particularly where lack of co-ordination with another project may materially affect that project’s ability to contribute to the achievement of the UK’s clean energy targets. Rather, developers should be coordinating with the range of other projects which contribute to these goals and which may impact one another.
- 2.4 EN-5 specifically requires that applicants demonstrate “...*how the construction planning for the proposals has been co-ordinated with that for other similar projects in the area on a similar timeline.*” The Applicants cannot ignore other incoming projects simply because they are coordinating with one another.
- 2.5 As noted in [REP4-169], the Ørsted East Irish Sea Transmission Project (“**EIST Project**”) is subject to a section 35 direction declaring it to be a nationally significant infrastructure project because of its role in enabling an energy system that meets the UK’s energy commitments.
- 2.6 Ørsted acknowledges that the EIST Project is at a relatively early stage of the consenting process, however, the level of coordination Ørsted is seeking is not onerous. The draft DCO requirements proposed by Ørsted at deadline 4 are discussed in detail later in this submission. However, in essence, the effects of those requirements are that the Applicants would be required to confirm details of certain substation connection works, once those are known and for the design of those works to give some consideration to the ability of other developers to connect. They would also provide a forum for coordination between parties with an interest in the substation.
- 2.7 The overarching goal of Ørsted’s draft requirements is to ensure proper communication between developers, in line with the goals of the policy framework and to avoid the sterilisation of land

around the Penwortham substation. Ørsted is not seeking that the Applicants make any design changes to the Project. The level of engagement secured by these requirements is commensurate with the importance of the EIST Project (as an NSIP) and is appropriate in terms of the consenting status of the EIST Project.

#### *Proposed DCO drafting*

- 2.8 Ørsted reiterates that it considers its concerns are capable of being addressed through a cooperation agreement with the Applicants or protective provisions in the DCO. In the absence of either protective provisions or an agreement, Ørsted submitted draft DCO requirements, which would address the key concerns at deadline 4 [REP4-169]. This reflects the wider public interest in ensuring proper and effective coordination between developers. The Applicants provided some high-level comments on this drafting in their response to ExQ2 [REP5-130] and comments on deadline 4 submissions [REP5-118].
- 2.9 Ørsted notes that the Applicants' comments in their response to ExQ2 [REP5-130] are unclear. Ørsted has assumed that the Applicants' reference to "*(i) of the draft requirement*" is intended to address Ørsted's first proposed requirement 'National Grid Penwortham substation connection' and the reference to "*point ii) of the draft requirement*" is intended to refer to Ørsted's second proposed requirement 'National Grid Penwortham substation liaison group'.

#### First draft requirement

- 2.10 The Applicants consider the first draft requirement will be addressed through protective provisions agreed with National Grid Electricity Transmission ("**NGET**") [REP5-118] and the respective land agreement. This is not correct. In summary, Ørsted's first draft requirement provides that:
- 2.10.1 the connection works will be designed in accordance with design principles, which will provide for a level of consideration to be given to the ability of other developers to access the substation;
  - 2.10.2 before the connection works commence, the details of the location and extent of works will be submitted to the planning authority and following this, will be provided to other parties which have secured a grid connection at Penwortham.
- 2.11 Ørsted considers this requirement ensures the minimum, appropriate, degree of coordination with other projects requiring access to Penwortham. It requires a degree of information sharing by the Applicants following detailed design of the Project, which would facilitate coexistence between renewable energy developments in line with the policy framework. These principles are not secured by the protective provisions and land agreements being developed for NGET.
- 2.12 Ørsted has explained in numerous previous submissions<sup>1</sup> that the protective provisions developed for NGET do not protect other developers, including Ørsted. NGET does not have an overarching function or ability to manage interactions between the infrastructure required for different projects to connect at the substation and therefore, the protections provided for NGET are not sufficient to protect the EIST Project.
- 2.13 The Applicants have suggested that the issues regarding access to Penwortham substation will be resolved through the consenting and property acquisition processes for the EIST Project. The Applicants have stated that "*...Ørsted should seek appropriate land rights and associated agreements as part of its DCO preparation for the OEIST scheme. The ExA cannot grant land rights outside of those sought by the Applicants for the benefit of a third party for land that sits outside of the proposed order limits*".<sup>2</sup>
- 2.14 The Applicants' comments seem to reflect a misunderstanding of the issue. Ørsted will, of course, seek the necessary rights for the EIST Project at the appropriate time and is clearly not asking for land rights to be awarded to it as part of this examination. What Ørsted has expressed concern over throughout this examination, is that the extent of land rights sought surrounding Penwortham substation is so extensive that it risks jeopardising other parties' ability to connect. In order to address this concern Ørsted has sought that the Applicants:

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<sup>1</sup> [REP5-188], [REP4-169], [REP3-102].

<sup>2</sup> [REP5-130].

- 2.14.1 be required to be forthcoming regarding the location of its grid connection works, once that is known, acknowledging that the Applicants wish to preserve significant flexibility regarding the grid connection at this stage; and
- 2.14.2 give some consideration to the ability of other developers to connect to the substation, in the design of the Project's connection.
- 2.15 It is not realistic to suggest that Ørsted's concerns regarding access to the substation should simply be resolved through the consenting process for the EIST Project. The acquisition of rights in respect of this type of infrastructure is complex. For example, the ultimate owners of transmission infrastructure (offshore transmission owners) typically require clean assets (i.e. not subject to overlapping property rights in favour of other parties). As such, it would not be straightforward to simply acquire rights over the top of areas which are being acquired for the Project. Additionally, Ørsted is not comfortable waiting until the EIST Project has further progressed to secure a mechanism for engagement with the Applicants.
- 2.16 In its response to deadline 4 submissions, the Applicants referred to an example from the Sheringham and Dudgeon Extension Project examination ("**SEP/DEP**") as providing support for its position. The example referred to is that protective provisions sought by Norfolk County Council ("**NCC**") for the protection of the Norwich Western Link (which had some interface with the project) were not accepted. Ørsted does not consider this example is analogous.
- 2.17 First, in that example, both the applicant and NCC had agreed, and provided submissions stating that a cooperation agreement was necessary.<sup>3</sup> As such, the examining authority and Secretary of State could be confident an agreement was underway between the parties.
- 2.18 Second, the protective provisions submitted were provided very late in the examination, unexpectedly to the applicant. As such, there was limited opportunity for parties to consider the drafting. Ørsted provided suggested drafting at the request of the examining authority at deadline 4. Ørsted has also provided substantial information supporting its specific concerns and the rationale behind the proposed drafting.
- 2.19 The Applicants have had sufficient time to consider the draft requirements and were on notice that this drafting should be expected due to the examining authority's request. However, the Applicants have failed to engage with the detail of the drafting or work with Ørsted to resolve its concerns before the examination closes. While Ørsted acknowledges some progress has recently been made towards developing a stronger working relationship with the Applicants, the Applicants' approach throughout the majority of the examination has been to dismiss Ørsted's concerns. None of the Applicants' recent suggestions (discussed below) properly address Ørsted's concerns and, as a result, these issues will likely remain unresolved at the close of the examination.
- 2.20 Unlike NCC's project in the SEP/DEP examination, the EIST Project is a nationally significant infrastructure project, and Ørsted has consistently raised specific concerns regarding the likely possible consequences of the Applicants' chosen approach.

Second draft requirement: 'National Grid Penwortham substation liaison group'

- 2.21 In respect of Ørsted's second proposed requirement, the Applicants have stated that it would be *"...of limited benefit for the Applicants to have a requirement imposed that would need them to disclose potentially confidential information into the public domain for the purposes of another developer"*.
- 2.22 Neither of Ørsted's proposed requirements would require the disclosure of confidential information. The 'National Grid Penwortham substation liaison group' would be a liaison group which could be called to meet at the discretion of NGET to share information and collaborate. Developers would be at liberty to determine which information they wished to share in such a forum.
- 2.23 Ørsted also do not consider its first proposed requirement would require the disclosure of confidential information. It is difficult to understand why the Applicants would be so reluctant to

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<sup>3</sup> Refer to the Applicant's comments on Norwich Western Link's deadline 7 submission [RE8-057] and final statement of common ground [REP8-051] EN010109 – Sheringham and Dudgeon Extension Projects.

confirm the location of their grid connection works to other parties, following detailed design and ahead of works commencing.

- 2.24 The Applicants have also made a general comment that they “...*are not against working with other parties collaboratively though it is incongruous to impose a requirement within the dDCO to do so.*”
- 2.25 Ørsted is not comfortable relying on assurances that the Applicants will engage outside of the examination process and requires provision for such engagement within the DCO.
- 2.26 Additionally, Ørsted rejects the statement that it is “incongruous” to the principle of collaboration, to establish a formal mechanism providing for such collaboration. DCOs frequently contain provisions which require engagement between parties. For example, many requirements will typically only be able to be discharged following consultation with other parties. Plans which support DCOs (such as communication plans) also frequently specify that engagement must take place with stakeholders and set out how that engagement should be undertaken.
- 2.27 Ørsted is seeking that a degree of coordination is provided for. It is not clear, specifically, what the Applicants consider would be unduly burdensome as a result of these requirements. In particular, it is difficult to understand why the Applicants would be reluctant to confirm the location of the Project’s grid connection, once that is known.

### **3. Recent correspondence**

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- 3.1 In recent correspondence, the Applicants directed Ørsted to several outline plans which seek to facilitate communication with other developers. While Ørsted does not have an issue with these plans, they do not address Ørsted’s concerns because they do not specifically provide for Ørsted’s participation, or for their concerns to be taken into account.
- 3.2 For example, the Outline Communications Plan [REP5-046] provides for a Communications Plan Framework to be developed based on a number of principles, including that there will be “*consultation with other offshore energy operators*”.<sup>4</sup> However, it is not specified how any feedback will be taken into account or how rigorous consultation will be.
- 3.3 The Code of Construction Practice [REP5-044] provides for the establishment of a Construction Coordination Working Group between the Applicants and local planning authorities. While there is scope for planning authorities to invite other stakeholders to participate in the working group on an ad-hoc basis, there is no requirement for parties such as Ørsted to be invited. Additionally, the focus of the working group appears to be on coordination between the Morgan and Morecambe projects, rather than with other developers. As such this mechanism does not allay Ørsted’s concerns.
- 3.4 The Applicants have also noted that Requirement 3 of the draft DCO requires confirmation of the stages of the onshore works with the relevant planning authority. This is a relatively standard requirement, which Ørsted does not consider addresses its concerns. This requirement would not provide for such information to be shared with Ørsted or for Ørsted to be engaged with. This requirement would not influence the design of access to the substation.
- 3.5 Ørsted is eager to continue to engage with the Applicants in order to develop a mechanism for coordination and information sharing. However, at this late stage of the examination, and in the absence of any agreement, Ørsted’s concerns remain outstanding and there remains a need for Ørsted’s proposed draft DCO provisions.
- 3.6 After a DCO has been granted and the authorised project progresses it is usually handed over to a development team which works with the appointed contractors to design and build it. The team follow the DCO and commitments that have been made through agreements. That is why, in the absence of an agreement, it is essential that the matters are effectively dealt with in the context of the DCO.

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<sup>4</sup> Paragraph 1.4.1.3

#### **4. Conclusion**

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- 4.1 Ørsted reiterates its position that, due to the scale of land interests being sought surrounding the Penwortham substation, there is a real risk that the Project will cause considerable difficulties for other projects further down the consenting pipeline. This approach is inconsistent with the planning framework established by EN-1 and EN-5.
- 4.2 Ørsted acknowledges that there are some uncertainties with both the Project and the EIST Project and acknowledges that the Applicants are seeking to preserve a degree of flexibility. However, it is not appropriate to dismiss Ørsted's reasonable concerns on this basis. The EIST Project has secured a grid connection at Penwortham substation. It is also clear that the rights sought by the Applicants surrounding the substation are extensive – they essentially surround the substation. There are, of course, other constraints around the substation (such as existing utilities). On this basis, Ørsted's concerns regarding possible obstructions to the substation are reasonable.
- 4.3 The measures Ørsted has sought would not require the Applicants to implement design changes or change the land rights sought at this stage. They would simply facilitate information sharing and engagement and provide for some consideration of other developers access to the substation in the design of the Project. We consider this is the minimum level of engagement communities would expect of developers working in the same area. It is noted that failure of energy developers to coordinate effectively is becoming a growing source of complaints from communities.

**Shepherd & Wedderburn LLP**

**22.10.2025**