
STATUTORY INSTRUMENTS

2003 No. 2829

The Lynn Offshore Wind Farm Order 2003

PART III

MISCELLANEOUS AND GENERAL

For Protection of Environment Agency

20.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the Company have effect.

(2) In this article:

“accumulation” means any accumulation of silt or other material;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, re-laying and removal; and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or shore of the sea or other structure of whatever nature, including the Lincs sea defences, under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991⁽¹⁾;

“outfall” means:

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage; and

“specified work” means any permanent or temporary work or operation authorised by or under this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken).

- (a) (3) (a) If, during the construction of a specified work or within 10 years after the completion of such work there is an accumulation or erosion or alteration of the tidal flow or littoral drift wholly or partly caused by such work which causes damage, or the reasonable expectation of damage within 2 years, the Company shall, if so required by the Agency before or within the period of 10 years after such completion, and subject to obtaining any necessary consents, remedy so much of such accumulation, erosion, alteration of tidal flow or littoral drift as is caused by such work, in the manner specified in sub-paragraph (e) below and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from the Company.
- (b) Should any such accumulation or erosion or alteration of the tidal flow or littoral drift arise during the said construction or the said period of 10 years and be remedied in accordance with sub-paragraph (a) above, any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall, subject to sub-paragraph (c) below, from time to

time be so remedied by the Company during the said period of 10 years and at any time thereafter.

- (c) The Company's obligation under this paragraph shall cease in the event that following the remedying of any such accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further such accumulation or erosion or alteration of the tidal flow or littoral drift unless the specified works are decommissioned and removed before the end of that 10 year period, in which case the Company's obligation under this paragraph shall cease upon the expiration of 2 years after such removal.
 - (d) In this paragraph, "damage" means any damage to or any adverse effect whatsoever upon the structure or operation of any outfall, flood or sea defences or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.
 - (e) For the purposes of this paragraph:
 - (i) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
 - (ii) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency provided always that the Agency will not require a remedy which results in betterment upon the average levels of accumulation, erosion, tidal flow or littoral drift for 2 years prior to the Agency's requirement.
 - (f) To the extent that damage would have been caused in any event by factors other than the construction of a specified work the Company shall not be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift.
- (4) For the purposes of paragraph (3)(a) above the date of completion of a specified work shall be the date on which it is brought into use.
- (a) (5) (a) Save for the Company's liability to the Agency in relation to remedying damage caused by accumulation or erosion or alteration of the tidal flow or littoral drift as set out in the provisions of paragraph (3) above (which provisions are, for the avoidance of any doubt, exhaustive as to the Agency's remedies in that regard) and subject always to subparagraph (b) below the Company shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or reasonably incurred by, the Agency to the extent they are caused by the construction of any of the specified work or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Company, its contractors, agents, workmen, or servants whilst engaged upon any such work.
 - (b) The Agency shall:
 - (i) give to the Company notice of any such claim, demand, proceedings, costs, damages or expenses or loss as soon as is reasonably practicable;
 - (ii) consult the Company in relation to the conduct of the defence and settlement or compromise thereof;
 - (iii) in the event that it is agreed that the Company shall assume the control and conduct of the defence and settlement or compromise thereof give such reasonable assistance as may reasonably be required by the Company in the defence, settlement or compromise thereof; and
 - (iv) not in any event make a settlement or compromise thereof without the agreement of the Company which agreement shall not be unreasonably withheld.
- (6) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or

imposed under the Land Drainage Act 1991⁽²⁾, the Salmon and Freshwater Fisheries Act 1975⁽³⁾ the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency or any existing approvals or consents granted by the Agency to the Company under any enactment, byelaw or regulation.

- (a) (7) (a) Any dispute or difference between the Company and the Agency arising under, out of, or in connection with this article shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President or Vice President of the Institution of Civil Engineers.
- (b) Without fettering the said right to commence arbitration proceedings the Company and the Agency will attempt to settle any dispute or difference by mediation.

(2) 1991 c. 59.
(3) 1975 c. 51.