

SASES Written Summary of Submissions on Cumulative Impact

[Agenda Items 2(c)-2(d)]

Legal and Policy position

1. The cumulative effects assessment carried out by the Applicant is deficient and fails to meet the requirements of:
 - 1.1. The Infrastructure Planning (EIA) Regulations 2017 in respect of assessing the cumulation of effects with other existing and/or approved projects taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources – Schedule 4 para 5(e);
 - 1.2. NPS EN-1 which states that the Environmental Statement (“ES”) should provide information on how the effects of the applicant’s proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence) [4.2.5], and that the decision maker should take account of the proposal’s potential adverse impacts, including any long term and cumulative adverse impacts [4.1.3];
 - 1.3. Advice Note 17 which reiterates the above and, as footnote 10 makes clear, for the purposes of the Advice Note, “other existing and/or approved development” is taken to include existing developments and existing plans and projects that are “reasonably foreseeable”.
2. When the first project enables a subsequent project, it is particularly important to assess the cumulative effects of a proposal together with other proposals (as emphasised in ***Brown v Carlisle City Council*** [2011] Env LR 5 (CA) – see SASES Written Representations (“WRs”) on Cumulative Impact Assessment (“CIA”) [REP1-354]).

SPR’s CIA

3. The CIA carried out by the Applicant is limited to consideration of the interaction of the two DCO schemes and the cumulative impacts with Sizewell C. The Applicant does acknowledge [ES Ch5 para 86] (and see e.g. p7-8 of the Statement of Common Ground

("SoCG") with National Grid Ventures ("NGV") [REP1-062]) that there is potential for future proposed NGV projects in the local area but claims there is insufficient information in the public domain for any of these projects to be assessed.

4. That approach is inadequate and renders the EIA deficient.
5. As a matter of fact, the proposed National Grid Electricity Transmission plc ("NGET") connection hub is designed at a scale and capacity to accommodate, and enable, a greater number of grid connections than proposed through the two Scottish Power Renewables ("SPR") projects and well beyond the needs of the two offshore windfarms promoted by SPR.
6. Importantly, there are *known proposals* for energy projects which either will connect, or are highly likely to connect, via a grid connection at Friston - if the DCOs are granted - and which should be taken into account in the CIA.
7. The question of what the cumulative effects of a particular development are is a question of fact in each case (see e.g. the *Carlisle* case). Therefore, whilst it is for the Examining Authority ("ExA") to reach a view on this matter, it should be noted the representations made by SASES and other parties objecting to the DCOs that the CIA carried out to date by SPR is deficient, are also made by the two relevant local authorities East Suffolk Council ("ESC") and Suffolk County Council ("SCC"). As Michael Bedford QC on behalf of SCC put it during ISH2, the Applicant's position on CIA is not "realistically tenable".
8. The oral assertions made by NGV's legal representative at ISH2 that connection of other projects is all speculation (a phrase later embellished by Mr Innes on behalf of SPR as "*utterly speculative*") ignores reality. Much of the evidence placed presently before the ExA emanates from NG¹. Self-serving assertion is no substitute for credible evidence and

¹ It should be noted that although NGV, at ISH2, emphasised that NGV, NGET and NGENSO (NG Electricity System Operator Limited) are separate legal entities and that therefore NGV considered it could do little to assist ExA further at ISH2 (and left the Hearing before the Site Selection topic was heard), all three organisations are part of the NG Group and the ultimate holding company is National Grid plc.

none that contradicts the published evidence available has been provided to ExA. If NG wishes to prove that any of these projects is speculative or excessively remote (not “reasonably foreseeable”), then it is now incumbent upon it to demonstrate that this is so.

9. SASES’ case is that six other projects should have been assessed. It is acknowledged that there are varying degrees of certainty in relation to these projects, but there is sufficient information to know that they are all likely to come forward over the period to 2030 - the period over which (subject to when EA1N and EA2 might actually commence) the SPR projects, if consented, would be being built. There is sufficient detail to undertake a meaningful assessment and certainly each project is “reasonably foreseeable”.

10. Four of these projects are promoted by members of the NG group (for which SPR is promoting the NG NSIP) and the connection hub would directly enable them.

10.1. The Nautilus Interconnector (1.4MW) promoted by NGV has a proposed landfall between Thorpeness and Sizewell. NGET has provided a connection agreement to use a new substation (“SS”) at Leiston, *explicitly identified* (in the NG Nautilus Briefing Pack July 2019) as the same SS that EA1N and EA2 will connect to – the connection hub for which development consent is sought (see also e.g. the NG Nautilus FAQs document (p5) dated May 2020). The Nautilus Interconnector was the subject of a direction under s.35 of the Planning Act in April 2019 and is shown on the PINs website as having a likely submission date of Q2 2022.

10.2. The EuroLink Connector (1.4MW) – NG’s Interconnector Register identifies the connection site for the project at Leiston and NGESO has identified the Connector has having the same landfall and grid connection parameters as Nautilus. The SoCG with NGV [REP1-062] at para 13 states:

“The [NG SS] (for which the Applicants are seeking DCO consent) has been identified by the NG ESO as the potential future point of connection to the national electricity grid for Nautilus and EuroLink, in accordance with their agreements with NGESO”.

See also e.g. the NG Nautilus FAQs document (p5) dated May 2020.

10.3. Each interconnector project would require significant new infrastructure (in the form of converter stations at, or in the vicinity of, Friston) to connect the high voltage cables to the NG connection hub. NGV's Q&A document on the Nautilus project webpage (p5) confirms the site area required for these extensions would be c1.3ha. Further, that document states (p9) that a typical footprint for a converter station covers c5ha, with a maximum height of 24m. It is also the case that *each* would require land for landscaping etc (see SASES WRs on Land Use [REP1-359]).

11. At ISH2, SPR sought to deflect scrutiny by stating that Agenda Item 2(d) was directed at NGET and NGESO. Whilst it is a matter of considerable frustration to SASES (and others) that NGET and NGESO have refused to engage in any meaningful way in the Examination, that does not absolve SPR from its responsibilities as promoter of these DCOs (including the NG NSIP). Moreover, it is evident that SPR is in communication with the various NG entities, yet at ISH2, SPR had very little to say about the justification for NG's approach.

12. SPR has been aware of these projects for a considerable time. Indeed SPR acknowledged in early 2018 (see para 13 of SASES CIA WRs [REP1-354]) that it had made commitments not to sterilise NGV's ability to develop their projects. Further, NGV wrote to PINs in March 2020 accepting that there would be a need to "future proof" the SS for future development [AS-018], that the Nautilus and EuroLink projects *would result* in the NG SS needing to be extended and that provision for land required to extend the NG SS has been provided as part of SPR's proposals (and see NG's Q&A document). In addition SPR as part of the documentation provided for the Phase 3.5 consultation produced a note dated 28 June 2018² prepared by National Grid setting out its assessment of connection options. In paragraph 5.4 of this note it is stated that "*A new National Grid 400kV substation will therefore be required somewhere in the Leiston area, beyond the Sizewell site, to connect the two proposed windfarms **and the two proposed interconnectors***" [emphasis added]. In paragraph 5.5 it is stated that "*National Grid is proposing a single new 400kV substation which, subject to consent being granted, **would connect all of these new sources of***

²https://www.scottishpowerrenewables.com/userfiles/file/National_Grid_COIN_Process_Connection_Assessment_Note.pdf

generation to the NETS. The windfarms and interconnectors would each have buried cables connecting the individual developments into that new 400 kV substation.”[emphasis added].

13. SASES’ understanding³ (not contradicted at ISH2) is that the design parameters for the NG SS are standard size requirements to connect the EA1N and EA2 projects. That standard approach should inform a CIA as to how the NG infrastructure would need to be expanded to provide a connection point for the other projects. Indeed, it is presumably this standard approach that enabled NGV to state that each connection point at Friston for its interconnector projects would require c1.3ha (see above).

14. The two other NG projects are SCD 1 & 2. NGET propose two domestic interconnectors between Kent and a landfall around Sizewell. SCD1 is proposed to be operational by 2028. SCD2 apparently has been put on hold at present. A similar quantum of land would be required to connect each of these interconnectors as described above for Nautilus and EuroLink).

15. Two other offshore windfarms may also utilise the NG connection:

15.1. North Falls (Greater Gabbard Extension) 504MW (promoted by RWE and SSE).

An agreement for a lease has been signed with the Crown Estate and an application for development consent is expected in 2023. The project is on the PINs website and there is a note of a meeting with PINs as recently as 6 November 2020. The meeting note inter alia reveals:

“NFOWF aims to sign a connection agreement with NG in 2021. The final stages of the feasibility consenting activity is anticipated to commence in January 2021.”

“Future milestones include:

³ In a letter dated 24 November 2020 from Bryan Cave Leighton Paisner, solicitors to NGET, to Paul Chandler of Save Our Sandlings it is stated on page 2 in relation to the size of the “NGET compound”: *“As above the design parameters for the sub-station have been provided to the promoter by NGET. **These are standard size requirements** for the sub-station required to connect EA1N and the A2 project.”*[emphasis added] This letter is attached at Appendix 1.

- *Mid Q1 2021 - A Scoping Request to PINS and consultation with the relevant local authorities on the Statement of Community Consultation (SOCC).*
- *Consultations in Summer 2021,....”*

*“Key consenting activities **to April 2021** [emphasis added]:*

- *.....stakeholder engagement with Councils;.....*
- ***Oct 2020 - cable route/landfall/substation selection activity to start.***
[emphasis added]
- *Q1 2021 - final EIA Scoping Report submitted to the Inspectorate.”*

“The Applicant explained some of the current issues affecting the project:

- ***In combination effects and the large number of NSIPs in the area including other OWFs and grid reinforcements.”*** [emphasis added]

15.2. Five Estuaries (Gallop Extension) 300MW OWF (promoted by RWE). An agreement for a lease has been signed with the Crown Estate. A grid connection offer at Leiston/Friston has been made by NGEN (the terms of the offer are not known) as listed on NG’s Transmission Entry Capacity Register and the project is shown on the PINs website as having a likely submission date of Q1 2024.

15.3. The agreements for lease show that there is a strong likelihood of these projects progressing. As noted, Five Estuaries has a grid connection offer at Leiston/Friston and in relation to North Falls its onshore elements are clearly planned to be in the same area, given the discussions with PINs as reflected in the meeting note referred to above.

15.4. It is a reasonable assumption (see above) that each of these OWFs will require a similar amount of land to the interconnectors (c1.3ha) to connect to the NG SS, and that each will require land for converter/SSs which would be at, or in the vicinity of, Friston (see the SASES Land Use WRs [REP1-359] at para 35).

15.5. To support the assertion that SASES and others are engaged in speculation, it was claimed at ISH2 that the power ratings required for the OWFs is unknown (and too uncertain for CIA). This is incorrect. On 4 October 2018 the Crown Estate

announced⁴ that it intended to grant rights to extend the Greater Gabbard and Galloper offshore windfarms, such extensions to be up to 504 MW and up to 353 MW respectively. On 28 September 2020 the Crown Estate announced⁵ that it had entered into Agreements for Lease for six extension projects including Greater Gabbard (extension known as North Falls) and Galloper (extension known as Five Estuaries). It is stated that the projects “*together have the potential to deliver 2.8 GW of new capacity*”. Such an aggregation of capacity would not have been possible unless capacity had been allocated to each of the six extensions including North Falls and Five Estuaries and no doubt a figure is included in the relevant Agreement for Lease which could operate as a working assumption for CIA purposes.

16. It is also relevant to note that there is increasing pressure for greater coordination of such infrastructure and to reduce its substantial environmental impacts. The very existence of the BEIS Review is an indication of the serious problems that exist in relation to the environmental and local impact of onshore infrastructure provision and coordination. That pressure itself indicates that it is likely future connections will be at Friston, if these DCOs are consented; to make use of existing facilities at a location where land is potentially available within the Order limits to expand NG’s infrastructure (particularly if the smaller footprint of a GIS NG SS is pursued).
17. In addition, a proper CIA should consider the construction and operational impact of the cable routes that would be required (see the SASES Land Use WR REP1-359), including the effects on the SSSI, AoNB and construction disruption etc). Whilst SPR takes the position that such routes are as yet unknown, given the clear evidence above as to the cable route promoted for the two SPR DCOs, and the likely landfall and destination of the cables (at Friston) for these further projects, there is sufficient information for assessment within properly defined parameters.

⁴ <https://www.thecrownestate.co.uk/en-gb/media-and-insights/seabed-and-coastal-notices/archived-notices/#aug>

⁵ <https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/seabed-rights-awarded-for-offshore-wind-extension-projects/>

18. SPR's approach has been to avoid CIA of these projects on the basis of what it says is the amount of information in the public domain. As demonstrated in the SASSES WRs, at ISH2, and above, that claim does not withstand any scrutiny.
19. The projects are readily understandable in terms of the nature of the works required; they are additional grid connections requiring infrastructure that can be seen elsewhere. Further there is in fact considerable information in the public domain, including likely connection dates, and there will clearly be overlap with the DCO projects (if they are consented). In any event, relevant information that is not in the public domain is held by NG which has a *direct interest* in these DCOs because development consent is sought on its behalf for the NG connection hub and (as set out above) four of these projects are promoted by members of the NG group.
20. The NG SS is plainly regarded by NG as a strategic grid connection location for future infrastructure projects and it is vitally important that the impacts of these projects are properly understood. There is sufficient information available, particularly where there are existing grid connection offers, or a clear indication (in the case of SCD 1 & 2), as to where grid connection will be made. Further, given the interrelationship and timings of these projects it is highly likely there has been detailed (internal) communication between NG and SPR on this topic. The proper examination of cumulative effects by the ExA cannot be governed or limited by what NG or SPR has *chosen* to put into the public domain.
21. The ExA has a legal duty to examine cumulative impact and, for the reasons set out at ISH2 and above, there is sufficient information to require further and better CIA.
22. Further, this is not a case where it can reasonably be said that the effects of the project may be experienced together with some unrelated project. The proposed development would directly facilitate and accommodate the further projects described above. Therefore, there would be greater uncertainty as to the duration of the construction period(s) and significant environmental impacts, including through the need for significant additional infrastructure at Friston (and multiple cable routes through the AoNB etc).

23. In order for the ExA to report on the cumulative adverse effects, as required by the EIA Regulations and NPS EN-1, these projects require proper assessment, including the need for more land at the site to accommodate additional grid connection infrastructure, the effects of a larger surfaced area on flood risk, landscape, visual, heritage assets etc and the extended and greater construction disruption, in terms of matters such as noise and amenity and disruption to the PRoW network.
24. Additionally, the very broad parameters of the proposed development may provide capacity for further development in relation to these or other projects. By Article 33 of the draft DCO, the land comprised in the NG connection hub works will become 'operational land' for the purposes of NG's undertaking, so NG will have considerable scope to carry out further works, under Permitted Development rights to accommodate other connectors. Therefore, it is all the more important that there is a proper assessment of cumulative effects at this stage.
25. The fact that the other projects will themselves require development consent (and EIA) is no answer. Since the object of both the Directive and the Regulations is to ensure that any cumulative environmental effects are considered *before any decision is taken* as to whether development consent should be granted, an assurance that they will be assessed at a later stage, when a decision is taken as to whether further development should be permitted, does not justify electing not to carry out a proper CIA now.
26. As matters stand, and as became very apparent at ISH2, unfortunately, there has been a failure by NG to engage with the ExA in an open, fair and transparent way and that means that the applications, and in particular the CIA carried out to date, are demonstrably incomplete and deficient.

Submissions to be made by SPR and NG at Deadline 3

27. As made clear by the ExA at ISH2 and in ExA's actions points, NGET and NGESO chose not to attend and take part in the Examination despite ExA's invitation for them to do so (and the repeated requests of SASES and others). NGET and NGESO are now required to

respond to matters relevant to CIA at Deadline 3. SASES reserves its position on any such WRs, however, it is necessary to put down a legal marker about the present state of affairs.

28. For the reasons set out above, the evidence that these projects are reasonably foreseeable is overwhelming. This evidence is found in: (i) documents published by NGV; (ii) documents published by NGET/NGESO in respect of connection offers and network development; (iii) the material on the various promoters' websites; and (iv) material set out on the PINs website.
29. This material was undoubtedly subject to careful review before being placed into the public domain. SASES consider that the ExA should proceed on the basis that it would not have been published unless it was intended to be relied upon as serious indication of future intent. Common sense compels the conclusion that the making public of information of this sort is an act towards the end of the internal decision making process. It is inconceivable that there are no internal planning and commercial documents *of a contemporaneous nature* which set out, in detail, the plans of NG in relation to each project. It is also wholly foreseeable that third parties would in fact rely upon this information once it was published.
30. As a matter of ordinary legal principles this evidence therefore creates a powerful case that each project is reasonably foreseeable and that third parties would rely upon such evidence.
31. There is no contrary evidence. The statements made by Mr Innes for SPR and by NGV at ISH2 that SASES, ESC, SCC and others rely on speculation is not evidence but assertion unsupported by anything that a court of law would, or a public authority tasked with finding facts should, accept as evidence, or having any probative value.
32. It is incumbent upon NG and SPR to come forward with credible and convincing evidence to rebut this position. To be credible, NG should now disclose to the ExA the contemporaneous internal documentation used during the planning of these projects, so

that the true position can be objectively verified. NG and SPR need to provide credible evidence in their submissions which clearly demonstrates that these projects are not reasonably foreseeable.

33. If – as is presently the case – NG declines to cooperate then, SASES submits that the proper course for the ExA to take is to conclude that each of the projects in issue is relevant for the purpose of CIA.

34. As SASES made clear during ISH2 in relation to Site Selection, were the position to be otherwise, any applicant and its associates and future project partners could prevent ExAs from assessing whether a full and fair CIA has been carried out by the expedient of failing to cooperate.

35. As to further submissions at Deadline 3 by SPR, business common sense and the evidence available compels the conclusion that, as the promoter of the NG NSIP, SPR must have good knowledge of the future plans of NG. As promoter of the DCOs, SPR cannot credibly maintain its stance of seeking to say this is a matter for NG. The CIA urgently needs to be revisited and a proper and thorough assessment of reasonably foreseeable projects carried out, without any further obfuscation, so the ExA can make a fully informed determination.

SASES

15th December 2020.

APPENDIX 1

Letter from Brian Cave Leighton Paisner to Save Our Sandlings dated 24 November 2020