



SPR EA1N and EA2 PROJECTS

DEADLINE 8 – FURTHER SUBMISSION IN RESPECT OF THE ELECTRICITY ACT 1989

Interested Party: SASES **PINS Refs:** 20024106 & 20024110

Date: 25 March 2021

Issue: 1

1. In its written submissions at Deadline 3 [REP3-128], SASES further explained the importance and relevance of the statutory duties on the grid operator (National Grid, NG) under the Electricity Act 1989 to questions of site selection, and thus to the examination of these applications. As noted there:
 - a. Section 9 EA 1989 imposes duties on licence holders, including to develop and maintain an efficient, coordinated and economical system of electricity transmission. Unlike the original connection offer at Bramford (see further below), the selection of Friston is neither efficient nor coordinated and therefore fails to comply with NG's obligations under s.9.
 - b. The CION assessment process for EA1N and EA2 is not compliant with NG's obligations under Schedule 9 in respect of environmental matters. Pursuant to Schedule 9(1)(1), in formulating relevant proposals, licence holders, or persons authorised to distribute, supply or participate in the transmission of electricity, shall have regard to the desirability of preserving natural beauty, conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest, and shall do what they reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or projects. NPS EN-5 at para 2.2.6 also refers to these duties, and para 2.2.7 requires that the licence holder explain how these duties have been discharged.

- c. The main objective of the CION assessment is to select the preferred connection option that is the most economic and efficient design connection option for the overall benefit of the Great Britain energy consumer.
 - d. NG has not explained or demonstrated that the proposed Leiston area connection is efficient and economical and coordinated and has not demonstrated compliance with the environmental duties under Schedule 9 EA 1989.
 - e. It follows that the selection of the Leiston area, and the rejection of Bramford as a grid connection location, is unjustified.
2. The real importance of these points is that the Examining Authority is being asked to consider a very limited consideration of alternatives, constrained by the CION process and its identification of the Leiston area for the general location of the grid connection. Those submissions are maintained and the Examining Authority is asked again to consider them.
3. The Applicants offered a response to these submissions at Deadline 6 (although purportedly in response to SASES's D5 submissions). The Applicants contend, principally, that SASES has misunderstood the regulatory framework.
4. In fact, it is the Applicants who have misunderstood the regulatory framework and the in particular the application of the relevant statutory provisions in s 9 EA 1989. SASES's first submission relates to the duty in s 9. The CION process is a process of identification of a grid connection location. It is carried out in discharge of the statutory and licence obligations which are imposed on the grid operator and thus quite clearly subject to the s 9 EA 1989 obligations. These are overarching duties which cannot be excused in the exercise of a particular function, and the Applicants simply fail to address the case which is put on the basis of s 9 and the clear duty to maintain an efficient, coordinated and economical system of electricity transmission.
5. The Applicants' submissions only address, therefore, the scope of the duties in Schedule 9. They contend that the CION process does not involve the formulation of a

proposal, and thus is not itself subject to the specific environmental duties in Schedule 9. This is an artificial distinction, because the CION process is a necessary step towards the formulation of the proposal. As the Applicants accept “*the proposals are only formulated after the completion of the CION process*”. It is obviously unarguable that the duties under Schedule 9 only apply once it has been decided that proposal should be made in a particular location, since that would denude the provisions of their power. The duty applies to all steps in the formulation of the proposal, including the (necessary, and prior) CION process.

6. It is notable that it does not appear that National Grid denies that the Schedule 9 duties apply throughout the CION process.
7. Thus contrary to the Applicants’ submissions, the CION process is bound by the statutory duties in both s 9 and Schedule 9 of the Electricity Act 1989. The upshot is that the legal adequacy of the CION process falls to be assessed against those duties. Contrary to the Applicants’ submissions, the CION process has not been carried out in accordance with these duties for the reasons previously explained.
8. The Applicants contend that, in any event, any breach of these duties does not give rise to a ground for withholding development consent because the duties are not imposed on the Secretary of State, but on NG. However, that misses the point. If the CION process was legally defective, then it would be wholly improper to rely on it to constrain the consideration of alternative locations for the substation. At the very least this is a relevant consideration in assessing the applications under s 104(7) Planning Act 2008, but it has further implications, for example in relation to the compliance with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and in applying specific policies in the NPSs (e.g., considering alternatives under the sequential test for flood risk). If the CION process is unlawful, then it cannot be relied on in the way that it is relied upon by the Applicants, namely to treat as immutable the need to locate a grid connection in the Leiston area.
9. For those reasons, the Applicants’ response does not in fact answer SASES’s complaint.

10. Finally, SASES would further draw attention to the relevance and importance of the recent disclosure of the decision to identify a grid connection location for the Five Estuaries proposed wind farm away from Friston, in Essex. This goes to the heart of the flawed CION process, because (a) it fails to show a coordinated approach and (b) it discloses the existence of another, alternative, location for OFW grid connection which has not been discounted in the process of selecting Friston. This again emphasises the relevance and importance of these matters to the determination of these applications for development consent. The Secretary of State's own review of coordination illustrates the importance of these issues; and the significant unresolved impacts of creating a new connection hub at Friston justifies proper scrutiny through these examination process of the means by which the Applicants, and NG, have brought these proposals to this location.

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Landmark Chambers

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