

Re: SPR EA1N and EA2 projects (Deadline 6)

Dated 22 February 2021

Interested party: Anglia Energy Planning Alliance

PINS references: 20024098 and 20024099

EFFECT ON THE APPLICATIONS OF THE NORFOLK VANGUARD JUDGMENT:

**Provision of further Cumulative Effects Assessments
is not a matter of choice for the Applicants.**

Table of contents:

- 1. Questions relating to Cumulative Effects Assessments**
- 2. Effect of the Norfolk Vanguard judgment**
- 3. Relevant projects for which information is required**
- 4. Principles of public law and procedural fairness**
- 5. Information capable of provision**
- 6. Failure to provide information**
- 7. No restriction on transparency**
- 8. NG's conflict of interest**
- 9. Real or perceived bias in decision making**
- 10. Reconsideration of local authority positions**
- 11. Suspension of consideration until information is provided**
- 12. Conclusion of examination without adequate information**

1. Questions relating to Cumulative Effects Assessments

The ExA's questions ExQ 2.0.13 ^(1,2) and 2.0.14 ^(1,2) dated 12 February 2021 are addressed to the Applicants and to National Grid plc or its constituent businesses ('NG'), to East Suffolk Council ('ESC'), Suffolk County Council ('SCC'), and to Interested Parties. In these questions the ExA draws attention to uncertainty and confusion surrounding the planned energy generation and transmission projects that have been offered, or may be offered, connection to NG's transmission network at or near Friston. If so connected, they will be co-located with the Applicants' proposed Friston developments.

This uncertainty and confusion has been caused by the failure of the Applicants and NG to supply or obtain adequate information about these projects, in order to inform appropriate Cumulative Effects Assessments ('CEAs') including each of them.

Information on these relevant future developments at or near Friston has previously been requested by the ExA from the Applicants and from NG. It has either not been provided, or has not been sufficient.

2. Effect of the Norfolk Vanguard judgment

The Applicants argue that these projects should not be included within its environmental assessments due to their early stage of development. They contend that development consent for their EA1N and EA2 projects can be granted while assessments of the cumulative impact of other potentially co-located projects can either be deferred, or are unnecessary for consent.

In the light of the recent High Court judgment in *Pearce v Secretary of State for Business, Energy and Industrial Strategy and Norfolk Vanguard Ltd as interested party* ('the Norfolk Vanguard judgment') it is essential that the Applicants reconsider their position, as already requested by the ExA.

The Norfolk Vanguard judgment makes clear that to comply with the requirements of NPS EN-1 and the EIA Directive, the Secretary of State must - before any decision on consent is made - examine *all other* relevant developments whose environmental or other effects might combine or interact with an applicant's proposed development. He must consider how the accumulation of and interrelationship between such effects might affect the environment, economy or community as a whole. The judgment emphasises that projects that are to be, or are reasonably likely to be, co-located must as a matter of law attract this detailed level of scrutiny.

So it is clear that CEAs including projects that may be located at or near Friston cannot be deferred, or requests for their preparation ignored.

3. Relevant projects for which information is required

At least six projects under development by NG or others that may connect to NG's network at or near the Applicants' proposed Friston development represent, individually and collectively, potentially immense adverse cumulative effects on the environment, economy and community as a whole.

They are:

- a. The Eurolink Interconnector (NG)**
- b. The Nautilus Interconnector (NG)**
- c. The North Falls windfarm/Greater Gabbard extension (SSE/RWE)**

- d. **The Five Estuaries windfarm/Galloper extension (RWE & partners)**
- e. **The SCD1 Interconnector (NG)**
- f. **The SCD2 Interconnector (NG)**

4. Principles of public law and procedural fairness

The Norfolk Vanguard judgment has brought into sharp focus the importance in DCO applications of applicants' strict compliance with EIA legislation, and with adherence to principles of public law and procedural fairness in the evaluation of cumulative impacts. This applies especially when projects are to be co-located. In the case of the present applications, the projects listed at **3** above may all be co-located with the Applicants' proposed Friston developments, either at Friston or nearby.

It is therefore a matter of fairness to the Applicants, to NG and to the other promoters of these developments that they are aware of the risks to their prospects of development consent, owing to the cumulative impact of their potential location at or near the Applicants' proposed developments, and in likely proximity to each other.

It is essential that adequate information about them must be submitted for the ExA's judgment, and also made public in order that further representations may be made by all interested parties in the light of new knowledge.

5. Information capable of provision

Although the Applicants bear sole responsibility for providing CEAs, the principal source of information on the co-related developments is NG. It is acknowledged that comprehensively detailed information about the projects has not yet been finalised. Nevertheless, information from a variety of NG sources can be made available to the Applicants and/or the ExA, including data from feasibility studies, network connection analyses, intra-group meeting minutes, interactions with project promoters, and a variety of other existing datasets.

A suggested schedule of essential information would include but not be limited to:

4.1 Full details and maps of every location currently under consideration for connections, constructions and cable routes.

4.2 A list and maps of locations not yet under consideration but which are available or could be made available for connections on the Sizewell 400 kV network.

4.3 A list of alternative locations outside the Friston/Leiston area that are included in current feasibility studies.

4.4 Details of typical construction, cabling and other physical infrastructure likely to be required for each of the projects.

4.5 Full details of criteria to be used in making final decisions on the proposed location of each project.

This data should be made available to the Applicants, to the ExA, and also made public, to enable assessment of the minimum and maximum likely environmental impact of these potentially co-located developments. The ExA may wish to consider the eventuality that every project capable of being connected at Friston will in practice be connected there, and the scale of cumulative effects this would create.

The same data should be the baseline from which the Applicants can begin to create properly extensive CEAs including each of the six projects, and also any other potentially co-located development of which they are aware.

6. Failure to provide information

The Applicants and NG have to date declined to provide sufficient information about these projects to enable an adequate and comprehensive assessment of their potential cumulative effects.

To justify their refusal they have variously cited commercial confidentiality, or the current state of project planning, or the fact that final decisions have not been made, or that information is not in the public domain. NG have said that certain questions should be re-addressed to different businesses within NG, not always with informative result. The Applicants and NG have drawn attention to their supposed compliance with guidance in PINS Advice Note 17. But none of these is a valid reason for failure to provide the information now confirmed as essential by the Norfolk Vanguard judgment.

7. No restriction on transparency

Advice Note 17 has no statutory status. It is a helpful suggested course of staged procedure for applicants, and a recommended hierarchy of information detail to be supplied for examination. It does not absolve applicants or related parties from providing information that they hold or are able to obtain, including information they may wish to supply with commercially sensitive material redacted. It does not state that final decisions must have been made on the projects to be examined. It does not require information provided to be already in the public domain. It states clearly that projects and plans that may affect a proposed development and are “reasonably foreseeable” must all be included in an applicant's CEAs.

In short, an applicant or related party that wishes to be co-operative and transparent with an Examining Authority, and thereby with the Secretary of State, is not restricted by Advice Note 17 from providing full information to assist the obligatory examination of potential cumulative impacts of its own or others' projects.

8. NG's conflict of interest

To date, NG has argued that the projects are not sufficiently defined to allow for reasonable assessment; that feasibility studies are continuing; and that the projects are not guaranteed to connect at Friston or to involve additional development there.

For two reasons, this is disingenuous: first, because the National Grid infrastructure elements of the applications are designed to facilitate additional projects at Friston beyond EA1N and EA2 connections; and secondly because NG has confirmed that the Nautilus and Eurolink projects are destined to be connected 'in the Leiston area'. If this does not mean at Friston (which in likelihood it does) then any other Leiston area location must equally carry the prospect of substantial cumulative impact on the Applicant's Friston proposals.

NG's response in this respect reflects the conflict of interest that continues to exist between its role as an ostensibly neutral planner of the electricity network, and its position as a major private commercial energy developer. This conflict of interest has been evident in the selection of Friston over other available alternatives, in which NG was the prime mover alongside the Applicants, and is apparent in NG's approach to the present examinations - whose hearings have not been attended by some pertinent NG businesses despite invitation by the ExA.

9. Real or perceived biases in decision making

The ExA will have noted Ofgem's conclusion, in its January 2021 report REVIEW OF GB ENERGY SYSTEM OPERATION, that NG should have its network planning powers stripped away completely. This is because, in Ofgem's words, its current ownership and governance create conflicts that *“may result in real or perceived biases in decision-making against outcomes that would negatively impact the significant value of the existing assets (i.e. interconnector and transmission network assets) or future assets in which National Grid plc may have a commercial interest”*.

Bias may not account for NG's failure to provide adequate information. However, it is evident that full disclosure of the potential cumulative impacts of NG's forthcoming commercial projects affecting the Leiston/Friston area could result in refusal of development consent,

which would negatively impact the value of its existing and future assets.

This fact, and the interdependent nature of NG's electricity businesses and system operations, may mean that release of the essential information continues to face barriers within NG. If permission from the Board of National Grid Group plc is required to unlock such barriers it should be given without delay, in accordance with the Board's published commitment to transparency.

10. Reconsideration of local authority positions

Once submitted, the Applicants' revised CEAs will require particular further attention from SCC and from ESC. Their current official positions with regard to the applications cannot be regarded as valid when such a substantial amount of new information remains to be provided.

ESC was far-sighted in January 2020 when it noted its concern that: “the National Grid substation proposed within the SPR (Scottish Power) applications is being seen by National Grid as a strategic connection point for future projects *without the potential impacts being cumulatively assessed* and without any of this future development being considered within the existing masterplan for the site”.

ESC has since moved its stance towards neutrality, i.e. having no objection, despite still expressing 'significant concerns' about aspects of the applications. It has been persuaded to this conclusion by the Applicants' mitigation proposals, and by the attractions of an S111 agreement with the Applicants whose draft is to be provided to the ExA.

The mitigation proposals made to date, which are regarded by many other Interested Parties as already wholly inadequate, and the unseen draft S111 agreement, must apply only to the SPR substations and their associated NG infrastructure. So both ESC and SCC will be obliged to reconsider in detail their response to the applications once the Applicants' revised CEAs include all other relevant developments.

11. Suspension of consideration until information is provided

If an Examining Authority considers an applicant's CEA to be inadequate, it is permitted under the terms of the EIA Regulations to seek further information from an applicant, and to suspend consideration of the application until that information is provided and publicised.

Suspension appears to be an appropriate course of action for the ExA in the current examinations, giving time for the Applicants and other parties to prepare and submit the essential information required, and for all Interested Parties to respond with relevant representations.

12. Conclusion of examination without adequate information

Alternatively, the ExA could proceed to the conclusion of the examinations without receiving the essential further information from the Applicants in the form of the enhanced CEAs required. This would render the ExA incapable of providing the Secretary of State with sufficient data to ensure fulfilment of his statutory duty in the assessment of cumulative effects, which has been confirmed with renewed emphasis by the Norfolk Vanguard judgment. Therefore the applications would inevitably be refused consent, either by the Secretary of State or, should he grant consent, by consequent judicial review.