

# SPR EA1N and EA2 PROJECTS



## DEADLINE 6 – POST HEARING SUBMISSIONS (ISH9) DCO

Interested Party: SASES

IP Reference Nos. 20024106 and 20024110

Date: 24 February 2020

Issue: 1

### Introduction

These submissions are made following Issue Specific Hearing 9 which took place on Friday 19 February 2021.

### Preliminary issue

1. SASES noted that it would not repeat previous issues raised which had not been addressed by the Applicants' recent updates. Those issues remained live and in some cases unaddressed. Whilst the Applicants said that their responses were as given in response to SASES's Deadline 1 submissions, it was noted that detailed submissions had been made on behalf of SASES in the course of the ISHs and in written submissions at Deadline 5. Accordingly, a response on some of those issues remained outstanding from the Applicants

### Agenda item 2: Applicants' latest position

2. SASES noted the following issues in respect of matters where the Applicants intend to propose further changes to the dDCO:
  - a. It was noted that the Applicants intend to consider provisions preventing the construction of the National Grid NSIP without constructing either generating station. However this exposes a broader ongoing issue about the control of the relationship between the three NSIPs;
  - b. It was noted that an onshore preparation works management plan is proposed to be the subject of a requirement. It will be important for SASES and others to review an outline of that management plan;
  - c. It was noted that requirement 12 is to be revisited. SASES notes that requirement 12 does not bring the cable sealing end compounds (CSEC) within the substation design principles and this should form part of the revisiting of this requirement.
3. SASES noted the following issues arising from (or related to) the latest iteration of the dDCO:
  - a. The definition of "stage" should extend to onshore preparation works. At present the position on this is unclear because under article 11, stages only arise after commencement. Issues arise e.g. in respect of requirement 18;

- b. The definition of “cable sealing end compound” raises an issue about how the CSEC will be controlled to ensure that they are constructed only for the purposes of EA1N and EA2, and not for other projects;
- c. Article 4 and the power to “maintain” still raises issues about the extent to which the undertakers are *required* to maintain the authorised development including the mitigation measures which are required as part of it. Article 4 authorises maintenance but does not require it; and the obligations to maintain e.g. landscaping and other mitigations measures are time limited and do not extend to the whole authorised development. There should be a general obligation to maintain. Further, certainty is required as to which party is subject to a maintenance duty given multiple undertakers and where (for example) drainage and landscape provision will be common to infrastructure of multiple undertakers;
- d. Article 5 and requirement 38 continue to raise concerns about the relationship between the three NSIPs. Requirement 38 should be reconsidered and made of general application e.g. to other parts of the development which are common to EA1N and EA2 and/or the National Grid NSIP. Furthermore how such parts of the development would be constructed under a DCO other than the EA1N and EA2 DCOs and the impact of that on the EA1N and EA2 DCOs needs to be thought through and addressed – see SASES Responses to the ExAs’ Commentaries on the dDCOs in respect of Schedule 1 Part 1 Paragraphs 1 & 2 and R38;
- e. Article 7 remains a significant concern. The Applicants’ position is not accepted. Further, the Applicants have failed to address the point that, unlike other NSIPs and other major projects, there is no commitment to obtain s 61 consents for the construction of the projects;
- f. Although the Applicants indicated that permitted development rights may be addressed, the extent of operational land created by the dDCOs remains a significant concern. SASES endorses the ExA’s request for a clearer indication of the extent of operational land, but further requests that dDCOs are drafted to ensure that the operational land is constrained to those parts of the land within the order limits that are in fact used for the authorised development in the final design;
- g. As noted above, requirement 12 is the subject of ongoing review by the Applicants. However, SASES notes a concern about the use of finished ground levels for the identification of height parameters since ground levels may be altered; a limitation in AOD is required for each part of these structures. In respect of the CSEC, clarification is required in respect of the height of the compounds and the height of the gantries associated with them;
- h. Requirement 17 needs to be considered in the context of onshore preparation works, since controls over temporary fencing will be required for that stage of the development;

- i. Requirements 23 and 24 on construction hours still represent a major concern for SASES and it is very disappointing that the Applicants continue to pursue long working hours in excess of those used on other major projects (e.g. HS2);
  - j. Requirement 25 in respect of lighting needs to ensure that lighting is also addressed as part of scheme design;
  - k. Requirements 26 and 27 on noise impacts are still unacceptable in SASES's view. Proposed alternative requirements have been advanced but not responded to by the Applicants. This issue will be addressed further in the noise ISH.
4. SASES's overall comment is that there are significant areas of ongoing disagreement, and the Applicants have failed to engage with SASES (updated) comments since its original submissions at Deadline 1.

#### **Agenda item 4: the changing policy environment**

5. The comments of the Rt Hon Therese Coffey MP were gratefully noted and endorsed. In SASES's submissions there are three possible approaches to address the lack of coordination, and the risk of consenting these projects when the policy environment is highly likely to change to require greater coordination:
- a. To refuse development consent in light of the multiple adverse impacts;
  - b. To issue a split decision;
  - c. To impose an obligation to confirm that a better coordinated approach cannot be achieved after consent but prior to the projects proceeding.
6. The possibility of a split decision to consent only the offshore works has been addressed at Deadline 1 by SASES, and is endorsed by SEAS and others. As to an obligation to ensure coordination, SASES suggest (without prejudice to its primary case) the following additional "Article 3A" as a possible approach:

#### **Article 3A: Grid connection coordination**

**3A** (1) *Article 3(1) is subject to the provisions of this article.*

(2) *The undertaker may not commence the development unless he obtains within six months prior to commencement a grid connection coordination certificate.*

(3) *For the purposes paragraph (2) a grid connection coordination certificate is a certificate granted by the Secretary of State to certify that there is no more efficient or better coordinated means of establishing a connection between Work No. 1 and electricity transmission network.*

(4) *An application for a grid connection coordination certificate under this provision shall:*

*(a) be made in writing to the Secretary of State*

*(b) be made after the strike price for the electricity to be generated by the authorised development has been determined under the Contracts for Difference regime (or such other regime as exists at the relevant time)*

*(c) be accompanied by an assessment of the opportunities to make use of all other reasonable means of connecting to the electricity transmission network available or likely to be available within five years of the date of the application*

*(d) demonstrate that there are no more efficient or better coordinate means of establishing such a connection.*

*(5) The Secretary of State shall determine the application for a grid connection coordination certificate based upon the facts and circumstances including all relevant Government policy at the time of his determination under this article.*

7. This approach would ensure that the projects did not proceed without the question of coordination being properly tested. The Applicants' suggestion that such an approach would be *unlawful* is baseless. The DCO can control the project as the Secretary of State sees fit, including subjecting it to further authorisations where necessary and appropriate.
8. The Applicants' approach in respect of a "pathfinder" project were noted. However, the Applicants have failed to respond to SASES's detailed submissions on this point in REP5-107. So far as the Applicants contended that s 104 Planning Act 2008 required a determination in accordance with the relevant NPSs, and the NPSs support the prospect of a grid connection being authorised along with a generating station, SASES observed that s 104(7) also requires consideration of the adverse impacts of the proposals. Moreover, it is plain that the NPSs do not require a grid connection to be authorised simultaneously and indeed that was the recent approach at Wylfa Newydd where a separate application was made by National Grid for a DCO for a new grid connection.

**Agenda item 9/10**

9. It was noted that Deadline 7 requires the submission of a final dDCO for each project. However, that deadline is before the final series of ISHs, including on the dDCO, and accordingly it was suggested that the timetable should be revised to reflect the fact that the dDCO would require further consideration and revision in light of those hearings.