

WRITTEN REPRESENTATION

GRID CONNECTION POINT

Deadline 4: 16th MAY 2023

Norfolk Parishes Movement for an OTN

Madam Chair, on behalf of the Norfolk Parishes Movement for an Offshore Transmission Network (“The Norfolk Parishes Movement”) we now provide further information relevant to the current examination of the SEP and DEP proposals. In addition, we comment on the claims made by the Applicant with regard to selection of the grid connection point. Specifically, we refer the ExA to the Second written questions, Q2.2.2.1, which National Grid (NG) ESO has responded to in document REP3-137 (EN010109-001537) and the Applicant responded to in document REP3-101 (EN010109-001418-16.2). Finally, we wish to respectfully suggest a question to National Grid ESO in view of the Applicant’s response to the OFH2, ID 15, REP3-114.

1. Further Information

We refer to the submission to Deadline 3 by The Norfolk Parishes Movement (REP3-151) which included the outcome of our request to National Grid under the Environmental Information Regulations 2004. Essentially no information on alternative grid connection points has been provided on the grounds that it is commercially sensitive and confidential. National Grid ESO and National Grid ET are apparently cooperating with the Applicant in presenting their response on this matter in a manner which does not serve the public interest and, we suggest, which hampers assessment of the planning balance.

We present to you now a formal opinion by Charles Banner, K.C. which has been prepared on behalf of East Anglia Pylons Limited in relation to the East Anglia GREEN project proposed by NG ESO. We consider this Opinion is directly relevant to the current examination in respect of SEP and DEP for the following reasons:

- The opinion comments upon the legality of claiming commercial confidentiality with respect to National Grid documents, such as CION and any subsequent contractual agreement, and supports our submission in REP3-151
- With reference to the ExA Second Written Question WQ2 2.2.1a, the opinion specifically points out the legal shortcomings of the statement by Minister Graham Stuart in his letter of 16th January 2023
- We have pointed out previously our view that the National Grid East Anglia GREEN project is linked to the SEP and DEP application and should be considered an associated development. Evidence has been provided to this examination that demonstrates the lack of capacity in the electricity transmission network leading out of Norfolk, especially in the case that Norfolk Vanguard, Boreas and Hornsea Three are constructed as planned – see REP1-176.

Please see Opinion from Charles Banner, K.C. in respect of East Anglia GREEN.

IN THE MATTER OF:
EAST ANGLIA GREEN ENERGY ENABLEMENT PROJECT
("THE PROJECT")

OPINION

1. I am instructed by Cerda Planning to provide further advice to East Anglia Pylons Ltd ("EAPL") in relation to the above named Project, which is being promoted by National Grid Electricity Transmission ("NG"). This follows my earlier opinion regarding public consultation dated 12th June 2022.
2. An alternative to the Project which EAPL advocate is a co-ordinated offshore grid (co-ordinated between the various off shore windfarms which are said by NG to generate the need for the Project), which would avoid the need for the proposed 180km of onshore pylons and overhead lines.
3. In my earlier opinion, I drew attention to deficiencies in NG ESO's 2022 public consultation on the Project, in particular in relation to its handling of alternatives to the Project.
4. In a letter dated 16th January 2023, Graham Stuart MP, the Minister for Energy Security and Net Zero (then a Minister of State at the predecessor department BEIS), wrote (emphasis added):

"Many people have written to their MP asking for a review to be launched regarding the planned electricity transmission infrastructure in East Anglia. **In most cases, offshore wind developers in the region already have connection contracts in place with National Grid Electricity System Operator (ESO) and the Government will not, and cannot, force changes to these contracts; any attempt to mandate changes to connection contracts at this stage would be open to legal challenge by developers. Therefore, I do not think a review is the best approach.** However, I recognise the concerns, and agree that we need to find ways of improving the situation"

5. In a similar vein, the Secretary of State for Energy and Net Zero, Rt Hon Grant Shapps MP, wrote in a further letter dated 18th April 2023 (emphasis added):

“The UK Government launched the Offshore Transmission Network Review (OTNR) in 2020 to improve the delivery of transmission connections for offshore wind, ensuring they are delivered in a more coordinated way. Considering increasingly challenging ambitions for 50GW of offshore wind by 2030, the current approach of delivering individual links for each wind farm is no longer fit for purpose and will not deliver the best outcomes for consumers, the environment, or local communities. A key challenge of the Review to date has been that, due to long lead times, many offshore wind projects connecting ahead of 2030, such as several of those in East Anglia, were too advanced to be included in the scope of the HND as they already had firm contractual connection offers. There is no clear legal route to mandate changes to these projects and attempting to do so risks major commercial impacts and delays, which could put at risk the delivery of the Government’s ambition for offshore wind and decarbonisation of the power sector.

Despite the challenges in making changes to projects at these later stages of development, the Government recognises the impact on the region of hosting significant volumes of offshore wind and interconnectors. The Government is encouraging developers to voluntarily opt in to developing more coordinated connections called ‘Pathfinder Projects’. To deliver this, we have launched a programme of activity working with offshore wind developers, interconnectors, and the onshore transmission owner, facilitated by the trade body RenewableUK, to explore and identify opportunities for more regional coordination with a specific focus on East Anglia.

The OTNR has developed enabling regulatory and policy changes that these projects can use to deliver near-term benefits, for example reducing environmental and community impacts or infrastructure costs. We announced the first four of these Pathfinder Projects alongside the HND publication, two of which are in East Anglia. In addition to this, we published an update on behalf of five other projects in East Anglia who committed to exploring coordinated network designs and identifying future Pathfinder projects, reducing, but not avoiding, the need for additional infrastructure.”¹

¹ Note HND stands for Holistic Network Design.

6. On my advice, EAPL made applications under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 seeking, amongst other things, information about the contracts on which these letters rely.
7. NG's response dated 25th April 2023 included the following (the underlined text quotes to the questions made in the FOI/EIR request and the text that follows each question is NG's response):

"3.1.1. provide a copy of the contract and / or connection agreement and name the contractual parties

As above, the specific Connection Agreements are confidential documents between the contracted parties. The details of the developers are provided in the response to questions 1 and 2.2.1 above and can also be found on the publicly available online registers via links provided above.

3.1.2. please confirm whether the contract is dependent upon planning permission being achieved for East Anglia Green

Where transmission works are required to provide a connection (and whilst we cannot talk about specific contracts) it is standard that the obligation to provide the connection is subject to getting planning permission for those transmission works. The Transmission Owner, in this case NGET, has to seek planning permission for the Transmission works which it is responsible for building or installing i.e. East Anglia Green and Sealink.

3.1.3. please detail the arrangements in the event that planning approval is not achieved

In the event planning approval is not achieved (recognising that there are planning appeals processes or this scenario), the nature and scope of the Transmission Works to provide the connection would need to be reviewed and as you would expect, the contract makes provision for scenarios to be resolved appropriately."

8. I am not asked to advise on whether NG's refusal to provide even redacted versions of the contracts is in accordance with its legal obligations. I note, however, that *prime facie* there appears to be a serious question to be explored in this respect given the extent of reliance placed upon them for discounting alternatives to a massive infrastructure project which will have widespread impacts on individuals and the environment. Under the

Environmental Information Regulations 2004, commercial confidentiality is a qualified, not absolute, exception to the duty to disclose and it only applies where “*in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information*”: Regulation 12(1)(b).

9. Although the precise terms have not been revealed, what is clear from NG’s answers to questions 3.1.2 and 3.1.3 is that, in the event that a development consent order (“DCO”) is not granted for the Project, the contractual obligation to connect the off shore windfarms in question to it falls away.
10. Accordingly, in the event that the decision-making Minister on an application by NG ESO were to refuse to grant the DCO on the basis that the balance of benefits and impacts of one or more alternatives was demonstrably superior, the mischief referred to in the letters quoted above would not, as a matter of law, arise: there would be no question of Government having to “mandate” changes to the contracts; instead, by virtue of the terms of the contracts themselves, the connection obligations under them would cease.
11. It follows that the reasoning in parts of the passages that I have highlighted in bold text above is irrational in the *Wednesbury* sense and therefore contrary to public law.² If and when tested in Court in response to a claim for judicial or statutory review of a public law decision (whether the grant of a DCO or some other decision pursuant to public functions), I would not expect it to withstand judicial scrutiny.

² *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 K.B. 223

12. Based upon the description provided by NG's FOI/EIR response, the contracts cannot lawfully be relied upon to discount alternatives to the Project on the basis that this would involve mandating changes to the connection contracts.
13. I have nothing to add as currently instructed but would be happy to answer any further questions arising out of the advice above, if and when required.



CHARLES BANNER K.C.

**Keating Chambers
15 Essex Street
London WC2R 3AA**

10th May 2023

2. Comments on Applicants response to WQ2.2.2.1

2.1 In response to WQ2.2.2.1d, the Applicant argues that no alternative grid connection points were offered to it as an outcome of the CION process. The Applicant then seeks to use this to explain that, as it was not offered any alternatives, it does not have to study any alternatives and, by further extension that, because it has not studied any alternatives, it is not obliged to report on any alternatives to the ExA. The Connection and Infrastructure Options Note (CION) Process, Guidance Note v4.0 (NGESO, November 2018) (the CION guidance) makes clear as follows:

“Section 2.1 What is the purpose of the CION?

*The CION records the output of the work between the Developers, TOs and NGESO to identify **the overall economic, efficient and coordinated connection option.**” (our emphasis in bold).*

Thus, it is clear that the CION process is inherently designed to identify a single option. The argument from the Applicant that the requirements in the NPS EN-1 and the EIA regulations to consider alternative connection points do not apply is, in our opinion, completely false. The Applicant is wrongly seeking to dress up its failure to carry out its obligations as a responsible developer to properly study viable alternatives as a matter outside the remit of the ExA.

2.2 In response to WQ2.2.2.1e, the Applicant has provided some basic information concerning why Walpole was not short-listed for detailed consideration during the CION process. They claim that NGET identified the following issues:

- Limited space on site
- Substation considered ‘full’ for generation,
- Fault level issues and lack of thermal capacity
- The seabed routes to Walpole around the Wash were believed to be at capacity with no further available space for more cables.

In fact, none of these “issues” stands up to examination. Taking the above points in turn:

- The ExA will be aware from REP1-145, that the Walpole substation is set in open country – space for the substation could be acquired
- National Grid has a record of making statements about lack of capacity at substations only to subsequently change its mind. It is documented that Hornsea Three considered connecting on the Yorkshire coast, alongside Hornsea One and Two, but was told there was no space available. Hornsea Four was then offered a connection there. This is recorded in the examination libraries for Hornsea Three and Four. In fact, Docking Shoal and Hornsea Three were both planned to connect at Walpole in the past and it is difficult to understand why the substation would be considered “full”
- Fault level issues and lack of thermal capacity are not insuperable problems and technology exists to resolve them
- As we have mentioned previously, we find it extraordinary and frankly outrageous that NGET could not be bothered to research properly the seabed routes to Walpole. Our information is clear that there are currently just two power lines coming through The Wash.

It would seem that no consideration has ever been given to making use of the Sutton Bridge power station.

It is apparent that the decision to exclude Walpole as the grid connection point could be based on nothing more than spurious arguments and the self-interest of the three commercial entities involved.

2.3 In response to WQ2.2.2.1g, the Applicant submits that:

“the preferred connection option was Norwich Main and agreed by all the CION parties despite being the second most economic option under the CBA as it carried less deliverability risk”.

This statement appears to conflict with the statement made by NG ESO in REP1-188:

“Following review of the available options during CION process, the route to the Norwich substation provided the shortest cable route and the best performance against the Cost Benefit Assessment and deliverability”.

Further, it will not have escaped the notice of the ExA that no information has been provided by the Applicant concerning the “most economic” option.

2.4 The Applicant continues to resist providing information to the SEP and DEP examination regarding alternative grid connection points. It is now abundantly clear that the reason for this is most likely that in fact no responsible study of alternatives has been carried out by the Applicant. Certainly, only the most superficial consideration has been given by the Applicant to a grid connection point at Walpole. During the CION process the grounds for dismissing Walpole as an alternative to Norwich Main seem to have been based on an extremely casual approach to obtaining accurate information, an arrogant dismissal of the cumulative impacts on communities and the environment, and an overriding desire by the parties to satisfy their own self-interest.

3. Proposal for a question to National Grid ESO concerning the East Anglia GREEN project

3.1 In view of the fact that the Applicant continues to maintain that it has met the requirement under section 4.9.1 of the NPS EN-1 to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated by SEP and DEP, we ask that NG ESO provides a detailed explanation for how the electricity from SEP and DEP will be able to contribute to net-zero targets in the event that East Anglia GREEN does not receive planning permission and Norfolk Vanguard, Boreas and Hornsea Three are constructed. What assurance can be provided that the CION connection offer for SEP and DEP is not, in fact, a clear case of pre-determination by NG ESO?