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Mr K Guest
National Grid

Your Ref:

By email

Our Ref: EN020017

Date: 01 October 2015

Dear Mr Guest

Planning Act 2008 (as amended) – section 51

Regulation on guidelines for trans-European energy infrastructure EU 347/2013 (the TEN-E Regulation)

Internal line between the vicinity of Richborough and Canterbury (UK) Richborough Connection Project

Draft Documents section 51 Advice

On 27 August 2015, the Planning Inspectorate received the following draft documents, regarding the above project:

- Draft Development Consent Order (DCO)
- Explanatory memorandum
- Consultation report
- Funding statement
- Land plans
- Works plans

Under Article 10(5) of the TEN-E Regulation, it is the promoter's duty to ensure the completeness and adequate quality of the application file and they may seek the competent authority's (the Planning Inspectorate in this instance) opinion on this as early as possible during the pre-application stage. Although a full suite of draft application documents has not been provided, the Inspectorate has produced advice on the submitted draft documents as detailed below.

Draft DCO

Interpretation Article 2

“maintain”

Maintenance of the authorised development should not result in works being authorised which have not been assessed in the Environmental Statement. The Inspectorate advises that this definition should be amended to include the wording in italics:

“maintain” includes to inspect, repair, adjust, alter, dismantle, remove, reconstruct, replace or relay the authorised development, but not so as to vary from the description of the authorised development in Schedule 1 and *only to the extent assessed in the environmental statement* and any derivative of “maintain” is to be construed accordingly;

“UK Power Networks works”

For clarity the Inspectorate advises that this should read:

“... Works Nos.[] and any associated development in connection with those works, described in Schedule 1 (authorised development);

Development consent etc granted by the Order, Article 3(6)

The phrase ‘in general accordance’ is too vague. The Inspectorate advises removing the word ‘general’ in line with the Secretary of State’s decisions on previously consented projects.

Limits of deviation, Article 5(a)

The power to carry out construction activities anywhere within the Order limits is very wide. The Examining Authority may ask for justification for this. This should be fully assessed in the Environmental Statement.

Time limit for exercise of authority to acquire land compulsorily, Article 22

Justification for the time limit of 8 years will be necessary.

Compulsory acquisition of rights, Article 23

The rights and restrictions should be clearly described and the plots identified in the Book of Reference. Justification and details should be provided in the light of PINS Advice Note 15 Drafting Development Consent Orders (Advice Note 15), paragraph 26 on restrictive covenants.

Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession, Article 25

This power should apply to apparatus belonging to National Grid and UK Power only.

Temporary use of land by National Grid, Article 30 and Temporary use of land by UK Power Networks, Article 31

The Inspectorate advises an amendment to Article 30(1)(a)(ii)

(ii) any of the Order land *which is subject to powers of compulsory acquisition in articles []* in respect of which no notice of entry has been served

Special category land, Article 33

This Article has the effect of extinguishing all rights etc over any special category land

over which the undertaker compulsorily acquires new rights or imposes restrictions under Article 23. It is not clear why this Article is necessary as Article 24 provides this power. This Article also extinguishes all rights etc over any special category land which NG or UK Power take temporary possession of under Articles 30 and 31. It is not clear why this is necessary as Article 24(4) provides a power to suspend private rights.

Trees subject to tree preservation orders, Article 43(2)

The Inspectorate advises you to reconsider this in the light of Advice Note 15 paragraph 24.2.

Schedule 1 Authorised Development

Should work number 6E refer to the removal of the two 'temporary' single circuit 132kV overhead lines?

Associated development (j) - please confirm what is meant by 'establishment' and if the 'site construction compounds' referred to here, specifically relate to the temporary site compounds in work numbers 2 and 3.

Requirements

Tailpieces found throughout the requirements should be reconsidered in light of the advice in Advice Note 15.

Requirement 1(3), Interpretation

The Inspectorate advises that this generic provision is deleted, see the comment above regarding tailpieces.

Requirement 3, In accordance with approved details

The Inspectorate advises that this requirement is re-redrafted so that it reads:

'The authorised development shall be carried out in accordance with the design drawings'

Advice Note 15 paragraph 19 explains the reason as to why the redraft is necessary.

Requirement 6, Approval and implementation of construction mitigation plans

The Inspectorate queries the extent of operations excluded from the definition of "commence". Construction Environmental Management Plan/construction mitigation plans should be approved prior to demolition or site clearance works, for example. Please consider Advice Note 15 paragraph 23.

Schedule 4 Discharge of requirements

4(9) should refer to the Planning Practice Guidance, as Circular 03/2009 has been cancelled.

Schedule 9 Deemed marine licence

The views of the Marine Management Organisation (MMO) will be needed here, please explain in the Explanatory Memorandum if the deemed marine licence been agreed with the MMO.

Schedule 15 Protective Provisions

Please reflect Statutory Instrument drafting conventions in the numbering of this Schedule, see Advice Note 15 for further information.

Explanatory Memorandum

At paragraph 2.2 it would be helpful if the relevant works numbers from schedule 1 of the draft DCO were quoted within each bullet point, thereby aligning the summary of the development with the works within the draft DCO.

Regarding Article 2 (Interpretation) for 'authorised development', please explain what is meant by 'and any other development authorised by this order'.

Regarding Article 3(6) 'Development consent etc granted by the Order', please explain the use of the terms 'operate and use'.

'Limits of deviation' Article 5, please expand on the justification for the carrying out of construction activities anywhere within the order limits.

Article 8 'Application of the 1990 Act', please can a full list of the 'specified' works be provided.

Article 9 'Application of the Community Infrastructure Levy' as above, please can a list of the 'specified' works be provided.

Please include further and detailed justification for the time periods after which consent may be deemed, for example regarding Article 14 'Access to Works' and Article 16 'Discharge of water' and other Articles.

The wording of Article 30 in the draft DCO is 'Temporary use of land by National Grid' this differs to the wording in the explanatory memorandum 'Temporary use of land by the undertaker'.

Funding statement

The draft funding statement should contain further evidence to support the conclusions it makes, it currently appears to lack the level of detail required.

Although at paragraph 1.5 reference is made to the need to include as much information as possible about the resource implications of both acquiring the land and implementing the works, this information does not appear to be included in the draft.

The anticipated timing of the availability of the funds should also be included, for example at paragraphs 3.5 and 3.6. This information is required to confirm that the funds will be available within the statutory period following any granted consent.

In paragraph 4.7, it is stated that National Grid is confident it can meet the costs in relation to blight, however no evidence has been submitted to support this statement, including the resource implications.

The funding statement should explain how UK Power Networks will meet any compensation liabilities.

Plans

In 'interpretation' in the draft DCO, it states "*the order limits*" means *the limits shown on the land plans and on the works plans within which the authorised development may be carried out*'. It is noted that the 'order limits' are shown by a red line on both the land and works plans, however there are instances where the red lines do not match, some examples are below, however the Inspectorate advises that a full review is undertaken:

- Sheet 1 of the land and works plans at the location of plot 151
- Sheet 2 of the land and works plans, south of Broad Oak Lodge Farm and land at Beecham Wood
- Sheet 3 of the land and works plans between PC8 and PC9
- Sheet 15 of the land and works plans at plot 1201.

Some plots on the land plans are currently difficult to identify, for example:

- sheet 2, plot 273
- Sheet 2 in enlargement 3, 290.

Work 5C of the draft DCO states that a new section of 132kV overhead electric line between PY19 and PY22 would be installed. However, the connection between PY 21R and PY22 is not clearly presented on sheet 12 of the works plans.

Work 5D of the draft DCO states that the removal of two single circuit 132kV overhead electric lines and temporary wooden pole divisions between pylons PY19 and PY20TB1 and between pylons PY19 and PY20TA1 would be undertaken. However, the single circuit 132kV overhead electric line temporary wooden pole diversion is not clearly illustrated between pylons PY19 and PY20TA1 on sheet 12 of the Works Plan.

Consultation report

It is noted that the draft consultation report is incomplete, the explanation of how National Grid has had regard to consultation responses has yet to be included, the appendices and some sections of the report are also absent.

It would be helpful if the format of the tables in the hard copy document could be amended to ensure the horizontal tables flow from the left side of the page to the right, on each page.

A summary should be provided within the main text of the consultation report, in addition to the tables and the feedback reports, explaining the changes made to the scheme as a result of each stage of consultation. It would also be clearer if paragraphs 7.6.3 – 7.6.5 were ahead of table 7.13 in the document. It is noted that section 14 'summary of changes made following the statutory consultation' section 15 'conclusion' are currently blank.

The terms 'consultation' and 'engagement' have been separately used to describe the non-statutory activities undertaken in 2014. It would be helpful if this could be clarified or explained.

Paragraphs 9.19 and 10.1.2 of the report refer to the section 46 notification, however different dates are provided regarding the date the notification was made to the Inspectorate.

National Grid should include a list of the persons with whom they have consulted under section 44 of the PA 2008. National Grid is strongly advised to check the list of these persons with the persons listed in the book of reference to ensure all relevant parties have been consulted.

Regarding table 4.1, it would be helpful if the entries under the 'what' column could state, for each of the 6 stages, whether the stage was referring to 'consultation' or an 'announcement' or the 'submission of the application'.

It is noted that the National Grid inspection point was listed as Monday to Friday 9am – 5pm in the Statement of Community Consultation (SoCC), however the consultation report states Monday to Thursday 8am- 4:30pm. The address for Canterbury Library differs between the SoCC and the consultation report regarding inspection boxes.

Copies of all newspaper notices should be provided, including evidence of the date on which the notice was published and the name of the paper.

It would be helpful if confirmation could be provided on whether any responses were received as a result of the section 48 publicity notices.

TEN-E Regulation and Manual of Procedures

It would be helpful if a table similar to 5.5 (compliance with DCLG Guidance) is provided, to show compliance with the TEN-E Manual of Procedures.

Article 9(2) states that parties involved in the permit granting process shall follow the principles for public participation set out in Annex VI.3, the consultation report should explain how National Grid has followed these principles.

In table 5.4 of the consultation report, regarding Article 9(4) of the TEN-E Regulation, National Grid could also reference the previous rounds of consultation, as there is a requirement to consult at an 'early stage'.

As well as listing those who have been consulted under the PA 2008, the consultation report should also make reference to how the persons/bodies listed in Annex VI.3(a) of the TEN-E Regulation have been consulted. In addition, Article 9.4 of the TEN-E Regulation requires that the stakeholders in Annex VI.3(a) are to be informed of the project at an early stage.

Please explain how each of the requirements of Annex VI.5 have been met.

It is noted that some of the above TEN-E Requirements were included within the SoCC, National Grid is advised to reference compliance with these points within the main text of the consultation report.

This section 51 advice is offered without prejudice to any future decision regarding the acceptance of the application for examination by the Secretary of State, or the examination of the application if accepted.

If you have any queries please do not hesitate to contact us.

Yours sincerely

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Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.