



Meeting note

File reference	Non-case specific
Status	Final
Author	Patrycja Pikniczka
Date	16 March 2015
Meeting with	Teleconference with OFGEM
Venue	Bristol, Temple Quay House
Attendees	<u>The Planning Inspectorate</u> Mark Wilson (Infrastructure Planning Lead) Patrycja Pikniczka (Case Officer) <u>OFGEM</u> Neill Guha (Transmission Costs and Outputs) Mayure Daby (Senior Technical Advisor) Adam Lacey (Transmission Investments) Grace Brown (Transmission Investments) Keren Maschler (Transmission Costs and Outputs)
Meeting objectives	To discuss OFGEM involvement in the process.
Circulation	All attendees.

Summary of key points discussed and advice given:

OFGEM was advised about the openness policy and that any advice given will be noted and placed on the Planning Inspectorate's (PINS) website in the form of a meeting note. The Planning Inspectorate explained that any advice given does not constitute legal advice upon which anyone should rely.

PINS explained that this meeting would deal with issues of principle relating to how OFGEM, as a statutory consultee, should engage with the pre application consultation process led by the developer and also how to participate at an examination. This meeting note and any documents that OFGEM refer to will not be used outside of the meeting and are not submissions for the purposes of any current examination. They will not be provided to any Examining

Authority (ExA) or the case team and OGEM will need to make any submissions they want to make in relation to any specific project directly to the examination, having regard to the examination timetable.

It was explained that the purpose of the statutory pre-application stage is for developers of NSIP projects to prepare their applications in an informed way, having regard to consultation responses from technical (statutory) consultees such as OFGEM and others. This is so that by the time an application is submitted any technical issues have been identified and resolved in such a way that they will not act as an impediment to the acceptance of the application or its subsequent examination, within the statutory timescales. New information that comes to light after the application is submitted can be examined by an ExA within certain parameters as explained below.

The Planning Inspectorate explained that the examination of an application under the Planning Act 2008 (PA 2008) process takes up to 6 months and cannot be extended unless the SoS agrees to an extension and makes a statement to that effect in Parliament. The Planning Inspectorate highlighted the importance of OFGEM being proactively involved in the PA 2008 process as a statutory consultee.

The Planning Inspectorate explained the importance of sharing information between parties as soon as possible. It was explained that the ExA must write its recommendation to the SoS based on information and evidence submitted during examination. It was explained that if information is not provided directly to the ExA, it cannot be treated as an examination document. All information submitted to an ExA during an examination will be made publicly available on the project website and treated as an examination document. It was explained that the ExA may use its discretion to disregard information submitted or may have a different opinion. Unless specifically directed by the SoS due to defence and national security concerns¹, the ExA cannot see any information that is confidential or secret and by definition cannot be made available to other interested parties.

If a matter is of particular concern to OFGEM then it is vital that, if they want an ExA to have regard to it, OFGEM should submit it during an examination. OFGEM should not rely on an ExA having a detailed knowledge of OFGEM's regulatory role and/or emerging research and information relating to the regulation of energy markets and price controls more generally.

The Planning Inspectorate advised that once an application is submitted, the extent of material change that can be accommodated to an application being

¹ Section 95A of the Planning Act 2008

examined is limited. The key issue is whether the change is so material that the applicant is seeking consent for a different project. There is no legal definition of “material”. It is a question of judgment which may be based on criteria including, for example, whether the development and ancillary matters for which development consent is sought would change to such an extent that if the Secretary of State (SoS) were to grant development consent for the application this would deprive those who should have been consulted about the development of the opportunity of consultation (the Wheatcroft principle)². For example, if the changes were made to a significant design element, such as the design of the pylons, which the applicant had consulted on at the pre-application stage and relied on for the purposes of their Environmental Impact Assessment (EIA), then it may require a new application to be made.

If an applicant decided to withdraw their application once it was at examination then this could lead to costs applications against the developer by interested parties seeking to recover the costs of participating in the examination of the original application.

OFGEM was advised that the re-submission of the application and the length of the process may take up to 18 months depending on how much of pre-application consultation is required and the extent of changes made.

Ultimately it would be up to an applicant to decide whether or not it wished to withdraw an application based on representations submitted by another interested party. An applicant may ultimately decide to proceed with the examination of the application as submitted and allow the ExA to consider the representation in their report to the SoS. The SoS would then need to decide whether or not to grant development consent, having regard to the ExA’s recommendation, the representations received and any relevant National Policy Statement (NPS).

² The Wheatcroft principle is one of the criteria which would assist in determining whether there has been a material change to the application. Another criterion might be whether the change would generate new likely significant effects.