

# Response to National Grid (NG) Scoping Report<sup>1</sup>

15 November 2022

Essex Suffolk Norfolk Pylons (ESNP) is the umbrella group for communities along NG's 180km 'East Anglia GREEN' (EAG) pylons route. Our petition, signed by 22,000, called for an offshore grid. On 16 June we submitted an 80-page response<sup>2</sup> to the non-statutory consultation. It detailed numerous environmental (and other) issues. With it we submitted a legal opinion<sup>3</sup> from Charles Banner KC and a survey completed by 2,500 people<sup>4</sup>. We are yet to receive a response from National Grid. Our submissions have not been referred to or the issues addressed in the Scoping Report<sup>5</sup> (SR).

We bring issues to the attention of the Inspector that we believe render the entire consultation invalid. As a consequence, **this SR, if accepted, would result in a legally deficient ES and consultation.** We set out three main areas of concern, with details in the pages that follow:

- **Main alternatives to EAG & continuing deficiencies in NG's process**

Charles Banner KC's opinion concluded that the non-statutory consultation was deficient due to 'after-the-event rationalisation of alternatives' and failure against two of the Gunning Principles. Mr Banner warned that unless remedied, the consultation risked infecting later stages. That is what we see now, in the Scoping Report. It is a continuation of a deficient process. It addresses none of the issues raised relating to selection of or consultation on alternatives. NG now breaches a third Gunning principle – the requirement to give conscientious consideration to consultation responses. We continue to maintain that the consultation must be re-opened to give stakeholders a full range of alternatives for consultation at a stage when options have not already been foreclosed.

- **Cumulative impacts of energy transmission infrastructure in the region**

ESNP is supportive of wind energy. However, excess power from North Sea wind farms must be transmitted out of East Anglia to London and southern England. That power makes landfall in Norfolk, Essex and Suffolk, with adverse impacts on the environment & communities. Despite evidence from National Grid ESO<sup>6</sup> in 2020 that a fully integrated offshore grid would be a deliverable alternative that is better for consumers, the environment and communities, instead, EAG is the proposed solution (and an offshore option not consulted on). These energy projects and EAG cannot be considered in isolation. They are functionally interdependent and inextricably linked. There is a clear causal connection between the two. The ES must therefore scope in the cumulative, in-combination effects with wind farms that connect into EAG.

- **Topics that should be scoped in to the Environmental Statement (ES)**

We set out which scoped-out topics we believe must be scoped in to the ES and recommend others to be scoped in.

<sup>1</sup>[EAG Energy Enablement \(GREEN\) Project | National Infrastructure Planning \(planninginspectorate.gov.uk\)](#)

<sup>2</sup> [REDACTED]

<sup>3</sup> [REDACTED]

<sup>4</sup> [REDACTED]

<sup>5</sup>[EN020027-000012-EAGN - Scoping Report \(including appendices B to K\).pdf \(planninginspectorate.gov.uk\)](#)

<sup>6</sup> [REDACTED]

## 1. Main Alternatives to EAG and continuing deficiencies in NG's process

Deficiencies with the consultation process mean that the SR cannot be considered valid.

### Legal deficiencies

It is clear from the SR that NG is doubling down on its 'after-the-event rationalisation' and failure against two of the Gunning Principles which led Charles Banner KC in an opinion for ESNP to conclude that the non-statutory consultation was deficient<sup>7</sup>. Mr Banner further concluded that the deficiencies of the consultation meant that it cannot be relied upon at statutory consultation stage:

*"Further, there is a real risk that the legal deficiencies in the current consultation will, if left uncorrected, will infect the later statutory consultation (which would in turn mean that the intended DCO application cannot lawfully be accepted by the Planning Inspectorate). As a minimum, the options which have already been improperly foreclosed would need to be revisited and consulted upon with a demonstrably open mind, providing the public with sufficient information to have a fair opportunity to advocate the alternatives discussed above."*

Specifically, Mr Banner noted that the rationale given so far for discounting the alternatives would not justify excluding them from the category of "reasonable alternatives" for the purposes of the EIA Regulations.

**The result is that the contents of the Scoping Report cannot be relied upon and that an ES which results from this process will be deficient.**

### Summary of relevant conclusions in ESNP submission

In brief, to assist the Inspector(s), in our submission to the non-statutory consultation we concluded:

*12.1 The East Anglia GREEN consultation must be abandoned. As demonstrated in this document, and supported by the opinion of Charles Banner QC, it is significantly and fundamentally deficient. It cannot be used to inform future consultations, nor to support a Development Consent Order application to the Planning Inspectorate.*

*12.2 We have the following recommendations:*

*12.2.1 National Grid must first demonstrate the need for this project.*

*12.2.2 Decision criteria must be objective and set out in advance. Results must be justified and testable. Any new consultation must be re-run and adhere to the Gunning Principles.*

*12.2.3 A new consultation must take into account the Offshore review, the new (accompanying) Network Options Assessment and the Sea Link consultation.*

*12.2.4 National Grid must present options with full cost breakdown, setting out environmental, socio-economic, heritage and health impact of each, plus impact to the AONB. Cost must be presented in a transparent, accurate and unbiased manner. Cost of mitigation must be included and comparison of risks of each project with climate change and extreme weather*

<sup>7</sup> in an opinion for Essex Suffolk Norfolk Pylons on 10 June 22

*must be set out. Stakeholders need to see an evidenced appraisal of options covering lifetime costs, technical complexity, impact on security of supply, delivery and planning risks.*

*12.2.5 The following options must be presented for consultation: Strategic offshore grid; options such as following existing power lines or infrastructure (rail/A12); undergrounding; T-pylons. National Grid profitability for each option must be presented for transparency. Ofgem and independent review must be performed throughout the process.*

## **NG's Main Alternatives Considered**

Despite the legal opinion and our detailed submission, Chapter 3, Main Alternatives Considered, in the SR demonstrates that NG is continuing to move forward with the very same process which was found to be deficient.

### New alternative proposed by NG post-consultation but not consulted on

Since the closure of the non-statutory consultation, NG has prepared a quasi-offshore option<sup>8</sup> for MPs of the OFFSET group. That has not been consulted on and there was very limited information to support the option.

In fact, the letter to OFFSET states *"It would have been disingenuous for us to present an offshore option to the public for consultation feedback, knowing this did not comply with the framework requirements."* It is referred to in paragraph 3.3.9 of the Scoping Report as an alternative dismissed. The 'framework', relates to the National Policy Statement (NPS) EN-5, which does *not* as stated by NG, prevent offshore development. It merely says that overhead lines will often be a starting point.

NG goes on to say, *"...decisions made will be reconsidered and backchecked throughout the process, having regard to consultation responses and other relevant information (policy and regulation), none of the conclusions should be seen as final."*

So, in fact, the post-consultation, quasi offshore option, continues NG's post-justification of a prior decision to choose an onshore, overhead lines option, with consultation limited to the 'purple swathe' preferred route.

NG continues to fail to acknowledge that the alternatives it has dismissed have never been presented to the public for consultation. All decisions have been made by NG without external stakeholder review. The result is that NG also now falls foul of a third Gunning Principle: *"conscientious consideration' must be given to the consultation responses before a decision is made."*

This is despite NG noting the requirement in NPS EN-5 to set out cost and benefits of alternatives, particularly economic and environmental, in paragraph 2.3.2 of the Scoping Report yet has neglected to do so to date:

*"2.3.2 Section 3.7 in EN-1 states that current scenarios show significant potential increases in generation and changes in direction of net electricity flows from Eastern England to centres of demand in the Midlands and South-East England and that these kinds of flows of power cannot be accommodated by the existing network and new lines would have to be built. It also acknowledges in paragraph 3.7.10 that "in most cases, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example,*

*by overhead line or underground cable) and **the costs and benefits of these alternatives should be properly considered as set out in EN-5 before any overhead line proposal is consented***

This is in distinct contrast from the approach taken in the north of England by National Grid. We set out in Appendix A a case study of an EIA in Cumbria. It demonstrates that alternatives were properly considered with stakeholders from the outset. Ruling out alternatives on the basis of cost without first subjecting them to environmental assessment and consultation, means that the “costs and benefits” cannot properly be considered as the scoping report acknowledges is required by EN-5. Without an EIA and consultation informed assessment of the environmental differentials between the alternatives, it cannot properly or lawfully be determined if the difference in cost outweighs the difference in environmental impacts, or vice versa.

### **Solution?**

We believe that the SR as submitted will lead to a deficient ES.

NG cannot continue its pre-determined course of action in breach of Gunning Principles.

We re-iterate the words of Charles Banner KC, *“As a minimum, the options which have already been improperly foreclosed would need to be revisited and consulted upon with a demonstrably open mind, providing the public with sufficient information to have a fair opportunity to advocate the alternatives discussed above.”*

## 2. Cumulative Impacts of energy infrastructure in the region

NG must ensure that the cumulative impacts of energy projects in the region are considered fully.

### Scoping Report Chapter 17, Cumulative Impact

The SR states that there are intra- and inter-project impacts, and it is inter-project impacts that concern us in relation to this Scoping report, *“Inter-project effects (also referred to a ‘cumulative effects’, Planning Inspectorate, 2019) occur when a resource or receptor or group of receptors is potentially affected by more than one development at the same time and the impacts act together additively and/or synergistically (IEMA, 2011)”*

### Guidance and background

Planning Inspectorate guidance on cumulative impact<sup>9</sup> sets the background, saying:

*“1.5 NPS EN-1 paragraph 4.2.6 goes on to state that the Secretary of State should consider how the “accumulation of, and interrelationship between effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.”*

*1.6 The NPSs variously state that applicants should, amongst other matters, consider mitigation for cumulative effects in consultation with other developers; assess cumulative effects on health; give due consideration to other NSIPs within their region; consider positive and negative effects; and consider environmental limits (e.g. the potential for water quality effects to arise due to incremental changes in water quality).”*

NG itself notes (under section 13.2 Regulatory and planning policy context) that NPS EN-5 says,

*“2.8.2 Cumulative landscape and visual impacts can arise where new overhead lines are required along with other related developments such as substations, wind farms and/or other new sources of power generation.”*

### Functional interdependence of projects

EAG cannot be considered in isolation from many of the other energy infrastructure projects in the region.

The project is required to remove excess power generated by offshore wind farms from the region. In all NG Future Energy Scenarios<sup>10</sup> the East of England will be a power exporting region.

EAG’s website states that, *“A need<sup>11</sup> was identified to resolve electrical boundary issues in East Anglia. There are three onshore power boundaries where additional system flexibility is required to ensure that power generated in the area from offshore windfarms and nuclear generation has more ways to flow into the wider transmission network during maintenance or faults on the system.”*

<sup>9</sup> [Advice Note Seventeen: Cumulative effects assessment relevant to nationally significant infrastructure projects | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/advice-note-seventeen-cumulative-effects-assessment-relevant-to-nationally-significant-infrastructure-projects/)

<sup>10</sup> <https://www.nationalgrideso.com/research-publications/etys/electricity-transmission-network-requirements/east-england-boundaries>

EAG has 'functional interdependence' with projects such as North Falls and Five Estuaries, currently at non-statutory consultation stage, who have been told by NG that who have been told that their connection point will be EAG. Equinor's two projects currently at DCO stage with PINS are also dependent on EAG. Functional interdependence is set out in case law. (BurrIDGE v Breckland DC 2013<sup>12</sup> and Wingfield, R v Canterbury City Council 2019<sup>13</sup>)

For example:

*"63. The question as to what constitutes the 'project' for the purposes of the EIA Regulations is a matter of judgment for the competent authority, subject to a challenge on grounds of Wednesbury rationality or other public law error."* and *"64. Relevant factors may include: iii) Functional interdependence - where one part of a development could not function without another, this may indicate that they constitute a single project (BurrIDGE at [32], [42] and [78]);"*

In addition, a Scoping Opinion by the Planning Inspectorate for a Proposed North Wales Connection found that, *"The ES should give equal prominence to any development which is related with the proposed development to ensure that all the impacts of the proposal are assessed."*

It also said that, *"In assessing cumulative impacts, other major development should be identified through consultation with the local planning authorities and other relevant authorities on the basis of those that are [amongst others]:"*

- *Projects on the National Infrastructure's programme of projects."* There are a number of NSIPs energy projects in East Anglia.

Therefore, EAG cannot be considered in isolation and offshore wind farms at consultation and DCO stage must be scoped in to the Environmental Statement.

Thus we also believe that the Zones of Influence identified by NG in its Scoping report (in particular 30km Ecology and Biodiversity and 3km for Landscape and Visual) for will have to be extended to include coastal north Norfolk and coastal Suffolk and Essex.

**We believe that EAG cannot be considered in isolation of the upstream projects it supports. This must be factored in to the cumulative impacts.**

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<sup>12</sup> [REDACTED]  
 [REDACTED]  
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### 3. Topics that should be scoped in to the ES

We set out below:

- Whole topics to be scoped back in
- Sub topics to be scoped back in
- Additional topics to be scoped in
- Additional comments relating to scoped in topics

#### i. Whole topics scoped out

##### Vulnerability to Climate Change

We disagree with NG that risk to infrastructure from climate change should be scoped out – it must be scoped in and alternatives including offshore and underground compared. Our reasoning is that on 27 October 2022, a Parliamentary Committee<sup>14</sup> concluded:

- the UK’s net-zero targets require the electrification of huge amounts of energy demand across the country and that this exposes the power system to enhanced vulnerabilities: electricity pylons and cables are more prone to disruption from extreme weather than gas, which relies mainly on underground pipes rather than overhead power cables.
- the energy sector was subject to an “adaptation shortfall” in relation to lightning, high winds and storms.

#### ii. Sub topics scoped out that should be scoped in

We list below elements scoped out of the SR that we believe must be scoped in.

Scoped out:	Why scope in?
Potential impacts on surface water are scoped out for biodiversity receptors in the ES during construction.	Watercourses are already stressed and in poor condition and this should be scoped in, irrespective of CoCP. Directional drilling should be considered in sections where cut trenches for underground cable are near watercourses.
Other notable mammals (brown hare ( <i>Lepus europaeus</i> ), hedgehog ( <i>Erinaceus europaeus</i> ), and harvest mouse ( <i>Micromys minutus</i> ))	The fact that NG notes that negative impacts could occur to ‘other notable mammals’ during construction (loss of habitat/habitat fragmentation/noise/light) means that this must be scoped back in. This, from the SR, indicates the level of disruption expected just for the haul roads: <i>“A temporary haul route would be constructed to provide access for construction vehicles along the working areas and to minimise impacts of construction traffic using the local road network. The position of the haul route would be determined as the Project evolves, the location would be assessed and presented in the ES. It is currently assumed that temporary haul route would have the topsoil stripped and hardcore placed on top of the subsoil, this would be delivered to site by Heavy Goods Vehicles (HGV). It would be sited</i>

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	<p><i>where possible to make use of existing access tracks where possible and avoid sensitive ecological locations and water crossing where possible. 4.5.6 The haul route for the OHL would be typically 12m wide to allow for a running track, topsoil storage and passing places where required (formed with imported stone and geogrid)". Underground sections require a swathe of up to 100metres wide (according to a National Grid webinar, Spring 22).</i></p>
<p>Existing environment and views – construction and operation (inc. maintenance) 13.9.12 Effects on visual receptors located outside of the ZTV are therefore proposed to be scoped out of the ES.</p>	<p>The 41 visual receptors selected by NG (Appendix H) are wholly inadequate for a 180km project with 50-metre high pylons. We have mapped NG’s receptors and supporters across Essex, Suffolk and Norfolk have added key visual receptors that NG must include irrespective of Zone of Theoretical Visibility. Local residents have the knowledge of lines of sight and areas of greatest impact.</p>
<p>"Significant visual effects on people travelling by train on the Greater Anglia railway network are not anticipated due to the speed of travel, therefore this is proposed to be scoped out." (Scoped in, Wales)</p>	<p>This is clearly ludicrous. It must be scoped back in and we note that the visual receptors refer to trains anyway. Note that in North Wales, visual impact of pylons on rail travellers was scoped in. It must include the Sudbury to Marks Tey line – the famous Lovejoy line.</p>
<p>Bat activity surveys Where it is considered that habitat impacts would have a significant potential adverse effect on bats, bat activity surveys would be undertaken to establish a baseline. Based on the information outline in Section 8.12.42, it is considered that impacts on foraging and commuting bats can be scoped out for the sections of overhead line</p>	<p>Bats forage over a very wide area. They will be impacted by the construction of the pylons due to loss of habitat (specifically, in SR: Direct severance/ fragmentation of woodland and linear habitat features (e.g., hedgerows and watercourses). Direct loss of woodland with good connectivity to the wider landscape), noise and light. There can be no sections of the line scoped out and a 10km assessment area must be set – as in North Wales’s pylons project scoping. So-called temporary impacts could have permanent impact on bat colonies. Some impacts will be permanent, when habitat is lost for good. The habitat avoidance policy set out by NG is already proposed to be breached in at least one place: in Aldham, Essex, where the pylons will pass directly over woodland. There needs to be a full assessment of habitat impact and it is imperative that bat activity surveys must be scoped back in.</p>



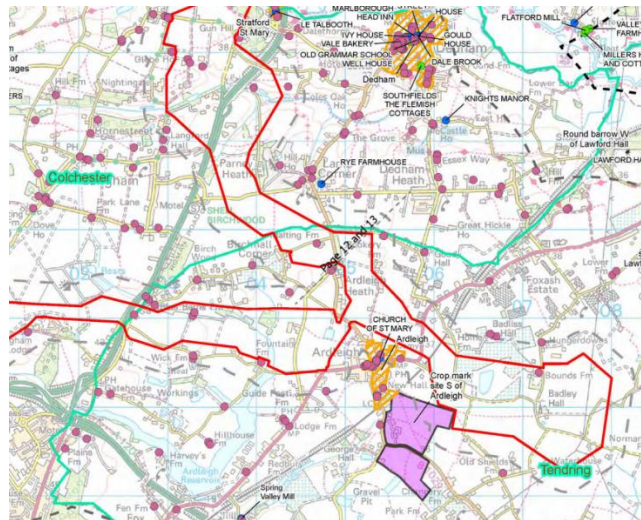
iii. Additional topics to be scoped in

**Existing infrastructure**

The Scoping Report must scope in impact of existing infrastructure on communities who risk being sandwiched between the proposed pylons and existing pylons or roads/rail e.g:

- There is existing electricity transmission and distribution equipment in the study area including 400kv and 132kv OHL's and the 400kv substations at Norwich Main, Bramford and Tilbury
- Thurrock section EAG There are also three existing OHL which run through this area along the Scoping Report Corridor.
- The Braintree section contains existing 400kv OHL's and near to Chelmsford there are 400kv and 132k OHL's.
- The Babergh section west of Ipswich and the Great Leighs section north of Chelmsford contain two OHL's within the corridor of search.

It is imperative, too, that the ES will consider the impact of the doubling back effect of pylons at Ardleigh, which leaves residents living in a 'V' of pylons:



iv. Additional comments relating to scoped in topics

**Visual receptors**

We believe that the 41 visual receptors put forward by NG are wholly insufficient. They leave huge unassessed gaps along the route and many very key sites of importance unaccounted for. We have therefore asked our supporters to log key visual receptors in their own area that should be scoped in to the ES.

The results are available on a map that we have created, and we would be delighted to supply the full list to the Inspector(s) if required.

Map of visual receptors submitted by the public:



## **Undergrounding of cables – swathe width**

The area of impact for the purposes of assessment of undergrounding cables must be set at the maximum of the several set out by NG. The SR report states a swathe of only 40-m wide is required for undergrounding. The non-statutory consultation documentation noted c60m-wide. At a NG webinar, Spring 2022, we were told that a swathe of up to 100m-wide is required. For the purposes of the ES, the swathe width must be assumed to be 100-m to ensure that all construction damage to ecology, habitats and archaeology is factored in.

## **Impact on farms**

The impact of the 12-metre wide access roads must be scoped in to the ES. These roads will damage habitat and lead to security issues for land-owners. The impact of walkers using these roads to access previously undisturbed areas of countryside on wildlife must be assessed.

## Appendix A

### Cumbria<sup>15</sup> – how alternatives *should* be consulted on

The below is taken from National Grid's Environmental Impact Assessment Scoping Report and Appendices for North West Coast Connections, Cumbria, in 2012. It highlights starkly the difference between the approach taken in East Anglia, where only one route has been pre-determined and presented for consultation. In Cumbria, by way of comparison, a variety of alternatives were discussed with stakeholders from the outset and those alternatives narrowed down through the process of consultation:

*“Strategic Options (2009 to 2012)*

*After establishing the need for new 400kV connections, National Grid worked together with local authorities from across Cumbria and Lancashire, as well as many prescribed and non-prescribed organisations, to explore the different options available for connecting the new generating capacity to the NETS. The outcome of this work helped to identify six high level options that represented potential solutions for making the connections needed in the North West.*

*2.2.3 In October 2012, following the completion of consultation on the possible strategic reinforcement options to meet the connection need, National Grid published a Strategic Options Report (SOR) (Ref. 2.4) for the Project. The SOR outlined six Strategic Options for electricity transmission system reinforcement in the North West identified by National Grid, and set out National Grid's appraisals of each of the options.*

*2.2.4 The six options were:*

- 1. Option 1 – Twin South Onshore (four onshore circuits south from Moorside);*
- 2. Option 2 – Twin South Offshore (four offshore circuits south from Moorside);*
- 3. Option 3 – Cumbria Ring Onshore South (two circuits north from Moorside, either onshore (3a) or offshore (3b) and two onshore circuits south from Moorside); Chapter 2 The Proposed Development 2-3*
- 4. Option 4 – Cumbria Ring Offshore South (two circuits north from Moorside, either onshore (4a) or offshore (4b) and two offshore circuits south from Moorside);*
- 5. Option 5 – Twin North and North-South (four circuits north from Moorside, either onshore (5a) or offshore (5b) and two circuits south from Harker); and*
- 6. Option 6 – Twin North and East-West (four circuits north from Moorside, either onshore (6a) or offshore (6b) and two circuits east from Harker plus 275kV to 400kV uprating of North East ring.*

*2.2.5 The appraisals reported in the SOR considered the Strategic Options in terms of environmental, socio-economic, technical and cost factors, and took into account consultation feedback.”*

<sup>15</sup> [EN020007-000050-NWCC EIA Scoping Report \(Main Report and Appendices\).pdf \(planninginspectorate.gov.uk\)](#)