

IN THE MATTER OF
EAST ANGLIA ONE NORTH AND EAST ANGLIA TWO
OFFSHORE WIND FARMS
AND THE
OFFSHORE TRANSMISSION NETWORK REVIEW

OPINION

Introduction

1. I am instructed by East Suffolk Council and Suffolk County Council (“the **Councils**”) to provide an Opinion on the implications of the Offshore Transmission Network Review (“the **Review**”) for the applications for development consent which have been submitted to the Planning Inspectorate for two new offshore wind farms known as East Anglia One North and East Anglia Two (“**EA1N and EA2**”).

2. In particular, I am asked to provide my Opinion on the following issues:
 - a) Whether EA1N and EA2 fall within the scope of the Review’s terms of reference, given their proposed connection dates in 2027 and 2026, respectively;

 - b) Whether it would be reasonable for the Councils to argue that it would be premature for the DCO process to proceed prior to the completion of the Review;

 - c) Whether it would be reasonable for the Councils to argue that the Examining Authority and Secretary of State should consider the outcome of the Review prior to making any recommendations or decisions on the DCO applications.

Summary

3. In summary, my Opinion is as follows:
 - a) Given their proposed connection dates, my view is that EA1N and EA2 both fall within the medium-term workstream identified in the Review's terms of reference.
 - b) In my view, any attempt by the Councils to suggest that the DCO examination of EA1N and EA2 should be held in abeyance pending the completion of the Review would be very unlikely to succeed.
 - c) Section 104 of the Planning Act 2008 requires applications to be determined in accordance with the relevant NPS other than in the limited circumstances set out in s.104(4 – 8). If EN-1 and EN-3 remain in force at the time of the decision on EA1N and EA2, then the applications should be determined in accordance with those national policy statements. The fact that there might, at some time in the future, be a change to the relevant policy or regime would be very unlikely to justify a delay in the Examining Authority's recommendation or the Secretary of State's decision on EA1N and EA2.

Factual background

The DCO applications

4. In October 2019 East Anglia ONE North Limited and East Anglia TWO Limited submitted applications for development consent for EA1N and EA2. Those applications are currently at pre-examination stage following a delay caused by the COVID-19 pandemic. Preliminary meetings are due to take place in September and October 2020, following which the six month examination period will begin. Thereafter the Examining authority will have three months to prepare a report to the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State will have a further three months within which to determine the application. Absent extensions to the examination or determination periods, a decision on the applications is likely to be issued by October 2021.

The Review

5. In June 2020 the Committee on Climate Change prepared a report to Parliament which called on the Government to “*Develop a strategy to coordinate interconnectors and offshore networks for wind farms and their connections to the onshore network and bring forward any legislation necessary to enable coordination*”.

6. Following that report, on 15th July 2020 the Department for Business, Energy and Industrial Strategy (“**BEIS**”) announced the terms of reference for the Review into the way that the offshore transmission network is designed and delivered, consistent with the ambition to deliver net zero emissions by 2050.
7. The intention of the Review to address the barriers that the existing offshore transmission regime presents to further significant deployment of offshore wind, with a view to achieving net zero ambitions. The Review aims to bring together key stakeholders involved in the timing, siting, design and delivery of offshore wind to consider all aspects of the existing regime and how this influences the design and delivery of transmission infrastructure. The terms of reference focus on identifying tactical actions that can be taken and early opportunities for coordination for projects in the short-medium term together with a longer term strategic review to develop a new regime that can ensure a more coordinated approach for the future.
8. The objective identified in the Review’s terms of reference is to ensure that the transmission connections for offshore wind generation are delivered in the most appropriate way, considering the increased ambition for offshore wind to achieve net zero. This will be done with a view to finding the appropriate balance between environmental, social and economic costs.
9. The Review is to be split into two main workstreams.
10. The medium-term workstream will seek to:
 - a) Identify and implement changes to the existing regime to facilitate coordination in the short-medium term;
 - b) Assess the feasibility and costs/benefits of centrally delivered, enabling infrastructure to facilitate the connection of increased levels of offshore wind by 2030;
 - c) Explore early opportunities for coordination through pathfinder projects, considering regulatory flexibility to allow developers to test innovative approaches;
 - d) Focus primarily on projects expected to connect to the onshore network after 2025.
11. The long-term workstream will seek to:
 - a) Conduct a holistic review of the current offshore transmission regime and design and implement a new enduring regime that enables and incentivises coordination while seeking to minimise environmental, social, and economic costs;

- b) Consider the role of multi-purpose hybrid interconnectors in meeting net zero through combining offshore wind connections with links to neighbouring markets and how the enduring offshore transmission regime can support the delivery of such projects;
 - c) Focus on projects expected to connect to the onshore network after 2030.
12. BEIS has indicated that it will publish an update by the end of 2020, with a view to providing clarity for an enduring approach in 2021. Any policy recommendations and proposed changes to the existing regime would be subject to consultation.

Engagement by the Councils with BEIS

13. Since 2018 the Councils have engaged with BEIS in an attempt to ensure a coordinated approach to the major infrastructure projects proposed in and around their administrative areas, which include EA1N; EA2; Sizewell C nuclear power station; other offshore windfarms known as Greater Gabbard and Galloper and two inter-continental connection projects known as the Nautilus and Eurolink interconnectors.
14. Most recently, in August 2020 the Councils wrote to the Minister for Business, Energy and Clean Growth inviting BEIS to take a strong lead in encouraging developers to engage in the Review. They also sought clarification about the interaction between the Review and the DCO applications for EA1N and EA2 and, in particular, whether the timing of the examination into those projects would, or should, be affected by the Review.

Other offshore wind projects

15. On 1 July 2020 the Secretary of State granted development consent for the Norfolk Vanguard Offshore Wind Farm. In doing so, he noted the opposition to the proposed onshore substations, which had driven calls for an offshore ring main to provide a single infrastructure connection point.¹ The Examining authority had found that the consideration of an offshore ring main was a strategic matter which involved many layers of interested organisations and was not, therefore suitable for consideration by the Examining authority in a forum which was considering a DCO application for a single site.² However, it invited the Secretary of State to note the strongly held views that, in light of the number of offshore wind farm project coming forward in this regions, there should be a strategic approach in terms of contributions towards the development of an offshore ring main.³

¹ Secretary of State's decision letter, paragraph 4.49

² ExA report, paragraph 4.4.26

³ ExA report, paragraph 4.4.33

16. The Secretary of State's conclusions on this matter were as follows:⁴

“While acknowledging the views expressed both during and after the Examination, the Secretary of State notes that NPS EN-3 states “When considering grid connection issues, the IPC should be mindful of the constraints of the regulatory regime for offshore transmission networks” [paragraph 2.6.36]. The Secretary of State considers that the offshore transmission proposal for the Development has been brought forward in line with the existing regulatory regime. Whilst discussions are taking place in respect of the future shape of the offshore transmission network, such discussions are at the preliminary stage. The Secretary of State considers that he must assess the Development in line with current policy as set out in the National Policy Statements. He does not consider that the decision should be delayed to await the outcome of the discussions on the offshore transmission network given the urgent need for offshore wind development as identified in the National Policy Statements.”

Advice

Do EA1N and EA2 fall within the scope of the Review's terms of reference, given their proposed connection dates in 2027 and 2026, respectively?

17. The Review's terms of reference include two workstreams. The medium-term workstream will focus primarily on projects expected to connect to the onshore network after 2025. Given that EA1N and EA2 are expected to connect to the network in 2027 and 2026, respectively, my view is that they both fall within the medium-term workstream identified in the Review's terms of reference.

18. One of the objectives of the medium-term workstream is to identify and implement changes to the existing regime to facilitate coordination in the short-medium term. This suggests that BEIS envisages that it may be possible to make changes to the existing regime which would take effect in the short-medium term and affect projects such as EA1N and EA2 which are anticipated to connect to the network after 2025.

Would it would be reasonable for the Councils to argue that it would be premature for the DCO process to proceed prior to the completion of the Review?

⁴ Secretary of State's decision letter, paragraph 4.411

19. In my view, any attempt by the Councils to suggest that the DCO applications for EA1N and EA2 should be held in abeyance pending the completion of the Review would be very unlikely to succeed.
20. Pursuant to s.104 of the Planning Act 2008, DCO applications must be determined in accordance with the relevant National Policy Statement. In this case the relevant National Policy Statements are EN-1 and EN-3.
21. EN-3 states at paragraph 2.6.34 that “*Applicants for consent for offshore wind farms will have to work within the regulatory regime for offshore transmission networks established by Ofgem. Under the regime offshore transmission will be a licensed activity regulated by Ofgem*”, and at 2.6.36 that “*When considering grid connection issues, the [Secretary of State] should be mindful of the constraints of the regulatory regime for offshore transmission networks*”. As with the Hornsea offshore wind farm, my understanding is that the EA1N and EA2 applications have been brought forward in line with the existing regulatory regime. The fact that the regime may change in the future does not seem to me to provide adequate justification to delay the examination of the applications.
22. In this regard, I note that the Review’s terms of reference make it clear that any policy recommendations or proposed changes to the existing regime as a result of the Review would be subject to the usual consultation process, and would therefore not take effect immediately following the publication of the Review’s outcomes.

Would it would be reasonable for the Councils to argue that the Examining Authority and Secretary of State should consider the outcome of the Review prior to making any recommendations or decisions on the DCO applications?

23. Pursuant to s.104 of the Planning Act, in reaching his decision, the Secretary of State is obliged to have regard to the relevant NPSs and any other matter which he considers to be “*important and relevant*” to his decision. If the outcomes of the Review are published during the examination of EA1N and EA2 or prior to the Secretary of State’s decision, then those outcomes are likely to constitute matters which are important and relevant to the ultimate decision and which should, therefore, be taken into account.
24. However, s.104 also makes it clear that the applications should be determined in accordance with the relevant NPS other than in the limited circumstances set out in s.104(4 – 8) of the Act (for example, where a decision in accordance with the NPS would result in a breach of the UK’s

international obligations or would otherwise be unlawful). If EN-1 and EN-3 remain in force at the time of the decision on EA1N and EA2, then the fact that the Review has published its outcomes would be unlikely to justify a decision other than in accordance with those NPSs.

25. In the Vanguard decision, the Secretary of State recognised that discussions were taking place about the future shape of the offshore transmission network, but considered that the discussions were at a preliminary stage. In my view, the consideration of the “*future shape of the offshore transmission network*” remains at a preliminary stage. The Review’s terms of reference have only recently been published; its outcomes have not yet been published; clarity about the enduring approach for the future is only expected in 2021 and any changes in policy or in the existing regime would then be subject to consultation and may or may not be adopted thereafter.
26. The Examining authority and Secretary of State will be required to consider the DCO applications for EA1N and EA2 in accordance with current policy and, given the urgent need for renewable energy, are unlikely to agree to suspend their recommendations or decision on the basis of potential future policy or regime changes. In my view, the Councils would not have a strong case for pressing for the delay of any decision on EA1N or EA2 pending the outcome of the Review.

Conclusion

27. My conclusions are set out in the Summary above.

Isabella Tafur
Francis Taylor Building
Inner Temple
London EC4Y 7BY

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