

PE2095/A: Improve the public consultation processes for energy infrastructure projects

Scottish Government written submission, 22 May 2024

I refer to an email from the Committee's assistant dated Wednesday April 10th, seeking the Scottish Government's views on the action called for in PE 2095.

Background

The petition calls on the Scottish Government to

- review and update section 3.2 of the Energy Consents Unit: Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989 - February 2022 (www.gov.scot) to address the concerns of communities about the lack of meaningful, responsible and robust voluntary and pre-application consultation by transmission operators on energy infrastructure projects, and
- to explore all available levers to strengthen community liaison and public participation for the lifecycle of energy infrastructure projects.

Scottish Government Response

Context

Electricity transmission is a reserved area. While land use, planning and environment are devolved matters, electricity is not. Scottish Ministers carry out land use and planning functions within the Electricity Act 1989 which were transferred under an executive devolution order. Such functions are narrow in scope and do not extend to the creation of statutory pre application procedures. The Scottish Government has, over many years, made requests of the UK Government for additional regulatory powers to place pre application engagement on a statutory footing. This could provide a structured, mandatory process for developments of appropriate scales, providing confidence to members of the public that there must be a high quality and effective level of notification and engagement, with appropriate timeframes and mandatory reporting to Ministers of how community feedback has been properly considered at the earliest stages of a proposal. It would also provide the opportunity for Ministers to require a minimum level of environmental information to accompany any pre application engagement, such that alternatives can be robustly explored, and local communities can comment on early environmental considerations.

The current Good Practice Guidance

The Good Practice Guidance was written by the Energy Consents Unit (ECU), an operational unit of the Scottish Government, and published after approval by Scottish Ministers. The ECU processes applications made under sections 36 and 37 of the Electricity Act 1989, for determination by the Scottish Ministers.

The Good Practice Guidance was updated as recently as July 2022. Noting that the Electricity Act 1989 does not set out a process or requirement for pre application community engagement, the ECU set out in the guidance that they consider it good practice to carry out pre-application consultation with the public, and applicants for consent are encouraged to have meaningful engagement at the earliest possible stage with any communities or groups who would be affected by development proposals. A minimum expectation is that two public consultation events should be held prior to the submission of an application. These events should be publicised on the applicant's website and in a local newspaper. The last event proposed should see the applicant provide feedback to members of the public in respect of any community comments received and taken into account by the applicant up to that point. The applicant is then required in the guidance to submit a pre application report with the eventual application, to evidence to Ministers that the process set out in guidance has been followed and that community concerns have been considered and addressed.

The guidance is based upon current procedures required of applicants for planning permission to planning authorities for major and national development, and these are required by virtue of regulations made under the Town and Country Planning (Scotland) Act 1997. The Town and Country planning pre-application process has been developed over many years in line with best practice.

It is important to state that this is only guidance, and it cannot be enforced by the Scottish Ministers. Non-compliance with guidance would not be a consideration for Ministers in terms of whether or not a proposal ultimately receives consent. Compliance with the guidance is not mandatory and can be variable. In general, for the largest overhead lines, applicants have in most cases met the basic requirements of the guidance, although it is accepted that there is little detail in the guidance about certain matters, for example the level of detail and format of information to be provided to communities, and at what stage(s) of pre application procedure this is to be provided.

The Scottish Ministers' position

While the current good practice guidance is considered appropriate to most forms of electricity development, the scale and linear nature of transmission development potentially requires a more detailed approach to be set out in guidance. Such development can affect several different communities and have different impacts depending on the different environments a line proposes to pass through, making these the most complex of all onshore Electricity Act applications.

The process required to develop a route involves fixed points of connection and requires a particular technical solution to meet national electricity system operating requirements. Further, the development of a route, from route corridor assessment, route selection, and alignment, involves a staged process at which meaningful community engagement is necessary on more occasions than are envisaged by the current guidance. This staged approach and the number of communities potentially affected makes it more challenging for transmission owners to reach the right people at the right time and in the right manner, and it also makes it harder for communities to have confidence that they can have a meaningful say at each important stage in the development of route options. It also requires that there is clarity and consistency of information to be supplied to communities at each stage, such that the impacts

may be understood by communities and that feedback provided by the public may be constructive and meaningful. This makes the case for a different approach to be set out in guidance that is specific for transmission developments, to give confidence to prospective applicants as well as communities, members of the public and key stakeholders that the correct approach is being taken at the appropriate times.

The Scottish Ministers will now consider how to take forward development of pre application guidance specific to transmission line applications requiring environmental impact assessment (EIA) which takes better account of the above distinctions and gives affected communities clear and meaningful opportunities to influence the process of developing route options.

I hope the Committee finds this response helpful.

Gillian Martin
Minister for Climate Action