

Citizen Participation and Public Petitions Committee
Wednesday 11 September 2024
13th Meeting, 2024 (Session 6)

PE2095: Improve the public consultation processes for energy infrastructure projects

Introduction

Petitioner Margaret Tracey Smith

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to:

- review and seek to update section 3.2 of the [Energy Consents Unit: Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989](#) 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
- explore all available levers to strengthen community liaison and public participation for the lifecycle of energy infrastructure projects.

Webpage <https://petitions.parliament.scot/petitions/PE2095>

1. This is a new petition that was lodged on 10 April 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 2,817 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received a submission from the Scottish Government which is set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
September 2024

Annexe A: Summary of petition

PE2095: Improve the public consultation processes for energy infrastructure projects

Petitioner

Margaret Tracey Smith

Date Lodged

10 April 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to:

- review and seek to update section 3.2 of the [Energy Consents Unit: Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989](#) 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
- explore all available levers to strengthen community liaison and public participation for the lifecycle of energy infrastructure projects.

Background information

Communities across North East Scotland have serious concerns about the quality and transparency of the public consultation accompanying SSEN Transmission's East Coast 400kV Phase 2 project.

SSEN's engagement with communities has been rushed, and insufficient effort has been made to understand and communicate the full impact of the proposals to impacted communities. There have been inconsistencies between information presented in SSEN's published material and their contact with community representatives. Many affected residents were unaware of the plans and it has fallen to local campaigners to raise awareness.

These concerns have had a detrimental impact on the wellbeing of residents, who are worried about their health, businesses, property value, cultural heritage, and the loss of prime agricultural land.

The Scottish Government must use all available levers to improve the public consultation processes for energy infrastructure projects and ensure they are carried out with the consent of the affected communities.

Annexe B: SPICe briefing on PE2095



Brief overview of issues raised by the petition

The [Good Practice Guidance sets out a procedure for applications made under section 36 and 37 of the Electricity Act 1989](#) ('The Act') where the development concerned is an Environmental Impact Assessment (EIA) development. Section 3.2 relates to Pre-Application Consultation and Engagement.

Section 36 of the Act requires any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of over 50 megawatts (MW), to gain the consent of Scottish Ministers, with applications processed on behalf of Scottish Ministers by the Energy Consents Unit (ECU).

Section 37 requires proposals to install and keep installed an overhead electric line to conform to the same requirements.

There are no statutory Pre-Application Consultation (PAC) requirements for energy consent applications under Section 36 or 37 of the Act. Instead, the carrying out of PAC with the public is considered 'good practice'.

In the Good Practice Guidance for Applications, section 3.2 relates to 'Pre-Application Consultation and Engagement', and it states that:

- "The carrying out of pre-application consultation with the public is **considered good practice** and applicants are encouraged to have meaningful engagement at the **earliest possible stage** with any communities or groups who would be affected by development proposals."
- "Whilst there are **no statutory pre-application consultation procedures** for section 36 and section 37 applications under the Electricity Act, the minimum expectation is that applicants carry out pre-application consultation as set out in Table 1 below. The applicant is asked to set out in advance to ECU how they will carry out pre-application consultation. Applicants for section 36 and 37 consents are asked to submit a preapplication consultation report with their application for proposed developments that are EIA developments."

The stipulated expectations for PAC (from the aforementioned Table 1) include:

- "... to hold at least two public consultation events prior to submitting the application"
- "At least seven days before holding a public event, the applicant should publish on the applicant's website and in a local newspaper circulating in the

locality in which the proposed development is situated a notice containing” details of the event

- The applicant should provide a description of the development at the public event and publish these details on the applicant’s website
- The applicant is expected to prepare a pre-application consultation report (“PAC Report”) setting out what has been done to accord with the guidance

Background to electricity infrastructure

A single integrated electricity grid operates on the island of Great Britain, with responsibility for most energy policy resting with the UK Government and UK Parliament. This includes the regulation of the energy sector which is delegated by statute to an independent regulator; the Office of Gas and Electricity Markets (Ofgem).

While policy and regulation relating to electricity networks are reserved matters, devolved policy can have substantial implications for the networks’ future, as [planning and consents law is ‘almost entirely devolved’](#).

Policy developments

The Scottish Government’s [Draft Energy Strategy and Just Transition Plan](#) sets out that:

- “Significant infrastructure investment in Scotland’s transmission system is needed to ameliorate constraints and enable more renewable power to flow to centres of demand. National Grid ESO has identified the requirement for over £21 billion of investment in GB electricity transmission infrastructure to meet 2030 targets. Over half of this investment will involve Scottish Transmission owners SPEN and SSEN. The most recent Network Options Assessment from the ESO also includes two major subsea links to England from Peterhead.”

The [National Grid recently published a Beyond 2030 Report](#) which ‘makes a set of network recommendations throughout the 2030s’ with network upgrades totalling £58billion. They plan to publish a Centralised Strategic Network Plan in 2026.

Further recent policy developments that affect the planning and consenting of electricity infrastructure include the [National Planning Framework 4 \(NPF4\)](#).

In the NPF4, “New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more” is classed as a ‘national development’.

- ‘A development contributing to ‘Strategic Renewable Electricity Generation and Transmission’ in the location described, within one or more of the Classes of Development described below and that is of a scale or type that would otherwise have been classified as ‘major’ by ‘The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009’, is designated a national development’

On Energy, the 'Policy Intent' section set out:

- 'To encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This includes energy generation, storage, new and replacement transmission and distribution infrastructure'.

The wider Energy policy section included the following:

- 'Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported.' Including 'enabling works, such as grid transmission and distribution infrastructure;'
- 'Grid capacity should not constrain renewable energy development. It is for developers to agree connections to the grid with the relevant network operator. In the case of proposals for grid infrastructure, consideration should be given to underground connections where possible.'

The UK's Electricity Networks Commissioner, Nick Winser, was appointed in July 2022 as an independent advisor to government. The [Winser Review findings and recommendations](#) were published in August 2023. The recommendations include some that were focused on planning in Scotland:

- SP1: 'The automatic requirement for a public local inquiry when the planning authority objects should be removed. An alternative process should be introduced that would allow Scottish Ministers to hear more about a specific issue raised by statutory consultees as an alternative to a public inquiry.'
- SP2: Further improvements should be made to the planning process to reduce the time taken to obtain planning consent to twelve months. Changes to the Electricity Act 1989 could be made or a new supporting process introduced. Changes should include, but are not limited to:
 - Introduction of pre-application requirements to reduce the need for additional information requests. Pre-application requirements could include environmental surveys and community engagement.

Scottish Parliament Action

[PQ \(S6O-02961 Tess White\) \(Lodged 10th January 2024\)](#): To ask the Scottish Government whether it plans to review the consultation process for energy infrastructure projects.

Response (The Minister for Energy and the Environment (Gillian Martin)):

"The power to alter the Electricity Act 1989 to change the legislative basis for consultation processes under that act is reserved to the United Kingdom Government. However, the UK Government's transmission acceleration action plan, or TAAP, makes it clear that changes to the consenting regime in Scotland under the 1989 act are necessary to accelerate the determinations process, and the UK Government has committed to a review. The Scottish Government supports such a review, and we will work with the UK Government to progress it.

The Scottish Government is currently undertaking work to streamline the consenting regime for offshore energy infrastructure projects, including reviewing the consultation processes.”

Niall Kerr
Senior Researcher, SPICe
14/05/2024

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Annexe C: Written submission

Scottish Government submission of 22 May 2024

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

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