

Points put to Ofgem by representatives from Dumfries & Galloway in relation to Scottish Power's proposed Strategic Reinforcement Project, Friday 11 March 2016

Present: Kirsti Berge, Partner, Networks and Head of Ofgem for Scotland
Mike Leonard, GB External Relations
Jeff Randall, Head of Electricity Transmission
Anna Kulhavy, Senior Regulatory Economist
Joan McAlpine, MSP
Alice Howdle, Kirkmahoe Residents
Gordon Douglas, Glencairn Community Council
Dr Ramesh Adhikari, Racks Residents
Alan Jones, Dumgal Against Pylons

Background

- Appreciate the need to upgrade the network to export renewables.
 - Also appreciate existing system will need to be replaced at some stage, although it is in similar condition to the majority of 132kV transmission systems operating throughout the UK which were built in the 1920/30s. No evidence to suggest the system will fail in next 10+ years with continued maintenance, and reliability metrics currently meet a range of targets.
 - Want to avoid the region becoming another example of Beaully-Denny as described in letters from three Beaully-Denny residents prepared to make their views public as examples of what life is like living with new infrastructure.
 - Only goal is to campaign for a more sympathetic solution that takes account of the disturbance to the environment, the economy, and the people who live, work and enjoy recreation within the region. Believe these factors are not fully assessed by transmission operators at present.
 - Up to 9 March 2016, 57 Community Councils (representing 63.3% of Community Councils and 75,435 residents) have given their support to the campaign calling for a more sympathetic solution.
 - Alternative proposal exists based on the most likely scenario for renewable generation post 2020. Alternative minimises blight by uprating while retaining much of transmission network at 132kV (~3m taller pylons, not double the height) and re-using the existing route with some modest deviation and/or undergrounding. Alternative has several potential advantages including overcoming lengthy planning delays and minimising constraint payments.
- More recent independent audit (March 2016) of likely generation post 2020 includes assessment of landscape and visual amenity, and capacity of the area to absorb more wind farms as well as history of planning consent. Confirms validity of alternative proposal but a new 400MW pumped hydro scheme at Sanquhar could introduce further options to mitigate impact as well as aid (capacity) congestion around Kilmarnock and (physical) congestion at Harker.

Opportunities for Scottish Power to improve future public communication

-Credit stakeholders (residents and other groups) with intelligence. Obfuscation, even when unintentional, often results in a negative reaction. For example, a) claiming power supply interruptions are due to the old transmission network when more probably they are due to the equally old rural distribution network, or b) claiming removing 22m tall 132kV pylons is an equitable exchange for replacing them with 400kV, 50m tall pylons.

-Avoid commercial mail. It can easily be mistaken for junk mail and discarded.

-Avoid scheduling consultation processes, or setting deadlines for feedback, over main holiday periods.

-Promoting location of substation using photograph in brochure, 'Powering your Future,' taken from a vantage point that belies the fact that there is a community in the immediate vicinity.

Improving Procedural Justice

Community Councils play a vital role in representing the views of their communities on a broad range of issues. Community Councils should a) have received prior notice of the intention for a Strategic Reinforcement Project and b) have the opportunity to feed their views into the Stakeholder Liaison Group at an early stage in the project so as to help shape key decisions.

Planning Democracy

Those on the receiving end of infrastructure development projects are often left with insufficiently detailed information on which to base decisions. When such information is eventually made available it occurs too late in the planning process to allow effective dialogue and for opposing views to be formulated and laid before the planning authorities. To improve on the current situation two proposals are made.

-SPTs initial Needs Case documentation as well as Ofgem's analysis of this document should be put into the public domain at the earliest opportunity. The same applies to further Needs Case documentation as the project develops. [See the Ofgem comments on this paragraph in the email dated 18 March 2016]

-The availability of independent socio-economic impact data on a region such as Dumfries & Galloway is needed to help determine whether it has the capacity to absorb new infrastructure without a debilitating loss to either the environment (and hence economy) and/or to its people. A research proposal makes the case for putting this information in the public domain at an early stage in the project to help guide decision making.

Going Forward

1 Jeff Randall (Ofgem) to advise whether the capacity of the Moyle Interconnector will be determined by commercial or technical limits. [See the Ofgem comments on this paragraph in the email dated 18 March 2016]

2 Provide feedback to Ofgem following meeting with Scottish Power Transmission Limited (SPTL) in relation to a) how the alternative plan is viewed in relation to the ongoing SPTL/National Grid System Operator (NGSO) deliberations and b) their level of support for and interest in the research proposal.

From: Mike Leonard – Senior Communications Manager, Ofgem

To: Alan Jones – DGAP

Date: 11 March 2016

Hi Alan

Following our meeting earlier today, I wondered if you would be kind enough to send me an electronic copy of the materials, including the small maps, that you used at the meeting.

I'd obviously welcome the opportunity to pass electronic copies of the documents to Geoff Randall and Anna Kulhavy.

Kind regards

Mike Leonard

From : Alan Jones - DGAP

To : Mike Leonard - Senior Communications Manager, Ofgem

Date : 14 March 2016

Hi Mike,

Further to my correspondence over the weekend please find a number of attachments to this email that you can share with your colleagues.

They are:

1 Brief notes of the points we, as a group, made to yourselves on Friday in relation to the concerns we have for the way in which the project has been handled so far and how the process might be improved in future.

2 A copy of three letters received from residents in the north of Scotland living near the Beaully-Denny infrastructure describing what life is now like for them.

3 A copy of our alternative proposal which includes the small diagrams I referred to in the meeting.

4 A diagram showing the projected renewable generation in Dumfries & Galloway based on a recent analysis

5 A copy of our proposed research programme

I have shared item 1 with the group to ensure everyone is in agreement.

We, and most likely Joan, will be back in touch following a meeting with Scottish Power to let you know how things went. Perhaps this might form the basis of a follow-up meeting?

Kind Regards,

Alan

PS Please be advised that Dumgal Against Pylons operates as a transparent organisation in a similar way to Ofgem. To this end we plan to publish the notes of our meeting on our website at www.dumgalagainstpylons.org. Before doing so, however, I thought it prudent to ask whether this might cause you a problem.

From: Mike Leonard – Senior Communications Manager, Ofgem

To: Alan Jones – DGAP

Date: 18 March 2016

Hi Alan

Thanks for your email and for your telephone call.

I attach a marked up version of your note of the meeting, with a few minor changes on names and titles. Subject to the points below, we don't have any objection to you publishing a note of the meeting on Dumgal Against Pylons' website.

1. **SPTL's Initial Needs Case and Ofgem's analysis should be put into the public domain at the earliest opportunity.** *We don't recall making this point in the way you describe. Scottish Power's submissions are confidential and we won't publish them. However, we will consult on the Initial Needs Case and we will publish our analysis of the submission together with supporting evidence from our consultants (redacted where necessary on the grounds of commercial confidentiality). We will publish our consultation when our analysis is complete – while we would look to complete our work as early as possible we can't commit in advance to a particular timescale.*

2. ***Ofgem to advise whether the capacity of the Moyle Interconnector will be determined by commercial or technical limits. The entry capacity of interconnector could be a combination of both. This is an issue for Moyle to resolve with NGET/SPT in the first instance.***

In terms of next steps and in relation to our role, what we would find helpful is to receive a note of your feedback on the meeting with Scottish Power. This would allow us to consider how best to take forward or respond to any issues arising from it.

I hope this is helpful.

Mike Leonard

From : Alan Jones - DGAP

To : Mike Leonard - Senior Communications Manager, Ofgem

Date : 3 April 2016

Hi Mike,

I'm sorry for not responding sooner to your comments of the 18 March. I have been engaged in preparing for my PhD viva and I'm pleased to say that I successfully defended my thesis earlier this week, which explored small firm engagement with low-carbon business practices. Now that this is out of the way let me return to our correspondence by responding to the two comments you made in relation to my notes of our meeting on the 11 March 2016.

Regarding the Moyle Interconnector, I note this is simply a matter of fact and I will modify my notes to reflect the position you suggest, namely that the future capacity will be determined in the first instance by the operators of the Interconnector in conjunction with NGET and SPT.

Your other point, point 1, is more difficult to address in simple terms and therefore a degree of 'unpacking' is required. It goes back to the principle of improving planning democracy in relation to large infrastructure projects where, as I described in our meeting, information may be tabled too late or lack adequate detail to allow those receiving the unwanted infrastructure, or bodies acting independently or on their behalf, to make informed judgements and submit rational and informed objections. I cited the case of Sir Donald Miller, the first Chair of Scottish Power, who was barred at the Public Inquiry to Beaulieu-Denny from raising certain points simply because at the time of the planning application he failed to lodge objections relating to these matters within the 1-month window.

I appreciate clearly, and it is reassuring to note, that part of Ofgem's activity includes one of constantly monitoring transparency and effectiveness of the regulatory processes employed and it was for this reason I wanted to bring to your attention the need for improvements in planning democracy. I felt this is an issue which is currently overlooked and one that inherently disadvantages objectors to proposed infrastructure schemes.

You will recognise too, that I described my notes as, “Points put to Ofgem ...” rather than “Minutes of meeting with Ofgem,” to reflect the fact that we, as residents of Dumfries & Galloway, were the supplicants presenting our case and our concerns, and thus calling upon Ofgem to consider future improvements in the regulatory process. It was not meant to be interpreted that you agreed to this statement, but merely that we had put the points to you for consideration. This perhaps answers why you state in your email dated 18 March 2016, “We don’t recall making this point ...”

Turning now to your reply in relation to this question, and here I will unpack this into the constituent parts.

1 Scottish Power’s submissions are confidential and we won’t publish them.

I think consumers and other bodies will be surprised to learn that an oligopoly such as SPT who is allowed to spend £10.7m which is ultimately recovered from consumers to develop an infrastructure proposal are not entitled to see the detail of these submissions (with commercially sensitive material redacted) published on Ofgem’s website.

One of the learning outcomes from Beaulieu-Denny, for us, is that these bodies require access to the Needs Case, and especially the technical and economic arguments, at the earliest opportunity in order to arrive at an independent evaluation for the veracity of the arguments made in support of the proposal with any weaknesses and gaps helping frame their (the objectors) objections. Such information forms the basis of democratic governance.

To this end, and before we learnt of NGSOs NOA1 recent report, we have made several requests under the Freedom of Information Act to Ofgem to request copies of Scottish Power’s Initial Needs Case. On each occasion we have been informed that you have not yet received a copy, and furthermore, there is no obligation on Scottish Power as to when they are required to submit such a copy to you.

To bring this particular point to a conclusion therefore, am I correct in thinking that although Ofgem will not publish Scottish Power’s submissions, interested parties will be able to obtain copies of such documents under FOI requests? Am I also correct in my interpreting that while there may be no particular time by which TOs should submit such information to you the submission of the Initial Needs Case should be such that it satisfies both the needs of the various Public Consultation processes and allows Ofgem sufficient time to evaluate and analyse their submission ahead of the next step in the development process. A flow chart showing the timeline of these inter-related activities and processes would be most helpful.

2 We will consult on the Initial Needs Case and publish our analysis of the submission together with supporting evidence

You do not state who you consult with. Is such consultation reserved for your consultant, presumably NGSO, or does it encompass a wider range of stakeholders? Could such consultation, for instance, involve those bodies who may ultimately be affected by the proposal?

In publishing your analysis will it, for example, include a sufficient level of detail to demonstrate that the technical and economic arguments have stood up to scrutiny? Will it take account of, making reference to objective data, the potential impact on the host environment and will this lead to defining the level of mitigation required?

3 We can’t commit in advance to a particular timescale

In some respects this is similar to point 1 above. However, it leads to the heart of the issue of planning democracy in so far as intended recipients of infrastructure development need sufficient time to evaluate and analyse proposals in the same way that Ofgem do. What would help greatly here is a flow chart working backwards from the point of making a planning application showing the time allowed for each of the parties involved, including the host recipients, to develop their thought and action processes.

I appreciate it may take a little time to respond to these points and in the meanwhile we, as Dumgal Against Pylons, have several thousand supporters across the region who look to us to keep them informed of developments. What I propose, with your agreement, is that I publish my notes of the points we put to Ofgem on the 11 March on our website and other social media suitably modified with the minor corrections you sent me and with reference to the Moyle along the lines you suggest. In terms of the comments under planning democracy in general and SPTLs Initial Needs Case in particular I will add your comments but say that these points are still under discussion.

It may be, depending on your reply to these points that we pursue them further in our meeting with David Mundell and your colleagues from London. I am seeing David on the 15 April and we will decide how best to take this meeting forward. I can also advise that Joan McAlpine's office have been in contact to say that Scottish Power are willing to meet with us although there has been difficulty in finding suitable dates. Rest assured that following this meeting as well as one David Mundell is attempting to arrange with the CEO of Scottish Power UK Ltd I will inform you of the outcomes.

Regards,

Alan

From: Mike Leonard – Senior Communications Manager, Ofgem

To: Alan Jones – DGAP

Date: 14 April 2016

Hi Alan

Thanks for your email of 3 April and please accept my apologies for the delay in responding.

As you suggest, it may be useful to discuss the issues you have raised in your email in the meeting requested by David Mundell MP. However, in advance of the meeting I thought it would be helpful to clarify a few key points.

1. **Consultation.** Our consultation will be published on our website and open to all interested parties to respond to. We will follow our [approach to consultations](#) – typically we would expect to consult on a needs case for around 8 weeks. Our consultation documents will include both our own analysis and our independent consultant's report (redacted where appropriate).
2. **Publication of information.** We cannot give a view in advance of how we will respond to any individual request under the FOI. As we are required to do so we will consider any request and respond within 20 working days.

The planning authorities will expect Scottish Power to make relevant information about the project need and scope available to stakeholders during its consultation on its proposals. However, the initial needs case is not a requirement of the public consultation process, which the company has to undertake under planning law. The initial Needs Case is a specific submission for our regulatory approval process in which Ofgem determine whether a project is economic, and if so how much the company is to be funded under its price control. We encourage network operators to submit an initial needs case on projects early on in its development (but it isn't a licence requirement) in order that our regulatory process works effectively and any issues on a project are raised in a timely manner so that they can be addressed promptly.

3. **Flow chart.** We will include a flow chart in the updated Strategic Wider Works Guidance which we aim to publish in the summer. This will include a diagram to highlight the likely timing of an initial needs case submission, relative to other events in the development life cycle of a major transmission project.
4. **Our assessment of the Needs Case** – while our assessment process has changed, it may be helpful to consider our initial views on the Needs Case for the [Caithness–Moray link](#) which we published in April 2014. This followed on from eight week period of consultation, which included publication of independent reports by our consultants **DNV-KEMA** and **Poyry**.

Please note that we would not expect the level of mitigation a project needs to be defined at the initial needs case stage. This is because the initial needs case comes at an early stage in the development of a project. The level of mitigation required will be the subject to defining the specific route and siting of infrastructure, and the company having considered the impacts and consulted stakeholders on these. Ultimately, the level of mitigation required will be determined by the planning process. Once any decision is made on the need for and extent of mitigation measures, our role will be to decide whether the cost represents good value for money for GB energy consumers.

I hope my reply is helpful.

Regards

Mike Leonard

From : Alan Jones - DGAP

To : Mike Leonard - Senior Communications Manager, Ofgem

Date : 4 May 2016

Hi Mike,

Thank you for your reply dated 14 April 2016. It is encouraging to learn that you plan to include a flowchart in the updated Strategic Wider Works Guidance document as this will provide a helpful addition to readers seeking to understand the overall process. It was also useful to read the Caithness-Moray Needs Case Assessment.

I have delayed responding so as to assimilate the thoughts of others with whom I have shared the essence of Ofgem's position as set out in your last email. Here, views have been sought from a range of individuals and organisations, such as David Mundell MP, Angus MacNeil MP, Richard Arkless MP, and the John Muir Trust. This process has highlighted a number of concerns around the broad issue of Planning Democracy which I am certain will lead to a request for a further meeting. You will appreciate that due to the current situation at Holyrood I have not been able to seek the views of our MSPs.

Let me address your points in turn so as to expand our concerns.

Clause 2 Publication of Information

1 You refer to the planning authorities expecting Scottish Power to make relevant information about the project need and scope available to stakeholders during the consultation on its proposals. You will appreciate that we have seen at first-hand the level of information provided by Scottish Power during the consultation process. Be assured there is insufficient technical or economic detail contained within such information to allow residents, or organisations seeking to influence the proposal to mount a satisfactorily challenge. The indigenous population of a region designated to receive new infrastructure, as well as campaign groups, are therefore severely restricted in their attempt to investigate the need, scope and scale of a project simply because of insufficient detailed information.

2 Your reference to providing only redacted information as part of any consultation process together with an inability to confirm whether a request made under the Freedom of Information would result in Scottish Power's Needs Case being made available adds further to our concerns under 1 above. We are at a loss to understand why a document that comes at such an early stage in the development of a project, and typically some 4-5 years before a project commences, should be considered to have the level of confidentiality it appears to have been assigned.

3 You refer also to the initial Needs Case as a specific submission for your regulatory approval process in which Ofgem determine whether a project is economic. I thought the Needs Case, and the assessment that follows, (as defined in clauses 2.14-2.22, Guidance on the Strategic Wider Works arrangements in the electricity transmission price control, RIIO-T1) was a more holistic process. I believed it to be one aimed at ensuring the project is justified, and where emphasis is on the appropriateness of the technical proposal taking account of the many factors that can lead to a proposal being over-specified. I refer here to the projected generator connections, the contracted generation dates, the level of user

commitment, local consent status of proposed generation developments and historical slippage dates.

To take just one example, we know, for instance, there is a queue for grid connections while many projects ahead of those waiting will never start their projects because they fail to get consent, lack investor backing, or, having paid large sums upfront for the connection they do not want to pay a penalty for cancelling their grid connection. This means there is a large backlog of renewable power which, for one reason or another, will not come to fruition. However, in the past this has not been of material consideration for transmission operators in proposing new infrastructure development and it is likely that UK legislation will be needed to change this practice.

We, therefore, see the initial Needs Case, in the first instance, as an opportunity to test the technical and practical veracity of the alternative proposals put forward by TOs against a range of factors, although we do recognise the recent involvement of National Grid, as the system operator, now introduces a broader economic appraisal to optimise boundary constraints.

4 You mention that Ofgem encourages network operators to submit an initial Needs Case early on in the project development in order to allow the regulatory process to work effectively, although you add that this is not a licence requirement. By implication, this suggests that if the initial Needs Case is not submitted early then the regulatory process becomes inefficient and fails to be fit for purpose. I would be grateful if you could let me know why it is not a licence requirement and what would be required to make it so? That said, Ofgem already have influence under RIIO-T1 to incentivise network operators to submit such Needs Cases at an early stage and I wonder why Ofgem does not make more use of this mechanism?

Clause 4 Our Assessment of the Needs Case

Your comments here brings us to the heart of the issue: the fact that the level of mitigation is not considered at an early stage in the project life-cycle, but instead materialises at the end of the process - at the consent stage, which may be several years down the line. It is only after this point, i.e. post consent together with any incumbent mitigation requirements, that Ofgem considers whether the cost represents good value for GB energy consumers.

As campaigners petitioning for a better, fairer, and more just system this raises two issues. Firstly, the network developer has little or no incentive at the early stages in the project development to deviate from their proposed line, even though their plans may not be capable of being sufficiently mitigated or because mitigation would cost too much. Secondly, at the development stage no-one knows what an appropriate level of mitigation will cost because it isn't mandated and hence different options cannot be fairly compared, either from a cost perspective or from a consideration of other impacts.

While both these issues are clearly interrelated there are at least two significant implications. One is that by the time the project reaches the planning stage neither the network developer, nor Ofgem, has any idea of what the final cost of the project will be because the need for, and hence the cost of mitigation is not included at that stage. The second is that as Ofgem are also required to take account of the effect of a proposal on the environment it is possible that the Minister, in considering a Section 37 planning application, will assume that because the proposal has the backing of Ofgem that matters relating to economic and environmental perspectives have been accounted for in the planning application. Thus, there is an opportunity for both Ofgem and the Minister, to be over-reliant on the diligence, knowledge, and awareness of the other party.

Our belief is that Ofgem could encourage a more holistic approach where the economic, social and environmental costs, and benefits arising from an examination of a range of alternatives to satisfy an infrastructure project is better than the network developer pursuing a single option from an early stage. With such a system in place Ofgem could give evidence to a Public Inquiry, should the Reporter feel minded to reject a proposal, that either mitigation, or one or more alternatives exist which Ofgem could sanction, even at a higher cost, providing they could be justified as offering consumer value. In this regard we were heartened to see Ofgem employing some aspect of this, more holistic approach, in their Caithness-Moray decision letter. We would like to see this become part of standard practice.

As a final point, and in support of the point I made around the issue of confidentiality, I was disappointed in the reply I received from National Grid following the release of their NOA 1 report. Here, I requested sight of the almost 30 alternative proposals that NG considered for Dumfries & Galloway and the economic appraisal of the scheme that was selected and put forward for cost-benefit analysis evaluation. The reply I received, in relation to the former, said that I needed to apply to Scottish Power Transmission for this information and, with respect to the latter, because NGs licence conditions are designed to support competition in providing transmission infrastructure, they could not give me access to this information due to the need to protect confidentiality.

This leaves me questioning how Ofgem, and those charged with regulating our processes, will ever satisfy the need for transparency to the point where the consumer, and those campaigning for an improved system, can see the right decisions have been taken.

Kind Regards,

Alan