

EnergyLaw@Lansdown Chambers

The New Connections Regime

Connections are ‘paused’ until the new connections regime is in place, i.e., it isn’t possible to obtain a connection at present. That pause affects both transmission and distribution connections. Once the pause has ended, a new regime for both comes into effect and changes the development landscape.

The scale of the change is intended. The new regime aims to prevent speculative applications and to restrict the connections queue (which is now vast) to those with the right technology in the right place that are ready to go.

Distribution applicants must follow the process below. That for transmission applicants is slightly different (there is a pre-application window) but should end up at the same point, i.e., provide a firm connection offer at about the same time.

There are two things to note. First, the last details of the new regime aren’t yet finalised and there could be further change; second, timings are not confirmed and assumptions about start dates are made.

Applying for a DNO Connection Offer – Gate 1

Project A wants to apply for a connection offer; in doing so, it applies for a connection date. The new G99 ‘Standard Application Form’ requires the developer to submit *as part of the application process*:

- The heads of terms of an agreement with the landowner giving exclusive rights;
- A site layout plan which clearly shows all land relevant to the application;
- A detailed engineering design plan; and
- A preliminary project timeline (all the way through from planning, plant delivery up to commissioning, all with specified dates and including a feasibility study, risk management plan, resource allocation).

Although this is all preparatory, it is meant to provide the DNO with some certainty

that the projects that apply in Gate 1 intend to progress to Gate 2.

The DNO reviews A's application along with all others made to it in the same timeframe, then makes an offer. That offer is for an indicative connection date at an indicative connection point. As only an indicative offer is given, the same offer is given to all applicants at the same GSP.

Getting a DNO Connection Offer – Gate 2

Having accepted a Gate 1 indicative offer, A now wants to apply for entry to the Gate 2 queue.

To do so A needs to have met the Gate 2 Milestones. They are:

- An executed lease option agreement (minimum requirements are specified);
- An application for planning consent has been made (and evidenced);
- Confirmation that the project fits NESO's "strategic alignment criteria", aligning to the capacities in CP30, i.e., the project must conform to the capacity, location and technology type set out in the CP30 annex tables.

This is the point at which everything that was preparatory at Gate 1 is now in place. (Note that planning consent is not yet granted. NESO intends to introduce a "Project Progression Fee" together with security to enable it to terminate the arrangements if consent is not granted within a reasonable time. This is not yet intended for DNO applications, but may be expected to be introduced at some point.) A Gate 2 application fee (not yet specified) is payable.

The DNO batches its Gate 2 applications and sends them to NESO in a Gate 2 application window. The DNOs currently assume there will be a Gate 2 window three times a year.

Having been passed to NESO, projects that are approved obtain a queue position based on when they met the Gate 2 criteria. (No real explanation is given for the queue, but once a project is in Gate 2 it goes to the TO for design, suggesting primacy for those higher in the queue.)

When A's Gate 2 application is accepted, NESO notifies the DNO – which informs

A of its varied connection offer. The whole process is expected to take 10-14 months.

Development Risks

What this programme demands is that *before* the applicant moves from Gate 1 to Gate 2, and therefore *before* it knows its connection date and its connection cost, it must have incurred almost all its development costs and to have lined up its funding, its technology provider and its EPC contractor. So at the point at which a project moves from Gate 1 to Gate 2, it is ready to go, subject to receipt of planning consent.

Funding offers are not made in the absence of known returns, something the programme prevents. Similarly, EPC and technology contracts require start and end dates – which are not available until after application to Gate 2.

Something has to give. The costs of a connection vary hugely and projects fall by the wayside on their basis. Project A may receive an offer for £5 million or, in another place, for £21 million. A will not, it cannot, accept the second offer. So, too, for dates. Unless Project A knows when it can connect, it has no basis to plan ahead.

This new regime ensures that only *some* projects can apply for a connection. But unless the risks at Gate 2 are removed, these will be limited to projects developed by organisations that can balance-sheet fund, i.e., big corporations. The programme introduces new and anti-competitive market-entry barriers that are hard to justify.

What's the likely outcome? The few big corporations that could take Gate 2 risks cannot be counted on to deliver the government's targets: there are too few of them and they increasingly have their own conflicts of focus.

Add to this that the fewer known applicants there are, the higher the demands for returns must be expected to be (so the greater the cost to the end user). That's the classic outcome of an anti-competitive market.

NESO, Ofgem and DESNZ need to think about this again.

This is an information-only publication; it is not intended to provide or offer legal advice

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