

EnergyLaw@Lansdown Chambers

Energy Policy End-to-End

There are multiple problems facing the growth of renewables, all the way from rooftop solar (caused by issues with rental agreements, re-sale values, network hold-ups) to there being insufficient heavy plant to create traditional inertia on networks.

As well as these problems and others of the same order (many being addressed in government policy papers, in NESO decisions or in promised consultations), there are bigger problems, each with their own – often painful – resolution.

Dealing with Capacity

There isn't enough capacity on the grid for all generation seeking to connect – and there are far more projects waiting to connect than GB will ever need (at least according to NESO's forward-looking – and for present purposes, determinative - energy scenarios).

The 'answer' to this major issue is in a number of parts.

- Investment in new network assets ahead of need (this is revolutionary).
- Planning made simpler, faster and more certain, partly by the use of designation.
- An overarching Strategic Spatial Energy Plan (**SSEP**) and a range of associated network and local plans to identify what plant is needed and where.
- A connections regime that requires new generation to be of the kind wanted by the SSEP at the places required by demand and by network operations. Any applicant for connection of a project not aligning with SSEP is wasting its time; it won't get connected.

Plant Location and National Pricing

It matters where generation connects: if it's too far from demand, it must be conveyed over distances, causing operational problems, lost power and increased costs.

This particular problem was to be dealt with by proposals for zonal pricing. Places with high demand would have higher prices than places with lower demand, so

incentivising new plant to locate where demand and prices were high. The big problem with zonal pricing is that electricity prices would depend on postcode, so the Scots (who unsurprisingly think zonal pricing to be a good thing) would pay less than Londoners, whose prices would be the highest. No matter what benefits zonal pricing might carry, explaining to an electorate that prices would rise in some places was never going to be a feasible sell.

Zonal pricing is at long last off the table. Instead ‘national’ pricing is the future and since government doesn’t set prices, it’s the soft underbelly that is in its sights: network costs. Key to the policy is SSEP plus suggestions in a recent DESNZ working paper that network pricing will be made tougher and connection charges will be “deeper” (i.e., cost more) for new generation in the wrong place.

The puzzling feature of proposals to increase costs is that it’s hard to see how they will affect the location of new generation. The SSEP makes clear what can be built and where. The connections regime guarantees that anything not aligning with the SSEP won’t be connected. So greater network and connection costs can’t affect new generation: if it’s in the ‘wrong’ place or it’s the ‘wrong’ technology, it won’t get built.

Government can’t be intending to penalize existing plant so it has either not thought things through or it doesn’t believe the SSEP and new connections regime together can do all that is needed. On this latter point, it’s worth noting that the intended Planning and Infrastructure Act (see below) gives Ofgem a time-limited power to make further changes to the connections process by a power to nullify or amend existing connection agreements. So perhaps government *isn’t* convinced that SSEP and the connections regime together (as currently constituted) can do the job.

Cannibalisation of Solar

What’s called ‘cannibalisation’ of solar is a problem. When supply of solar exceeds demand on a hot sunny day, prices can become negative, leaving a generator with returns below cost. This makes new solar generation in a developed market risky and unattractive, but more solar investment is needed if targets are to be achieved.

There are strategies that can be utilised to help deal with this.

- ✓ One strategy is co-location of solar with storage. Batteries absorb the power when it's cheap and export it when demand, hence prices, are high(er).
- ✓ Another strategy is long-term power purchase agreements. Although there are issues when a solar PPA is designed to supply corporates that have other power needs (Update November 2024), sale of output via PPAs to big suppliers or to independent batteries avoids those issues and ensures sellers have stable prices.

In support of these anti-cannibalising strategies, government proposes to consult on corporate solar PPAs later this year; it wants to see them in widespread use but shows no sign that it sees there to be any associated problems. It has also amended the CfD scheme to allow for co-located solar and batteries, although batteries are not (yet) in the CfD supported mix.

What government is not intending to do is remove the 'penalty' of negative pricing to the CfD regime to make difference payments to bridge the gap between strike prices and negative prices. Until that happens the two strategies indicated are the only defence against cannibalisation. Perhaps for that reason co-location of solar and storage has become *de rigueur*. What isn't yet clear is how big both a solar farm and a battery have to be to make that co-location financially viable as a joint enterprise rather than merely being a way (an expensive way) to avoid the penalty of negative prices.

Once upon a time, when the CfD scheme was quite new, solar generators had to bear the risk of negative prices only when market prices had been negative for six hours. Reinstating that rule avoids most cannibalisation risk. Government should consider its reintroduction if it's serious about its solar targets.

Planning Problems

Community objections are a pressing problem as are the range of local development plans that make provision for renewables in principle but not so much in practice. Increasing network capacity involves pylons and increasing generation involves what many think of as unsightly intrusions on their landscape.

The 'answer' to these problems is the Planning and Infrastructure Act (currently still the Bill as it will remain until ~Q4), together with new Nationally Significant

Infrastructure Project (**NSIP**) policies and the capacity to designate government policies (the Industrial Strategy and its six accompanying plans will be designated enabling, among other things, “*Government to reserve future capacity on the grid, dramatically reducing waiting times for businesses with major investments in GB*”).

The new Act is aimed at ensuring ‘needed’ (that’s a loaded term) infrastructure can be built by speeding up the ‘right’ decisions on planning applications, reducing procedural waiting times and preparing local authorities to be more professional (more timely and sympathetic to, *inter alia*, energy schemes). Proposed new NSIPs underscore the intention; limitations on rights to judicial review add to it.

The Act will introduce a Nature Restoration Fund, an alternative approach for developers to meet specified environmental obligations imposed by previous legislation. A body (yet to be designated) will set out plans to deal with impacts on sites and species. It is intended to remove obligations from developers by (it would seem – details have yet to be provided) requiring payment by those developers into a fund used to address the resultant environmental issues.

That and the Rest

Other plans and policies (the Industrial Strategy and its six associated sub-sector plans, changes to the impending CfD auction, promised waste obligations, plans for hydrogen, plans for the location of data centres, etc) all sit within these four main pillars of strategy. Some of them are now subject to consultation, some are yet to be clarified to be in a form suitable for consultation. Much of the strategy of these pillars is itself nascent and is almost all subject to proper consultation later this year.

New legislation is promised, much legislation needs amending (e.g., to change the obligations of NESO and the distribution companies to connect on request). The NSIPs and the proposed designations also need drafting or finalising, followed by parliamentary approval. So it’s all here, just not quite yet - and for the entire programme the due date is 2030.

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

Energy Law @ Lansdown Chambers
+44 (0) 7958 463 213 | www.energylawuk.com | sally.barrett-williams@energylawuk.com