

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 8 August 2022

Public Authority: National Grid Electricity System Operator

Address: Faraday House
Gallows Hill
Warwick
CV34 6DA

Decision (including any steps ordered)

1. The complainant has requested grid connections for seven wind farms. National Grid Electricity System Operator (NGESO) withheld the requested information under regulations 12(4)(d) and 12(5)(e) of the EIR, which concern material still in the course of information and commercial information respectively. NGESO has subsequently confirmed that it does not hold information potentially within scope of the request and is relying on regulation 12(4)(a) in that regard (information not held). It has also now applied regulation 6(1)(b) to some relevant information as that information is already in the public domain.
2. The Commissioner's decision is as follows:
 - The information that NGESO holds that falls within scope of the complainant's request is excepted from disclosure under regulation 12(5)(e) and regulation 12(4)(d) of the EIR and the public interest favours maintaining these exceptions.
3. The Commissioner does not require NGESO to take any corrective steps.

Background

4. NGESO has provided the Commissioner with the following background to the process of connecting wind farms to the grid.
5. Applications by developers for connections can include a single preferred connection and/or any number of potential connection options. NGESO, in its role as electricity transmission system operator and the party that contracts with network users (and in line with its duties under the Electricity Act 1989), will make any number of recommendations, any number of times. This often facilitates project re-design, before reaching connection agreement. In practice, and in the majority of cases, this process will post-date an initial connection offer due to the regulatory timeframes for making such offers under the relevant industry code - the Connection and Use of System Code.
6. It is slightly misleading to therefore regard the process as one with very clear milestones that move a developer through to the next project stage, as one would in a conventional contract-deliverable sense. The process remains live and iterative and it is not the case that once a stage is reached, it is closed off (even after connection agreements are signed). Projects change, as a result of things like the planning consenting process; funding or technical requirements or any number of other factors. It is also important that developers feel that there is a safe space to discuss options and scope with NGESO. This can result in revisiting the connection process, making revisions or modifications to include or remove connection options, to revise design and to ensure the connection is economic and efficient. Wind farm projects can and often do encounter multiple scope changes before practical implementation.
7. It is also the case that developers are competing to provide projects and part of this involves competing for grid connections. Applications for connections can be received at any point and in reality, further scoping, or the progression, delay or modification of one project can impact on the options and/or cost implications and/or viability of another. This remains a risk even after initial connection offers or other contracts are signed.
8. Although this risk reduces as a project advances throughout development, in essence a retained residual risk for a developer exists at any point until actual connection takes place (which can be several years in the future). Developers may still during this time be competing for investment, refinance and/or be procuring build.

9. NGESO says it understands that inevitably there must come a point where stages are concluded but this will vary considerably on a project by project basis.

Request and response

10. On 1 June 2021 the complainant wrote to NGESO and requested information in the following terms:

"I hope you'll recall the earlier information which you were kind enough to provide me with, in relation to the grid connections of various wind farms. You'll recall that we agreed a format for the information requested, which you provided on 24/12/20. You provided the key dates, size, type and key changes in the evolution of establishing grid connections for various wind farms. I would now like to obtain same information for a further group of wind farms. These are: Sandy Knowe, Sanquhar 2, Eucharhead, Lorg, TwentyShilling Hill, Quantans Hill and Shepherds Rig WF"

11. On 25 June 2021 NGESO responded. It referred to the Commissioner's decision in FER0902445¹ (July 2020) which concerned a previous request on the same subject that the complainant had submitted to NGESO (about different wind farms). The Commissioner had found that information about a wind farm project that was not yet connected to the grid was excepted under regulations 12(4)(d) and 12(5)(e) of the EIR. NGESO explained that, for the same reason and under the same exceptions, it was withholding the information the complainant has requested.
12. NGESO provided an internal review on 18 August 2021. It noted that the complainant had not appealed the decision in FER0902445 and maintained its position.

Scope of the case

13. The complainant contacted the Commissioner on 5 September 2021 to complain about the way their request for information had been handled.
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¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618027/fer0902445.pdf>

14. In its submission to the Commissioner NGESO advised that, at the time of the request, it did not hold information of the type the complainant has requested – that is “final” information - and said it is relying on regulation 12(4)(a) in respect of that information.
15. NGESO also now wishes to rely on regulation 6(1)(b) with regard to some of the requested information which is already in the public domain on the Transmission Entry Capacity (TEC) Register. That information is some of the provisional/intended technical information held on each project, such as the proposed/intended connection site, provisional/anticipated connection date and proposed voltage. NGESO says that comments in their request for an internal review suggest that the complainant is aware of the TEC Register.
16. NGESO said, in its submission, that it would advise the complainant of its new position.
17. The Commissioner does not intend to consider NGESO’s reliance on regulation 6(1)(b) because it is clear from their complaint to him that the complainant does not dispute that certain information is published on the TEC Register.
18. The Commissioner has considered whether NGESO is entitled to withhold information within scope of the request under regulation 12(5)(e), and the balance of the public interest. The Commissioner will also consider whether NGESO can rely on regulation 12(4)(d) to withhold information. This analysis will also address the matter of whether or not NGESO holds “final” information.

Reasons for decision

Regulation 12(5)(e) – confidentiality of commercial or industrial information

19. Regulation 12(5)(e) of the EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
20. In its submission to the Commissioner, NGESO says that it is seeking the exception for “all of the information” it holds that falls within scope of the request, except that which is available on the TEC Register.
21. The Commissioner considers that in order for this exception to be applicable, there are a number of conditions that need to be met. He

has considered how each of the following conditions apply to the facts of this case:

- Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?
22. The complainant has requested the key dates, size, type and changes in the evolution of establishing grid connections with regard to the Sandy Knowe, Sanquhar 2, Eucharhead, Lorg, TwentyShilling Hill, Quantans Hill and Shepherds Rig wind farms.
23. In FER0902445 the complainant had requested the dates of the key stages and milestones of establishing connection for four other wind farms, and “the basic technical details like the length of connection, voltage, overground or underground, the OS reference point for the start and end of the connection” for those four wind farms.
24. The Commissioner considers that the information the complainant has requested in this case is substantially the same as that requested in the previous case, but for different wind farms. (The Commissioner discusses the interpretation of the request further under his regulation 12(4)(d) analysis.) As noted, the Commissioner had found in FER0902445 that National Grid was entitled to withhold information associated with a wind farm that was not connected under regulation 12(5)(e) and regulation 12(4)(d).
25. NGESO has provided a copy of the information it is withholding in this case to the Commissioner. It comprises information about the seven wind farms in question in the format described at paragraph 70.

Is the information commercial or industrial in nature?

26. The Commissioner’s published guidance on section 12(5)(e) advises that for information to be commercial in nature, it will need to relate to a commercial activity; either of the public authority or a third party. The essence of commerce is trade, and a commercial activity will generally involve the sale or purchase of goods or services, usually for profit. Not all financial information is necessarily commercial information.
27. In its submission, NGESO says it is relying on this exception primarily in respect of the potential consequence to the developers’ commercial

interests rather than any adverse impact on NGESO or any network owner.

28. NGESO has referred to the Commissioner's decision in IC-45736-FIG2² (September 2020). That case concerned a request for information about the process by which NGESO determines the best location for connections to be made from a number of proposed offshore wind farms to the transmission network. The Commissioner found that the relevant information that NGESO held was exempted from disclosure under regulation 12(5)(e).
29. As in that case, NGESO says the information in this case concerns the commercial environment relating to securing wind farm connections. Even information that is narrow in scope, such as dates of applications, contracts, dates of modifications and technical information on the project has a material impact on the underlying economics of the project from the developer's perspective, and in overall system terms.

Is the information subject to confidentiality provided by law?

30. In its submission, NGESO has noted that the duty of confidence was also considered in detail in IC-45736-FIG2 and it considers the same points stand.
31. NGESO says that the information provided to it for the purposes of connection of a particular wind farm is obtained in its licensed transmission operator role and is confidential by virtue of the regulatory framework within which NGESO operates. This includes, notably NGESO says, the transmission licence granted to it under the Electricity Act 1989 and the confidentiality regime established by the Connection and Use of System Code and its associated bilateral agreements to which NGESO and developers are party.
32. NGESO says it has a legal confidentiality duty under section 105 of the Utilities Act 2000. As such it risks criminal enforcement and penalty for any breaches caused by disclosing information relating to third party businesses for as long as those businesses operate. The exact wording of s:105(1) is as follows:

Information which—

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618342/ic-45736-f1g2.pdf>

(a) has been obtained under or by virtue of the provisions of this Act, Part I of the 1986 Act, Part 1 of the 1989 Act, section 184(5) or 185(5) of the Energy Act 2004 or Part 2 or section 27 or 28 of the Energy Act 2010 or section 50 or 51 of the Energy Act 2013 or section 41 or 100 of the Energy Act 2008 or the Domestic Gas and Electricity (Tariff Cap) Act 2018; and

(b) relates to the affairs of any individual or to any particular business, shall not be disclosed **during the lifetime of the individual or so long as the business continues to be carried on.** (NGESO's emphasis).

33. NGESO notes that the exceptions are limited (which the Commissioner accepted in IC-45736-FIG2) and the confidentiality obligation extends long beyond the connection process, contracts and beyond actual connection.
34. NGESO also notes that in the above decision the Commissioner also supported a common law confidentiality as a result of developer expectation. It says it made this point not to seek to justify withholding information as a standalone point but to illustrate that there is a statutory (and common law) basis, with criminal liability requiring NGESO to preserve confidentiality.
35. Disclosures NGESO previously made in response to other requests did not, NGESO says, disregard this point, but it considered that the public interest for projects that were already connected differed. Whilst certain information relating to wind farm projects can often be in the public domain, including on the TEC Register, a substantial proportion of the key milestone information the complainant has requested, especially dates (and modification dates), is not. For competitors who know the process (and/or investors whose confidence needs to be sustained for the open market to properly function), a significant amount of inference can be drawn even if the information in isolation appears undamaging or underwhelming - a slight modification or delay to a completion date or change in capacity may be the difference in sustaining a competitive edge and/or economic benefit or not.

Is the confidentiality required to protect a legitimate economic interest?

36. In correspondence to the Commissioner dated 5 September 2021, the complainant has said that NGESO publishes, and frequently updates, the details on grid connections in its TEC Register. They say that NGESO has said that the TEC Register is "a list of projects that hold contracts for Transmission Entry Capacity with us. These include existing and future connection projects and projects that can be directly connected to

the National Electricity Transmission System.” In other words, the complainant says, once a new grid connection contract is agreed, it is notified to the industry and the public that the contract exists, via the TEC Register.

37. The complainant goes on to argue that the position at paragraph 59 of the decision in FER0902445, in relation to Broken Cross wind farm, is based on whether the wind farm is connected or not. In other words, whether the grid connection physically exists and construction is completed. The complainant considers that the key test of confidentiality is not whether the connection has been built, but whether knowledge of the connection (including future connections) is publicly known. The complainant says they accept that where discussions between the developer and NGENSO are ongoing (until a contract on the grid connection is agreed), information about these connections these should be protected by confidentiality, and the factors considered at paragraph 59 of FER0902445 apply. However, the complainant argues, once a contract exists, the contract's existence is notified (to industry and the public) in the TEC Register. They therefore believe that there is no need for the confidentiality protection provided by 12(5)(e).
38. NGENSO addresses this argument in its submission to the Commissioner. It notes that certain information relating to windfarm projects can often be in the public domain, including on the TEC Register. Such information includes the intended connection site, capacity, project status and agreement type. However, NGENSO says, a substantial proportion of the key milestone information the complainant has requested, especially dates (and modification dates), is not in the public domain. For competitors who know the process (and/or investors whose confidence needs to be sustained for the open market to properly function), a significant amount of inference can be drawn even if the information in isolation appears undamaging or underwhelming. A slight modification or delay to a completion date or change in capacity, for example, may be the difference in sustaining a competitive edge and/or economic benefit or not.
39. NGENSO says it therefore does not accept the complainant's assertion that "key information about the grid connections" is necessarily in the public domain. As projects do 'go public' anticipated connection dates, capacity and connection routes may all be released in the public domain. However the technical detail on the design of that connection (and key contractual dates) would be much harder to find. Even advanced projects can carry significant commercial risk and require restructure if information is released to the public in an unmanaged way, confidence slips, the competitive market changes or inferences are drawn.

40. Summarising, NGESO notes that the complainant's position is that this exception cannot be engaged, and that any justification for commercial confidentiality under regulation 12(5)(e) falls away as soon as a connection agreement is listed in the TEC Register - because information is then already in the public domain.
41. NGESO says it disagrees. As it has detailed, the information on the TEC Register is much less detailed. NGESO sees no reason why the developers' expectations, or indeed its own statutory obligations relating to confidentiality, alter simply because some information is put on the TEC Register.
42. NGESO goes on to explain in its submission that commercial companies develop generation projects and that they are independent of NGESO and the respective transmission network owners. The right to be involved in developing and implementing wind farms is a competitive process between the developers; both for the rights to supply electricity to the transmission network but also for funding from private investors and any available government subsidies (where applicable).
43. As already stated, NGESO says, it can receive applications for connections at any point and, in reality, the progression, delay or modification of one project can significantly impact on or alter the options and/or cost implications and/or viability of another - even after offers or contracts are long-since signed.
44. There is a large amount of information that is not and cannot be made publicly available whilst a project is still progressing its development - especially at pre-scoping, pre-consenting and pre-construction stages. This is because live projects are subject to a number of ongoing pressures. These include obtaining the relevant consents and satisfying planning conditions (which can take a number of years). Much of this is forward funded, NGESO says.
45. Projects are particularly vulnerable during the early scoping stages but they can continue to be vulnerable right up to the actual connection if there is uncertainty in the market. NGESO says that developers would not want competitors to have access to information (however slight) which they could use to undermine future bids for other wind farm projects. Nor would they want anything disclosed which could damage their bargaining position whilst investment and build decisions remain outstanding, or which could affect the value and viability of an upfront investment before actual connection.
46. NGESO says that, in respect of disclosing information, it is important to note that even where projects may be past what could be perceived as the higher risk stages, if connection dates are impacted and possibly

delayed, the developer would want to control the timing of release of that information in order to minimise or mitigate impacts on subsidy or funding. Allowing the release of milestone date and technical information for live projects could undermine the integrity of the entire process and disrupt the market as a whole – at a time, currently, of critical need for domestic energy supply.

Would the confidentiality be adversely affected by disclosure?

47. In its submission NGESO says that a developer has an economic interest in protecting information about the wind farm it is developing whilst a project is still live and ongoing. This is in order to protect investor confidence and to prevent the release or impact of sensitive financial and technical information to competitors. In this case none of the projects covered by the request were connected at the time of the request – all the projects therefore had/have a level of vulnerability.
48. NGESO considers that information in isolation may not appear to be commercially sensitive. However, in combination, details such as agreement and modification dates, capacity and location could enable a party to infer, reverse engineer, replicate, adapt, enhance or optimise business or finance models, determine cost baselines and/or engineer optimum technical design at certain interface points. This would be in order to favour their own business, or to prejudice the developers. Those parties could seek to advance a project which, if capable of progress at a different pace and with greater certainty (particularly once proposed connection dates, project timetables and costs of a competitor is known), may impact on regional capacity, consent success prospects, funding, or costs for the developer.
49. NGESO says it is not always aware of the full extent or likely adverse impact to a developer on any specific project at the time an EIR request is made. NGESO also says it does not have visibility of all project information or all a developer's background actions and cannot necessarily say with certainty whether pieces of information are more sensitive than others.

The Commissioner's conclusion

50. As the Commissioner has noted, the information requested in this case is substantially the same as that requested in FER0902445. And in that case, he had found that information that related to wind farms that were not connected was commercially confidential and engaged the exception under regulation 12(5)(e).
51. He has noted the complainant's arguments and he considers that NGESO has addressed them satisfactorily. The Commissioner has again

decided that that regulation 12(5)(e) is also engaged in this case. He accepts that none of the seven wind farms referred to in the request were connected at the time of the request. As such he also accepts the following, for the reasons NGESO has given:

- The requested information about those wind farms is commercial or industrial in nature.
 - The information is subject to confidentiality provided by law (Electricity Act 1989 and Utilities Act 2000).
 - Given the competitive arena in which wind farms are developed and implemented, a developer would not expect their commercial information to be published. This would, in effect, make it available to other developers who could use it to undermine future bids for other wind farm projects. Disclosure could also damage the developer's bargaining position whilst investment and build decisions remain outstanding. Alternatively, it could affect the value and viability of an upfront investment before the wind farm is connected.
 - Since the Commissioner has accepted that first three conditions at paragraph 21 have been met it follows that the fourth condition is inevitable and that disclosure would adversely affect the confidentiality provided by law.
52. Although the Commissioner accepts that disclosing the requested information would adversely affect the commercial confidentiality of the developer(s) of the wind farms identified in the request, he has gone on to consider if it would nevertheless be in the public interest to release it.

Public interest test

Public interest in disclosing the requested information

53. NGESO says it accepts that there are a number of arguments for the public interest being in favour of disclosing the requested information. There is a general public interest in wind farm development, particularly where the construction and development of such projects may have an impact on local areas. The general public may be interested in the dates and times of construction as well as the connection dates and may wish to understand the timelines of developments.
54. In addition to the points above, NGESO acknowledges that any government subsidies being provided to help develop wind farms will involve taxpayer money and there will be a public interest in understanding how such money is being spent. Market activity and the

supply/demand balance also ultimately determine energy prices for customers.

55. In their request for an internal review and their complaint to the Commissioner, the complainant has discussed why they consider regulation 12(5)(e) is not engaged but have not raised any public interest arguments for the information's disclosure. The Commissioner is aware, however, of the presumption in favour of disclosure that is a feature of the EIR under regulation 12(2).

Public interest in maintaining the exception

56. NGESO argues that there is a public interest in ensuring no specific developer is materially disadvantaged through disclosing confidential milestone information, which is not released in respect of other projects. This ensures that there is a level playing field across all projects. Given the competitive nature of the process of developing wind farms, it would work against the public interest if participants in that industry found they were disadvantaged as a consequence of information they had shared with a public authority being made public. They would expect that statutory duties would ensure this information would be kept confidential. The Commissioner acknowledged this in his decision in a separate decision in 2019 - FER0848972³ - which concerned the Low Carbon Contracts Company.
57. At the time of the request, the issues to which the information relates were live in respect of all seven projects (only the TwentyShilling project has subsequently connected) and NGESO argues that this increases the information's sensitivity.
58. NGESO says it is concerned that disclosure would erode trust and could be open to abuse - sabotaging and prejudicing projects. This could undermine and dis-incentivise developers to collaborate or dis-incentivise greater opt-in, which helps to drive the development of the most economic and efficient electricity system. The consequence would be to prevent genuine (and potentially environmentally advantageous) reform, with greater environmental benefit, from getting off the ground.
59. NGESO notes that increased renewable generation is crucial to the Government achieving its net zero targets and that anything that

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616528/fer0848972.pdf>

unjustifiably inhibits the competitive development of that renewable generation runs counter to these goals.

Balance of the public interest

60. The Commissioner appreciates that the complainant has an interest in wind farms and their connection to the grid. However, they have not made a case that the information they have requested should be disclosed, including in advance of any planned timetable for release for some or all of the information that the developers may have.
61. The Commissioner understands, from his investigation in IC-45736-F1G2 that the wind farm industry is highly competitive, that the success of one wind farm project can impact on the viability of others and that rivals are alert to the projects others are developing and would seek to use to their own benefit the information about grid connections being withheld in this case.
62. As in IC-45736-F1G2 the Commissioner recognises that the licence under which NGENSO acts places a duty on it to facilitate competition in the supply of electricity in Great Britain. There is a clear public policy to promote commercial enterprise within the industry as a means of ensuring the efficient and economic supply of energy at prices that are affordable to consumers. Therefore there is a recognised public interest in allowing competition within the industry. To adversely affect the commercial interests of some of the companies operating in the industry and distorting the competitive nature of the industry, would work against that public policy.
63. That being the case, and in line with his decision in FER0902445, the Commissioner is not persuaded that, at the time of the request, it was in the public interest to disclose the information relating to the wind farms referred to in the request as those wind farms were not connected and the projects were ongoing.
64. In light of the above the Commissioner again finds that, even after taking account of the presumption in favour of disclosure, in all the circumstances of the case the public interest in maintaining the exception provided by regulation 12(5)(e) outweighs the public interest in disclosure.
65. NGENSO has applied regulation 12(5)(e) of the EIR to all the information it holds within scope of the request and the Commissioner has found that this exception is engaged. However, in the interests of completeness, the Commissioner has also considered NGENSO's application of regulation 12(4)(d).

Regulation 12(4)(d) – material in the course of completion

66. Under regulation 12(4)(d) of the EIR, a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
67. Regulation 12(4)(d) is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. However, as with regulation 12(5)(e), regulation 12(4)(d) is a qualified exception so the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
68. NGESO's submission to the Commissioner suggests that it has applied regulation 12(4)(d) to "...the technical details sought such as the overall length of connection and whether over or underground and voltage..."
69. The Commissioner has noted that the complainant's request in this case is for "the key dates, size, type and key changes in the evolution of establishing grid connections". They have not clearly requested the type of technical information NGESO has described, although this was requested in FER0902445, when the complainant requested "the basic technical details like the length of connection, voltage, overground or underground, the OS reference point for the start and end of the connection".
70. But in the current request, the complainant has referred to having agreed with NGESO a format for the information requested. NGESO appears to have based its interpretation on at least one previous request it has received from the complainant, its response to that request and the format it agreed with the complainant. NGESO describes the format as being information relating to: Project [name]; Original connection application date; Original connection agreement date; TEC (capacity) in original connection agreement; Completion date in original connection agreement; TEC (capacity) in latest connection agreement; Completion date in latest connection agreement; Point of connection (plus grid reference); and Design details.
71. In its submission to the Commissioner NGESO has said that the complainant:

"...specifically requests the same information in the same format as previous requests. Contrary to what would ordinarily be a wide

approach to interpretation regarding information, this therefore clearly narrowed the request to very specific information.”

72. NGESO's interpretation of the current request therefore appears to include the technical detail above and it is this particular information to which it has applied regulation 12(4)(d).
73. In their submission to the Commissioner the complainant has said that they consider the Commissioner should base his findings on regulation 12(4)(d) on whether the material was 'still in the course of completion', rather than on whether or not the physical connection was completed.
74. The complainant has told the Commissioner that during the course of the FER0902445 investigation, it appeared that NGESO had provided [to the Commissioner, the Commissioner assumes] a document which was still undergoing change. But, the complainant argues, there would have been an earlier version of the document which was "completed". The complainant says their request "then and now" relates to completed material. As they have explained in relation to regulation 12(5)(e), there has to be a completed contract before the grid connection is placed on the TEC Register. They say they have earlier versions of the TEC Register which lists the connection of a different wind farm (at the time of their 2019 request considered in FER0902445). Similarly, the complainant says, the wind farms about which the complainant is currently seeking information are all listed in the current TEC Register. The complainant therefore does not consider that the information they have requested can be categorised as 'material in the course of completion'.
75. Discussing regulation 12(4)(a) in its submission – which concerns information not held – NGESO has confirmed that at the time of the request on 1 June 2021, none of the seven wind farms in question were connected. NGESO says that it would not therefore have held 'final' information at that point.
76. NGESO says that it does, and did at the time of the request, hold some provisional information on what is or was initially proposed or intended by developers at the time of original connection agreements. However, for those projects still being scoped this information is incomplete, and/or unverified. Information being scoped may in any event be subject to change as the connection process has not concluded.
77. NGESO goes on to discuss the information it holds in the context of its reliance on regulation 12(4)(d). In its 12(4)(d) submission to the Commissioner NGESO has confirmed that, at the time of the request, none of the projects had progressed to actual completion. Five of the seven projects are still currently in the process of being scoped by their

respective developers. The technical information NGESO holds is therefore only provisional and may turn out to be inaccurate or incomplete once the process is concluded and/or the project heads towards consenting. Until design and planning consents are fully secure, the technical details the complainant has requested, such as the overall length of connection, whether over or underground and the voltage, are not yet final. Releasing information while still at the scoping stage may risk adverse impact or negative implications for funding, procuring or consenting prospects.

78. NGESO says that although it has regular liaison calls with developers, its role is also limited to the connection itself (as explained, this can be an iterative process – even after substantial time has passed). It is not involved in or necessarily party to all aspects of project design, management and development. NGESO is therefore unable to give any clear indication of when such technical details will be finalised or indicate the full range of factors that may adversely influence progression or modification. While NGESO can anticipate modifications and/or revisions in respect of connection agreements, based on its experience, it cannot say with any degree of certainty if/when such modifications would happen and when information will be final.
79. NGESO's licence requires it to sustain an iterative connection process because keeping this open is an economic and efficient way of encouraging competition and facilitating investment into the transmission system - when compared with the costs of termination and resubmission. While projects are still being scoped, that process has not fully completed. It remains possible that points of connection (amongst other technical detail) may vary – previously rejected site options can be reconsidered. For example if they have been affected by other connections, as a result of consenting factors, cost changes or other commercial, financial or policy factors at the time of revisit that impact on the project's suitability.
80. NGESO says it is perfectly feasible that the entire process could potentially be run again. This entirely depends on the nature of the event or circumstance that triggered the review. Connection sites do change. There could be a significant change in design or capacity on the developer side and until the final design solution is agreed and has sufficiently progressed such that the risk of revision is negligible, the process is not concluded. The information held is "material" in securing connection (by which the Commissioner means "is important to") - actual connection usually being the final stage of the project.
81. NGESO goes on to say that the iterative nature of the connection process and the ability for this to continue up until actual connection can be illustrated by one of the wind farms referred to in the request (and

which NGESO has named). At the time of the complainant's request, construction was underway and the project could have been considered 'low-risk'. However, at the date of its letter to the Commissioner, NGESO says that the project is close to connection but has incurred a delay. This has meant recent modifications to the contract (which NGESO has detailed in its submission but which the Commissioner has not reproduced). NGESO says the modifications above highlight the potential for commercial risk and reinforces the need for commercial confidentiality, which is a matter that has been discussed above.

The Commissioner's conclusion

82. The fact that the exception under regulation 12(4)(d) refers both to **material in the course of completion** and to **unfinished documents** implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion.
83. In this case, the seven wind farms were unconnected at the time of the request and were competing with other projects in order to get an investment decision and to build. While certain aspects of the requested technical information may have been 'finished', this information related to projects – the seven wind farms - which were all still in the course of completion. As he found with the unconnected wind farm in FER0902445 therefore, the Commissioner has decided that NGESO was entitled to withhold technical information under regulation 12(4)(d) of the EIR. He has gone on to consider the public interest.

Public interest test

Public interest in disclosing the requested information

84. National Grid ESO says it again accepts that there are public interest arguments in favour of disclosing the requested information. There is a general public interest in wind farm development, particularly in cases where constructing and developing such projects may have an impact on local areas. The general public may be interested in the dates and times of construction as well as the connection dates and they may wish to understand the timelines of a development.
85. As before, the complainant has not provided discrete public interest arguments but the Commissioner is aware of the presumption in favour of disclosure that is a feature of the EIR under regulation 12(2).

Public interest in maintaining the exception

86. NGESO says that, following the principle in paragraph 59 of FER0902445, its view is that the balance of public interest favours

maintaining the exception. This is because information may be incomplete, inaccurate or could be commercially prejudicial to developers while they are still scoping and refining the detail of their projects (especially when competing for funding or procurement). As noted, at the time of the request none of the wind farm projects referred to were connected. NGESO says that the evolving nature of wind farm development and construction is further highlighted by the fact that, at the date of NGESO's submission, three of the wind farms have changes in progress.

87. NGESO says that as projects progress more towards planning consent, developers will release greater levels of more accurate and certain information into the public domain. Therefore, maintaining the regulation 12(4)(d) exception at this time does not, in its view, prejudice public access to environmental information relating to these projects or the public's participation in decisions about those projects.

Balance of the public interest

88. The Commissioner has again taken into account the EIR's presumption of disclosure. However, he is satisfied the public interest favours maintaining the regulation 12(4)(d) exception. Disclosing potentially incomplete or inaccurate information about live wind farm projects, or information that may change in the future, has the potential to frustrate, undermine or delay a project's progression and completion. That would not be in the public interest. The Commissioner considers that the public interest in these projects is satisfied to an adequate degree by information already published and by information that will be published in the future for example through local authority planning processes.

Right of appeal

89. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

90. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
91. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Cressida Woodall
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