

17 August 2024

Dear Mr Sharvill,

Re: Consultation on the proposed regulatory funding and approval framework for onshore transitional Centralised Strategic Network Plan 2 projects

"We would like views from people with an interest in development of the electricity transmission network and Net Zero. We particularly welcome responses from the electricity transmission owners and the ESO and we also welcome responses from consumer groups, other stakeholders and the public." (Consultation document p.1)

I am writing on behalf of Deeside Against Pylons, a community group based in north-east Scotland of which I am the chairman. I note that you are seeking views from us in your current consultation although not, perhaps, as fulsomely as you are seeking the views of the ESO and Transmission Owners. This is disappointing given that your "role is to protect consumers by working to deliver a greener, fairer energy system." It is to be hoped that this is a stylistic oversight and that those you work for, ie us, are at the heart of your considerations about the way forward, rather than those with a purely selfish commercial interest in the future development of infrastructure.

You will recognise that times have changed and that the levels of awareness, knowledge and involvement of members of communities up and down the UK has increased exponentially over the last two or three years. Groups such as ours are increasingly active in the consultation and consenting processes around infrastructure proposals, given the life-changing impact they will have on individuals and communities. It is more important than ever that communities have a voice at the earliest stages of discussions about how decisions are made, how our money is spent, and in helping to shape options that might achieve a more consensual way forwards as we strive to achieve a just transition to net zero.

In paragraph 3.29 of your consultation document, you point to the risks of locking in "*designs that have not been thoroughly tested and may not be the optimal option. In the worst case, this could lead to excessive costs, poor routing choices, and poor design choices for the network.*" It is our view that these impacts are already playing out across Scotland, as over-simplistic models of cost, insufficient options appraisal, and inadequate consultation are starting to appear in consent applications for projects that do not align with the needs of communities. By way of example, the TO for North Scotland presented the TKUP project for consultation only after the DND was virtually complete, with just the final locations for the pylons and OHL as the subject of consultation. This situation arises, in part, because of the exclusionary, opaque and cursory nature of consultations conducted around HND, the NOA refresh and other parts of these strategic processes in recent years.

Given that we agree about the importance of involving communities in your consultation, there is a need to fundamentally review your consultation model. To allow a month for a consultation of this magnitude, with such a lack of promotion or visibility that even our Member of Parliament (who is the shadow minister for Energy Security and Net Zero) was not aware of it by the middle of August, frankly beggars belief. We have stumbled across it by accident but are now determined that we, and others across the UK, have a meaningful opportunity to contribute.

You will not need me to remind you of the Gunning Principles of public consultation (see R v London Borough of Brent ex parte Gunning 1985) that are frequently referred to as the basis for decisions at Judicial Review. It is clear that your current approach to this consultation is in breach of at least two of those principles; that there should be sufficient information to give "intelligent consideration" (available, accessible, and easily interpretable for consultees to

provide an informed response); and that there is adequate time for consideration and response. Thirty days may be sufficient for a large corporation to find the resources to respond in detail. Communities and the individuals working in their interests do not have those resources and do not have the insider contacts that would have ensured that we already knew what the consultation document would say.

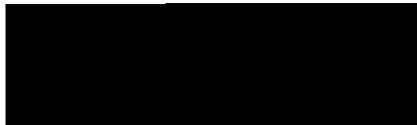
In addition to failing to comply with the Gunning Principles, your approach is also likely to discriminate against people and groups sharing particular or protected characteristics. It would be interesting to know if you have Equality Impact Assessed your approach.

What we are seeking is, in particular, a rethink of the timeframe for consultation to enable adequate consideration and preparation of our response. It is our view that, without such a rethink, your consultation is unlawful and we would take appropriate advice.

In terms of sufficient information to give intelligent consideration, you might think it important that the public can assess your proposals in the knowledge of how government (UK and Scotland) intend to reform the planning and consenting process for these projects. Potential changes being mooted, for example removing the right of the public in Scotland to achieve Local Public Inquiries would leave the OFGEM process you propose as the de facto approvals process. This would clearly give rise to a prima face contravention of our rights under the Aarhus Convention, and potentially Article 6 of the Human Rights Act.

I would be grateful if you would give the issues I raise your urgent consideration and respond as soon as possible, in any event before the current deadline of 30 August.

Yours sincerely,

A large black rectangular box redacting the signature of the sender.