

Public

Ref: EIR/24/0007

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Dear requester

Request for Information

Thank you for your request for information which was received by the Information Rights team on 11 December 2024. We are aware that you initially submitted your request to NESO on 13 October 2024 and would like to apologise for the delay in responding to you.

Your request has been considered under the Environmental Information Regulations 2004 (EIR) as we believe that the requested information falls within the definition of environmental information

as set out in Regulation 2(1) of the EIR. The exemption at Section 39 of the Freedom of Information

Act 2000 (FOIA) covers information that a public body is obliged to consider under the EIR and has the effect of routing all requests for environmental information via the EIR rather than the FOIA

Request and our response

Note: In your request you have referred to an agreement with the National Grid. National Grid Electricity System Operator was part of the National Grid PLC group of companies. On 1 October we became the National Energy System Operator (NESO), a new public corporation and not part of National Grid.

NESO manages and holds any agreements for the connections to the transmission network. We can confirm that we hold information which falls within the scope of your request:

A developer, Photovolt Development Partners GmbH acting on behalf of SolarFive Ltd, is currently in the pre-application stage of a NSIP planning application to install and operate a utility-scale solar farm in Oxfordshire called Botley West Solar Power Station. I understand the developer has an agreement that was made with National Grid to supply approximately 840MW of solar energy connecting to the electricity transmission system via a new 400kV substation to be constructed to the west of Oxford.

1. Re the amount of power to be supplied:

a. I understand that the developer is contractually obliged to supply a maximum of 840MW. Please can you confirm this?

b. Is there a minimum amount the developer is contractually obliged to supply?

c. If the developer decided to reduce the size of their scheme so that they would regularly supply a lower amount than 840MW to National Grid/NESO, would this be permitted within the terms of their contract with National Grid/NESO or would it be a breach of contract?

The TEC Register contains information about existing and future connection projects and projects that can be directly connected to the National Electricity Transmission System (NETS) or make use of it. The latest TEC Register is published on the NESO website: [Transmission Entry Capacity \(TEC\) register | National Energy System Operator](#).

The TEC Register dated 17 December 2024 shows an entry for SolarFive Ltd's 840MW project 'Botley West – Cote Solar Power Station' with a connection at Botley West 400kV Substation. The effective date is 30 October 2026.

Connection offers are made substantially in the form and under the terms of the Connection and Use of System Code (CUSC). The CUSC has exhibits containing proformas of the documents which set out the main content of the connection agreements with a developer and you can find the CUSC and the proformas on our website: [CUSC Code Documents | National Energy System Operator](#).

The amount that a developer applies for forms the basis of a right to connect to and use the system. This is a right rather than an obligation. A developer can apply to change the amount and there are provisions within the CUSC for cancellation etc.

In terms of providing information that relates to a specific connection agreement with the customer, SolarFive Limited, relating to the Botley West Solar Power Station project, we are relying on the exception at Regulation 12 (5)(e) of the Environmental Information Regulations 2004 which states 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. Further information on our engagement of this exception is provided at the end of our response.

2. Re the timeframe

a. Is there a date by which the developer is contractually obliged to start supplying the power?

Please see response to question 1 above.

b. What will be the consequences for the developer if it is not ready to supply power by that date? For example, are there financial penalties or would the developer become a 'zombie project' and lose its place in the queue for a grid connection?

Please see response to question 1 above.

c. Is the new 400KV substation on track to be constructed in time to accommodate the Developers current connection date?

d. If the answer is no to the above question, what impact does this have on the Developer's connection date?

NESO does not own or build any infrastructure. We advise that you contact National Grid to request this information. Contact details and further information can be found here: [Environmental Information Regulations \("EIR"\) 2004 | National Grid ET.](#)

e. We understand that new grid reforms (TM04+) are being introduced on the 1st January 2025, requiring developers to meet certain criteria to pass through Gates 1 and 2. What is the deadline for existing contracted developers to submit evidence of fulfilling Gate 2 criteria, to avoid being recategorised to Gate 1 on the 1st January 2025?

A new gated process (if approved) will introduce an application window by which existing projects will need to have submitted evidence that they meet the Gate 2 readiness criteria ('land rights'). The exact timing of this window remains to be confirmed.

f. Further to the above, has the developer in question already fulfilled the proposed required criteria for Gate 2?

Please see response to question 1 above.

3. Re other suppliers: How many other solar farm and battery developers have contracts with National Grid/NESO to connect to the electricity transmission system through the planned new Botley West substation?

The TEC Register (17 December 2024) shows an entry for a 280MW project named 'Buckland Marsh Solar Park' with a connection at Botley West 400kV Substation. The customer for this project is Arise Renewable Energy UK Ltd and the effective date is 31 October 2023.

Engagement of Regulation 12(5)(e) of the Environmental Information Regulations 2004.

In our response to questions 1.b., 1.c., 2.b., and 2.f. we are relying on the exception at Regulation 12 (5)(e) of the EIR which states 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.

We believe that the content of specific connection agreements and related information is commercial in nature and our use of this exception is primarily in respect of the potential consequence to the developer's commercial interests.

Commercial companies develop generation projects and are independent of NESO and the respective transmission owners. These development projects are competitive processes, both for the rights to supply electricity to the transmission network and also for funding from investors and any available government funding where applicable.

You will see from the TEC register that this particular project is listed as being in the scoping phase. 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.

Given the competitive arena in which renewable energy projects 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 renewable energy projects. Disclosure could also damage the developer's bargaining position whilst investment and build decisions remain outstanding. It could also affect the value and viability of an upfront investment before the project is connected.

NESO is bound by the confidentiality obligations under the CUSC and cannot share the specific terms put in place with a developer, nor other information held relating to specific projects. NESO also falls within the scope of the Utilities Act 2000 and Section 105 of that Act makes it a criminal offence to disclose information:

- a) obtained under the Utilities Act 2000 and any other key energy legislation such as the Gas Act 1986 and the Electricity Act 1989, subject to specific exceptions; and'
- b) where the information relates to the affairs of any individual or any particular business during the lifetime of the individual or so long as the business continues to be carried on.

You may find it helpful to know that this kind of confidentiality obligation is not limited to the energy sector. There are equivalent provisions in legislation governing other sectors (e.g. the Water Act 1989, the Telecommunications Act 1984, the Airports Act 1986, and the Broadcasting Act 1990).

In our opinion, the information in question which is held by our Connections Team is subject to the restrictions at Section 105 of the Utilities Act and does not fall within any of the limited exceptions to that duty of confidentiality. Beyond this, there is also a common law duty of confidentiality based on the expectations of the developers.

All exceptions in the EIR are subject to a public interest test.

NESO acknowledges that there are a number of public interest arguments in favour of disclosing the requested information. There is a general public interest in renewable energy 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, the connection dates, and the timelines and scope of developments. This information may be of interest where local residents wish to submit comments as part of the planning consents process.

There is a public interest in ensuring no specific developer is materially disadvantaged through disclosing confidential commercial information, which is not released in respect of other projects. This ensures that there is a level playing field across all projects. NESO has a public duty under our licence to facilitate competition within the energy market and there is a recognised public interest in allowing competition in the energy industry.

Increased renewable generation is crucial to the Government achieving its net zero and clean energy targets and anything that unjustifiably inhibits the competitive development of that renewable generation runs counter to these goals.

NESO is the designated independent system operator and planner under the Energy Act 2023 and must remain independent, fair, and consumer focused. Disclosure could erode trust within the

sector, hampering NESO's role and our ability to drive forward reforms and initiatives that would bring benefits to consumers and to the environment.

Having weighed up these public interest arguments, our opinion is that the balance of the public interest lies in maintaining the exemption and withholding the specific contract for this project. The information in the TEC Register confirms that there is a project covered by an agreement and the CUSC information outlines the substantial content of connection agreements whilst preserving the commercial confidentiality owed to the developer and ensuring that NESO meets its legal and licence obligations.

The use of the EIR exception for similar information relating to the connection of windfarms was the subject of a Decision Notice (Reference IC-127537-Q8R6) from the Information Commissioner. Whilst we consider every request for information on a case-by-case basis, the Information Commissioner's analysis of the connections process and the application of this exemption is helpful context. This decision upheld the use of the exception by the National Grid Electricity System Operator prior to our transition to NESO. The full decision is available on the Information Commissioner's Office (ICO) website should you wish to check this for yourself.

Conclusion

You can ask us to review our response. If you want us to carry out a review, please let us know within 40 working days and quote the reference number at the top of this letter.

If you are still dissatisfied after our internal review, you can complain to the Information Commissioner's Office (ICO). You should make complaints to the ICO within six weeks of receiving the outcome of an internal review. The easiest way to lodge a complaint is through their website: www.ico.org.uk/foicomplaints. Alternatively, they can be contacted at: Wycliffe House, Water Lane, Wilmslow, SK9 5AF.

Thank you for your interest in the work of the National Energy System Operator (NESO).

Regards,

The Information Rights Team

National Energy System Operator (NESO)