

Public

Ref: EIR/24/0005

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Dear requester

Request for Information

Thank you for your request for information which we received on 5 November.

Request

Your request was for the calculations behind the costings in the Clean Power 2030 report. And you asked, "Could you please send me copies of the spreadsheets (with the formulae intact)".

Our response

As a new public corporation, NESO became subject to the Freedom of Information Act 2000 on 1 October and NESO is also subject to the Environmental Information Regulations 2004 (EIR). We have first considered whether your request falls within the definition of environmental information as set out in Regulation 2(1) the EIR and should therefore be considered under the EIR. Energy is a factor affecting or likely to affect the elements of the environment so would be covered by 2(1)(b) of the definition. The cost-benefit and other economic analyses and assumptions that are covered in 2(1)(e) of the definition, however, only apply to measures likely to affect the elements. The CP30 Report was provided to the Government as impartial, expert advice on potential pathways and scenarios so that the Government could then determine any measures such as policies, plans and programmes, to be put into place. Some of the underlying calculations, however, reflect current and planned activities, costs and assumptions. Some of the requested information therefore falls within the definition of environmental information and our response reflects this.

We confirm that we hold information in scope of your request and attach copies of the Excel workbooks/spreadsheets as requested in accordance with the requirements of the FOIA and the EIR.

In the assumptions log which we recently published and also in the attached spreadsheets, we have provided the information sources or referenced the sources. Your request did not specify whether these were required, so these may fall outside the intended scope of your request, but for the sake of completeness and transparency, we have provided further explanation below.

There are two instances where information sourced from other parties has been aggregated, averaged, and/or annuitized in order to input a figure into the attached spreadsheets and we have not provided the source information from which the average or aggregated figure was derived.

- **Confidential information received from Transmission Owners (TOs)** (see “Network” tab in the Cost Calculation Model spreadsheet)

We have not included the source information as we judge this to be exempt from disclosure under the exception at Regulation 12(5)(e) of the EIR.

Information is covered by the exception at Regulation 12(5)(e) of the EIR if:

- The information is commercial or industrial in nature;
- Confidentiality is provided by law;
- The confidentiality is protecting a legitimate economic interest;
- The confidentiality would be adversely affected by disclosure.

In these instances the Transmission Owners provided confidential information under the System Operator Transmission Owner Code (STC). The information used to create the input figures was provided by TOs to NGENSO and NESO and it was clear at the time that the TOs considered the information to be commercial in nature and confidential, had an expectation of confidentiality, and would not have provided the information to us without assurances of confidentiality due to the potential adverse effects of disclosure. The TOs have not provided consent for the information to be disclosed into the public domain.

The STC applies to information shared for the purposes of system operator licensed business. NESO prepared the Clean Power 2030 Report pursuant to its statutory duties and in its capacity as a strategic advisor to the Government and Ofgem. A disclosure by NESO of this information under the FOIA or EIR would, therefore, be a breach of the confidentiality obligations in the STC and the common law duty of confidentiality would apply. On this basis, it is our opinion that the exception at Regulation 12(5)(e) is engaged.

Public authorities are not able to rely on this exception where the information in question relates to emissions. This information was used to compile the Clean Power 2030 report, however, the

specific information that this exception relates to is about costings only, and does not itself relate to emissions.

All EIR exceptions are subject to a public interest test.

NESO is mindful that the EIR requires us to apply a presumption in favour of disclosure when considering the public interest test. There is a public interest in NESO, as a public corporation, being accountable for its advice. NESO acknowledges that information about these calculations could help to inform public debate around clean power, energy security, and energy costs which affect private and business consumers. There is a public interest in furthering public understanding of the costs and assumptions used in the development of public energy policy, planning and investment. NESO recognises that there is a public interest in UK and global adoption of renewable energy sources and decarbonisation plans which impact on the environment.

The Information Commissioner has acknowledged that there is some inherent public interest in maintaining commercial confidences and that third parties would be discouraged from confiding in public authorities if they did not have some assurances that confidences would be respected. In order to fulfil our statutory and licence obligations as the independent system operator and planner under the Energy Act 2023, we must remain independent, fair, and consumer focused.

Disclosure is likely to harm the relationship between NESO and the TOs and would be likely to reduce trust in NESO more widely in the energy sector. If suppliers of information are concerned about the disclosure of the information, and feel that they cannot trust NESO, such that they are unwilling to provide information in the future, this would be likely to have a detrimental effect on NESO's ability to carry out our role, which would not be in the public interest. Our engagement for Clean Power 2030 went beyond the energy sector, ensuring we took a whole system view, so it is important that we are able to obtain information from a wide range of sources in order to carry out our public role as effectively as possible.

Where the disclosure of commercial costings could impact on pricing and value for money this has the potential to adversely affect costs to consumers which would not be in the public interest.

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 confidential information provided by the TOs as the source. There are circumstances where NESO needs to be able to maintain confidentiality in order that we can continue to receive the information that we require to carry out our independent planning and advisory functions. Disclosure would be likely to 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. We are mindful of our duty to consumers and our obligation to ensure fair competition within the energy sector. We have provided the aggregated, averaged, and annuitized figures across the three Transmission Owners

who are licensed by and subject to scrutiny by Ofgem and believe that this satisfies the public interest.

- **Confidential information provided by Offshore Developers** (See “Offshore Network Costs” tab in Cost Calculation Model spreadsheet)

Some of the source information used for the costs of offshore routes was provided to NGESO and NESO in confidence by offshore developers and based on a Non-Disclosure Agreements (NDAs) where a common law duty of confidentiality applies. We believe that this information is also covered by the exception at Regulation 12(5)(e) of the EIR. In particular, information linked to current tenders is commercially sensitive whilst those tenders are underway and the public disclosure of related information could adversely affect the tender process and outcome.

Again, we are mindful of the EIR’s presumption in favour of disclosure and the general public interest in favour of transparency, including arguments relating to accountability and furthering public understanding and debate.

In addition to the arguments already cited for the TO source information in relation to the value of confidentiality in certain circumstances, there is a public interest in ensuring fair competition during competitive tender processes and conducting these processes in such a way that businesses are able to participate in the energy and infrastructure markets, value for money is delivered and consumer costs are minimised. 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.

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 confidential information provided by the offshore developers as the source.

This concludes our response to your request.

Advice and assistance

On 27 November we published our assumptions log in the document library on our Clean Power 2030 webpages which you may find helpful alongside the attached workbook/spreadsheets. Our CP30 information, including workbooks and assumption log is available on our website: [Clean Power 2030 | National Energy System Operator](https://www.neso.energy/clean-power-2030).

Our website provides information about the EIR and the Freedom of Information Act. Please see: www.neso.energy/corporate-information/freedom-information-and-environmental-information-regulations. Should you wish to make further requests for information, please contact informationrights@nationalenergyso.com.

The ICO website provides a range of information for members of the public and provides a general enquiries telephone line and a live chat service which you may find helpful:
<https://ico.org.uk/global/contact-us/contact-us-public/>.

Next steps

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)