

## **MAJOR PROJECTS - PLANNING DECISION PROCESSES**

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### **General -**

With some exceptions, all overhead lines over 132kV must be submitted to government for approval; either the English Secretary of State for Trade and Industry (DTI), the Welsh Minister for Energy (Welsh Assembly) or the Scottish Minister for Energy (Scottish Exec). Applications for power lines are submitted under s.37 of the Electricity Act 1989, and almost always result in a public inquiry being held. Where proposals are likely to have significant effects on the environment then an EIA must be undertaken so that appropriate information is available to enable a decision to be made.

It is also open to the relevant government agency to call-in any application on any matter for inquiry if it so decides.

Once an inquiry has been called, then it is held according to the Rules of the specific country. This note deals with England and Scotland.

### **England**

Inquiries take place under Inquiries Procedure Rules which are well established. There is no restriction on the issues that can be raised at an Inquiry. If locally-based, an inquiry will hear any evidence that is put before it, but if the proposal is to be called to inquiry by government, then the relevant Secretary of State or Minister (DTI/Scottish Exec) will issue a 'statement of matters' that they wish to receive evidence on.

Normally, anyone can provide evidence on any matter of relevance, including need. The Inspector is obliged to listen to all evidence, and to respond to it in his report: it is for him to conclude the weight to be given to it, and also for the government agency to decide whether to agree with the Inspector's report and recommendation, either in part or as a whole. They are entitled to disagree with any recommendation or conclusion made by the Inspector, provided that they set out the reasons why in the proper context. Any decision, as for any inquiry, can be challenged in the courts on a legal point, but not on the basis that the decision is held to be 'wrong'.

These procedures have caused considerable delay in securing the relevant consents for a number of major projects of national interest such as BAA's application for Terminal Five. In an effort to streamline the inquiry process for projects that are in line with national strategies such as airports, energy, defence, the New Major Infrastructure Project (MIP) Rules were introduced in mid-2005. These update those originally issued in 2002 but very little used. It is for the DTI (on behalf of the Secretary of State) to decide whether an application is a M I P: this decision will only be made after an

application has been claimed by Government for a decision under established rules, rather than it being an Inspector's own decision.

Implementation of the new MIP Regulations is still in its infancy. The first round of applications likely to be affected is the proposals for new runways at Stansted and Luton airports. Recent discussions with the ODPM in England have confirmed that these projects are consistent with the Government's Airports White Paper and, as such, will not need to argue the case for need. Instead, the resulting inquiries will focus on site specific issues such as the siting of the runways and the appropriateness of any proposed measures put in place to mitigate adverse environmental effects such as noise and traffic. This should greatly simplify the inquiry process and reduce both the duration of the inquiry and the time taken to reach a decision.

It is anticipated that the Government will also use these procedures for projects arising from the Energy White Paper, such as nuclear power stations or strategic proposals such as upgrading the inter-connector between England and Scotland. With a considered planning strategy and policy case, it is considered that other strategic grid upgrades could also be proposed for consideration under the MIP procedures process.

The Rules are generally very similar to the ordinary Inquiry Rules, but there are a number of important differences. These include -

- \* the use of a Technical Assessor (already possible) with a specific issue;
- \* concurrent sessions held by the lead Inspector and the Technical Assessor;
- \* scope for mediation between parties on a specific point during the inquiry;

#### Timing

In general, it can take at least 6 months from the time that an application is received by Government for a decision to be taken on whether an Inquiry is to be held. The start of the Inquiry will usually follow in a further six months. The Inquiry will probably last about a month, and the Inspector will write his report thereafter. As a general rule, assume 2 days of Inspector's time for every day that the Inquiry sat. The relevant Secretary of State (Malcolm Wicks in this case) will issue the final decision any time thereafter, but assume a period between 3 and 6 months after the close of the inquiry.

#### Scotland

There is no equivalent M I P set of Rules in Scotland, but a change is now contained within a new Planning (Scotland) Bill presented to the Scottish Parliament in December 2005. This is in addition to the Electricity Act procedures.

Part 1 of the new Bill introduces the requirement to prepare a 'National Planning Framework' while Section 4 proposes a hierarchy of what constitutes 'development'. This has no counterpart in England. There will be three categories - National, Major

and Local. It is understood that the intention is for a different set of procedural rules to be introduced for the three categories.

'National' proposals will be those that appear within the National Planning Framework. This has existed before in Scotland, but it has had no statutory basis: with the new Act it will. This Framework will be prepared by the Scottish Executive and approved by relevant Scottish Minister (Malcolm Chisholm, Minister for Communities). Examples of national developments quoted in section 9 of the new Bill include "new railway lines and trunk roads". On this basis it is considered that other strategic infrastructure projects such as major overhead power line projects could also qualify. It is suggested that NGT should make representations at the appropriate time to ensure that its requirements to upgrade or extend major overhead power line infrastructure should be included in the National Planning Framework. This would confirm the status of such projects as of national importance.

For 'national' applications, it may be assumed that these will all be notified to the Scottish Ministers, and that an Inquiry will almost certainly follow. The Rules for this process will be very closely modelled on the English MIP Rules. Different Rules will apply to Major or Local categories, with the Local procedures likely to be much less onerous than currently employed.

### **The way forward**

It is almost inevitable that any major power line submission will be determined through the inquiry process. Only if the proposal is of relatively minor importance, and there is no major objection to it, will an inquiry be prevented. However, if it is accepted that an inquiry has to be followed through, then this must be built in to the time-line for development, and the necessary work undertaken. To this extent, it is no different from any other major planning proposal. The necessary EIA will have to be prepared, and the decision-making authority (DTI/Scottish Ministers) encouraged through usual planning processes and lobbying, to make the necessary decisions as quickly as possible to further the inquiry. The key point here is that this is only the application of usual professional planning process - it does not imply novel solutions to the process.

While it cannot be doubted that the period from the submission of a major application for a transmission line to the time of decision will be up to two years, this again is no more than for other major proposals - including wind-farms that are likely to connect to it. The proposals by Scottish Ministers for a National Planning Framework also gives hope that major infrastructure could form part of the Scottish Framework, thus reducing the issues that might have to be considered at any inquiry, such as need.