

## Public

Ref: FOI/24/0030

National Energy System Operator

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Dear requester

### Request for Information

Thank you for your request for information which we received on 17 January 2025.

NESO is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

Your request has been considered under the EIR as we believe that the requested information falls within the definition of environmental information as set out in Regulation 2(1) 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

You initially asked us for:

*Milestones M1, M2 and M7 under the NESO's live connection agreements (issued or accepted) for all renewable transmission connected projects in Scotland which a connection date of 2035 or earlier.*

Following our request for clarification you confirmed on 17 January 2025 that you are requesting:  
*Recorded information on milestones within specific connection agreements.*

### Our response

We confirm that we hold information in scope of your request.

Information about parties with agreements which provide for connection and capacity (transmission entry capacity) is published by NESO. We publish the latest Transmission Entry Capacity (TEC) register on our website at: [Transmission Entry Capacity \(TEC\) register | National Energy System Operator](#). The list of projects in the register include existing and future connection projects. Information on connection dates is available in the Register.

The TEC register is supplemented by our Connections 360 portal which you can register to access: [Connections 360 | National Energy System Operator](#).

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. You can find the CUSC and the proformas on our website: [CUSC Code Documents | National Energy System Operator](#).

The CUSC Section 16 Queue Management Process document includes information on how the User Progression Milestones are calculated by reference to a project's Contracted Completion Date: [CUSC Section 16 Queue Management Process V1.01](#).

Further information on queue management is available here: [Queue management | National Energy System Operator](#).

In respect of information relating to specific connection agreements, which will include milestones that have been bilaterally negotiated, 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.

The TEC register provides information on current and future connection projects. 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 are projects within Scotland covered by agreements and the CUSC information outlines the substantial content of connection agreements whilst preserving the commercial confidentiality owed to the developers 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 and linked above.

This concludes our response to your request.

### **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](http://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)