

Public

Ref: FOI/24/0067

National Energy System Operator
Faraday House
Gallows Hill
Warwick
CV34 6DA

InformationRights@nationalenergyso.com

nationalenergyso.com

16 April 2025

Dear requester

Request for Information

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

You asked that your request be considered under the Freedom of Information Act 2000 (FOIA). Section 39 of the FOIA provides an exemption for information that falls within scope of the Environmental Information Regulations 2004 (EIR). We have determined that the information you are requesting meets the definition of 'environmental information' provided at Regulation 2(1)(c) of the EIR and we have therefore considered your request under that legislation.

Request

We understand that you have been informed by SP Energy Networks / SP Transmission that they were instructed by NESO to pause work on the Roger Hill Farm project. Your request is for information held on the reasons for that instruction.

Our response

You have previously been informed by NESO Customer Service that an instruction to pause work was issued to the Transmission Owner (SP Energy Networks / SP Transmission) by NESO, and that we are unable to provide further information regarding specific projects due to confidentiality.

The EIR require us to confirm whether recorded information is held at the time of a request, and to disclose that information unless an exception applies.

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

NESO is responsible for leading and facilitating the process by which developers / project owners connect to and make use of Great Britain's transmission system (National Electricity Transmission

System – NETS). When a developer applies for a contract to connect to or make use of the transmission system, NESO progresses the application and the developer will ultimately hold a connection contract with NESO. Transmission Owners (TOs) own the infrastructure and assets that make up the transmission system. The relevant TO will design a developer's connection and enter into a Transmission Owner Construction Agreement (TOCA) with NESO i.e., the TO contracts directly with NESO for the works required for a developer's project to connect to the transmission system.

A developer does not have a direct contractual relationship with a TO, therefore any modifications to a developer's contract will be communicated to a TO by NESO if required. Modifications could include, for example, changes to project timings, capacity requirements or technology. A modification may result in an instruction to a TO to pause work.

Further information on the Connections process and the key participants is available here: [NESO's role in Connections | National Energy System Operator](#).

The Environmental Information Regulations 2004 (EIR) state exceptions that allow for the refusal to provide requested information. Some of the exceptions are based on the harm or adverse effects that would arise from disclosure of the requested information. Regulation 12(5)(e) of the EIR 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.

Connection offers are made substantially in the form and under the terms of the [Connection and Use of System Code \(CUSC\)](#). 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 held relating to the reasons for a pause to work on the Roger Hill Farm project 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.

Further to the above, NESO is also bound by the confidentiality obligations under the System Operator Transmission Owner Code (STC) when we receive information from TOs for the purposes of our system operator business.

Commercial companies develop generation projects and are independent of NESO and the respective TOs. Given the competitive arena in which energy projects are developed and implemented, disclosure of information specific to the progress of a project, including reasons for a pause to work, would be likely to have a commercial impact on a developer. The disclosure of any specific information relating to a project would make it available to other developers who could use it to undermine future bids for other energy projects. Disclosure could also damage the developer's bargaining position whilst investment and build decisions remain outstanding.

The commercial impact of disclosing such information may reduce over time but there remains a common law duty of confidentiality based on the expectations of the developers.

Under the EIR, exceptions are subject to the public interest test. This is an extra stage in the process of deciding what information to provide, which requires us to balance the public interest arguments for disclosing the information against those for upholding the exception. The public interest is not necessarily the same as what the public finds interesting.

- NESO acknowledges that there are 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 public may be interested in the dates and times of construction, the connection dates, and the timelines and scope of developments.
- 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 information held that meets the scope of your request.

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. 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)