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Phil Jones
by email

Your Ref:

Our Ref:

Date: 5 August 2013

Dear Mr Jones

Thank you for your email regarding generating capacity.

Relevant statutory provisions

The Planning Act 2008 as amended (PA2008) specifies that an offshore generating station must (when constructed or extended) have a capacity exceeding 100MW to be considered a Nationally Significant Infrastructure Project (NSIP) (s.15(3)b). "Capacity" is not defined in the PA2008.

s.235 PA 2008 defines an "extension", in relation to a generating station, and a "generating station" as having the same meanings given to them as in the Electricity Act 1989. "Capacity" is not defined in the Electricity Act 1989.

It should though be noted that neither of these Acts are framed in terms of the supply or consumption of electricity, but rather in terms of the capacity of a generating station. Given its ordinary meaning capacity would, we think, be interpreted as the ability of a generating station to produce electricity, and not its actual final output to the grid, which may also vary from time to time.

Relevant policy

As you have identified the optimal, maximum performance of a generating station may not be consistently deliverable since such stations are not generally in continuous full-power operation. This difference is known as the capacity factor, and is key in estimating availability of supply. This is discussed in Part 3.3 of the Overarching National Policy Statement (NPS) for Energy (EN-1), which sets out overall Government policy in relation to energy NSIPs. Whilst an NPS is not, unlike the PA2008, primary legislation it has been formally designated by the Secretary of State.

When calculating the need for new generating stations, Government recognises that it will need to apply a capacity factor to the total capacity planned. This total capacity is referred to in footnote 26 to paragraph 3.3.14 of NPS EN-1 as the 'nameplate capacity' of a project. The NPS EN-1 glossary describes 'nameplate capacity' as "The rated output of the unit/station at the generator, and therefore includes station own use (parasitic power), and any other consumption/loss prior to despatch to the grid, local network, industrial site or similar transmission system". This description covers the scenario you outline, of a rated output being higher than the output generally transferred to the national grid.

Conclusions

In our view "capacity", as used in the PA2008, probably therefore means the rated maximum gross output, or 'nameplate capacity', of the station.

Please note that the Planning Inspectorate does not have the power to give a legally binding interpretation on such matters. Only the Courts can ultimately determine the interpretation of legislation, and to date there has been no case law on this point under the PA 2008 regime.

It should also be noted that the Planning Inspectorate, on behalf of the Secretary of State, is only able to decide whether development consent is required for a project, under PA 2008 s.55, once an application has been formally submitted.

Yours sincerely

Nicholas Coombes

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Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.