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Insights

UK GOVERNMENT CONFIRMS TYPE OF PLANNING CONSENT REQUIRED FOR ELECTRICITY STORAGE

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SUMMARY

The electricity storage sector in the UK has had a number of false dawns over the past 5 years but does appear to have some momentum even in these difficult times. Developers and potential investors into battery storage projects have been working hard to simplify and improve the regulatory requirements for such projects, whilst battling to understand and secure the revenue streams that these assets can grant access to. In that context, the recent announcement by BEIS on the type of planning consent required for battery storage is being welcomed by the industry.

In the UK, electricity storage often requires various consents, including planning consents. The UK Government consulted in 2019 on the type of planning consent which might be required. Having concluded that consultation, UK Government has confirmed that electricity storage schemes will require conventional 'planning permission', and will not be subject to the more onerous and costly 'Development Consent Order' (DCO) regime for Nationally Significant Infrastructure Projects (NSIPs). This blog explores that announcement.

Overview

As outlined in our last blog on this subject, UK Government (the Department of Business, Energy, and Industrial Strategy, or 'BEIS') was consulting during 2019 on the nature of the planning consents required for electricity storage. This is because the relative novelty of electricity storage did not neatly fit with the existing thresholds of the planning regime.

BEIS has announced (on 14 July 2020) the outcome of the consultation.

Overall, BEIS has decided to implement its proposals as consulted on in late 2019. This means that UK Government will legislate shortly such that electricity storage (except pumped hydro) can be consented by way of 'planning permission' (mostly granted by local planning authorities), rather than requiring a 'Development Consent Order' (DCO) (granted by central Government). That said, BEIS can still direct for particular projects to need to go through the DCO regime, where considered

appropriate (which might be in cases where the storage in question is felt to be nationally significant).

In Wales, where planning was mostly devolved, planning decisions for electricity storage (except pumped hydro) of any size will in future generally be consented by planning permission (again mostly from the local planning authority).

The changes now proposed, will capture applications for both (1) new storage facilities, whether as part of a freestanding generating station or a composite project, and (2) extensions of storage facilities to existing consented generating stations.

Where does it leave pumped hydro?

In England these projects will require a DCO where the capacity is 50MW or above. In Wales, where the capacity is between 10MW and 350MW, consent will be sought from Welsh Ministers under the Developments of National Significance (DNS) regime; and facilities with a capacity above 350MW will require a DCO (granted by the UK Government in Westminster). Where lower than the DCO thresholds, then planning permission may be sought from the relevant local planning authority (i.e. no need for a DCO).

So what might this mean for delivery?

Well, it means that to deliver electricity storage, in most cases there should be no need for a DCO, and a planning permission from the local planning authority will suffice. Where available, a developer can benefit from any appropriate permitted development rights.

Planning permissions can generally be obtained much more quickly than DCOs, provided that there is a robust planning case and the political support required to get a positive decision from the local council. If the council refuses to grant planning permission (and that decision will be taken either by elected members i.e. councillors, who generally have no professional planning background, or, by delegated authority to a council planning officer), then it is open to the applicant to appeal to the Secretary of State, which may lead to a 'public inquiry' where the case will be fought out in front of an independent government inspector. Public inquiries into planning permissions, can become comparable to DCOs, in terms of programme and cost.

It is also worth bearing in mind, that if a developer already has a DCO (e.g. for its generating station), then the developer will still need to comply with all the terms of that DCO (or amend the DCO). This will need to be factored in to the approach to securing any necessary consents for electricity storage. In addition, if a DCO project promoter (e.g. for a generating station) seeks a DCO, then the DCO may include 'associated development' which could include electricity storage facilities. DCOs offer programme certainty, as well as a greater degree of decision making certainty (most DCOs are approved, and note that a DCO decision is made in Westminster, not by the local

council / politicians); hence a developer may want to include storage in its DCO, even though it doesn't have to.

Where does this leave things, overall?

Overall, the changes are seemingly positive for the electricity storage industry, as they offer the greater level of flexibility which comes from the planning permission regime. Planning consents should be capable of being obtained more quickly, and more cheaply and most in the industry have been supportive of this change. It should also mean that projects are not designed to fit the planning regime anymore and that, instead, they are designed for purpose which, common sense dictates, is bound to be a good thing.

That said, where there is any level of controversy or objection to a scheme, then the planning permission process can still throw up considerable programme and cost risks, and should always be undertaken with the help of expert planning consultants (and where needed, lawyers!).

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