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Response to Consultation on National Policy Statements for Energy Infrastructure

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the consultation on the draft National Policy Statements on Energy Infrastructure has been prepared by the CLLS Planning and Environmental Law Committee (the "Committee"). The Committee is made up of leading specialists in the field of planning and environmental law.

Response

The Committee welcomes the opportunity to comment on the draft National Policy Statements (NPSs) for energy infrastructure and recognises the importance of the documents for the new system of development consents for Nationally Significant Infrastructure Projects.

The Committee has chosen only to respond to those questions in the consultation where we have something material to add to the points that have been raised.

Q2 Does the draft overarching Energy National Policy Statement provide the Infrastructure Planning Commission with the information it needs to reach a decision on whether to grant development consent?

The draft NPS contains a strong generic statement on need, which is welcomed. However, we do have a concern that the draft NPS does not attempt to express a stronger view on the energy mix and appears generally to leave it to the market to bring forward individual projects. Whilst this is understandable given the urgent need for additional energy generating capacity, our concern is that in the absence of a stronger policy endorsement of the energy mix, at some point (after the first few energy projects have been consented) objectors could question, and the IPC may feel compelled to allow examination of whether, the emerging energy mix is appropriate or not. We think a stronger policy direction on this area would be beneficial, particularly in view of the fact that most of the technology-specific NPSs defer to the overarching NPS on the issue of need.

Q4 Does the draft overarching Energy National Policy Statement provide suitable direction to the Infrastructure Planning Commission on the need and urgency for new energy infrastructure?

Yes, subject to our comments in relation to question 2 above.

Q6 Does the draft overarching Energy National Policy Statement appropriately cover the generic impacts of new energy infrastructure and potential options to mitigate those impacts?

Whilst the section on assessment principles and generic impacts is generally helpful, in our view it occupies a disproportionately large part of the NPS, when compared to the text devoted to policy. In our view, this section may be better condensed, focussing more on the weighting of criteria and considerations by the IPC, with the remainder contained in separate practical guidance. One particular concern we have is that this part of the NPS is so detailed that it could become a straight-jacket for both applicants and the IPC and an area which objectors may exploit, given the binding status of the NPS. As a minimum, if this section is retained, we do not think it is necessary to include guidance for the applicant's assessment of the impacts and issues, since in practice this will be addressed and determined through the normal Environmental Impact Assessment scoping procedures.

Q7 Do you have comments on any aspects of the draft overarching National Policy Statement not covered by the previous questions?

We wish to make two additional points.

- It would be helpful if the NPS were to set out clearly the anticipated relationship between it and local development frameworks/regional strategies.
- In addition, to be given its full weight, the draft NPS needs to be subject to full and rigorous consultation. In particular, we think it is unfortunate that there is a mismatch between the deadline for consultation responses and the deadline for evidence to be placed before the Select Committee which will be responsible for scrutinising the draft NPS. In this latter regard, we think it is important that the Department identifies a way of placing consultation responses received after 15 January 2010 before the Select Committee.

Q9 Do the following draft National Policy Statements [EN-2, EN-3, EN-4 and EN-5] provide the Infrastructure Planning Commission with the information it needs to reach a decision on whether or not to grant development consent?

We repeat our comments at question 2 above regarding need; if the technology specific NPSs are not to contain any technology specific statement on need, then the overarching NPS should in our view provide a stronger policy direction for energy mix.

Q10 Do the following draft NPSs [EN-2, EN-3, EN-4 and EN-5] appropriately cover the impacts of the specific types of new energy infrastructure covered in them, and potential options to mitigate those impacts?

We repeat our comments at question 6 above.

Q11 Do you have any comments on any aspects of the following draft National Policy Statements [EN-2, EN-3, EN-4 and EN-5] not covered by the previous questions?

We repeat our comments at question 7 above.

Finally, subject to the above, we look forward to the designation of the NPSs at the earliest opportunity to bring certainty to the new system.

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