

Agenda Item	17
Report No	EDI/29/18

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 17 May 2018

Report Title: Scottish Government Consultation: Fees Charged for Applications under the Electricity Act 1989

Report By: Director of Development and Infrastructure

1. Purpose/Executive Summary

1.1 This report provides background information on, and outlines the officer response to, the Scottish Government's consultation on its proposed increase to fees for applications submitted under the Electricity Act 1989.

2. Recommendations

2.1 Members are asked to:

- note the background; and
- agree to homologate the response provided to Scottish Government by the Head of Planning and Environment.

3. Introduction

- 3.1 The Council is frequently consulted by Scottish Government on proposals submitted to it under the Electricity Act 1989. This includes applications for electricity generation in the form of wind farms (over 50 Megawatt (MW) in capacity for on-shore), hydro power stations and tidal power schemes as well as applications for electricity transmission infrastructure.
- 3.2 Where Ministers give consent for any on-shore development under the Act, planning permission is deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997. The Council then becomes responsible for the discharge of the conditions of the consent and ongoing compliance monitoring. Where the Council raises an objection to the proposal there is an automatic requirement for Ministers to hold a public local inquiry (PLI). The Council is the only consultee that can call a public inquiry should it object. The Council is therefore an extremely important consultee in the whole process.
- 3.3 While not a planning application, given the implications of a consent being granted, the Council processes, and makes an assessment on, a consultation in the same way as it does a planning application for similar development.
- 3.4 Fees for applications under the Electricity Act are governed by The Electricity (Applications for Consent) Regulations 1990. The fees are set on a sliding scale based on total distance of overhead line or MW capacity of generation with a current maximum of £60,000.
- 3.5 Fees for development within Highland to date have generally not exceeded £18,000 for transmission projects and £24,000 for generation projects. A voluntary arrangement exists whereby two thirds of the fee is paid to the Council; the Council receiving, in most cases, £12,000 for large scale transmission projects and £16,000 for large scale on-shore renewable generation projects.

4. Proposed changes to fees

- 4.1 On 19 February 2018 The Scottish Government published a consultation titled Fees Charged for Applications under the Electricity Act 1989. The full consultation is available to view at https://consult.gov.scot/energy-and-climate-change-directorate/power-lines-and-electricity-generating-stations/user_uploads/sct0118887496-1_fees_p1.pdf. The closing date for responses to the consultation was 14 May 2018.
- 4.2 In the preamble to the consultation, The Scottish Government sets out its reasoning for its proposal to increase fees for applications submitted to it under the Electricity Act. The Government has reflected on whether it is *'properly resourced to deliver the standard of service'* expected at a time when it continues to *'receive a significant volume of applications for complex infrastructure proposals'* and also in order to ensure that it conforms to the principle of full cost recovery for public services in accordance with the Scottish Public Finance Manual.
- 4.3 The proposals, which are contained within **Appendix 1**, are to increase fees from a maximum of £60,000 to a maximum of £585,000. For those applications typically received in Highland the fee would increase to £175,000 for transmission projects and to £125,000 for renewable energy proposals such as on-shore wind.
- 4.4 Staged payments are a feature of the proposals in order to encourage early discussion

and ensure that the Government is appropriately resourced to respond effectively to these discussions i.e. providing screening and scoping responses for EIA development.

- 4.5 Of most significant interest to this Council is that the consultation, as a footnote, explains that the voluntary arrangement whereby the Council receives two thirds of the fee will not continue and that in the future we would only receive the current fee apportionment.

5. Response

5.1 The response to the consultation is contained with **Appendix 2**. The review of fees for S36 and S37 applications is welcomed, albeit long overdue. The principle of seeking full cost recovery for public services is supported; something that this Council, with support from other organisations, has advocated for some time in relation to the ongoing discussion with Scottish Government on planning fees. The concept of staged payment is also of merit, recognising the demand on resource at critical points prior to the submission of an application.

5.2 However, the proposals do nothing to address the illogical two-tier system for the calculation of fees for energy related development in Scotland or recognise the resource requirement from a local authority perspective. There is a somewhat nonsensical situation where a wind farm with a design capacity of 49MW submitted under the Planning Act would pay £125,000 (under the new planning fee regulations) but the Council would receive only £16,000 for one of 50MW submitted under the Electricity Act. The resource required to process both applications would however be the same. When considering the matter in a UK context the disparity is even greater. Given that the Government is seeking to achieve full cost recovery, it is argued that this principle should also apply to the local planning authority and that the fee payable to the Council should in fact be on par with the equivalent planning application fee.

6. Implications

6.1 Resource Implications: It is anticipated that Highland will continue to experience interest in renewable energy development, including further on-shore wind proposals, and that given the anticipated scale of the next generation of turbines that a greater proportion of these schemes will be progressed through the Electricity Act as opposed to the Planning Act. The Scottish Government's current proposal on fees for these applications will result in the Council not having sufficient resource to respond effectively to these consultations.

6.2 Climate Change/ Carbon CLEVER Implications: Renewable energy developments support the transition to a low carbon economy.

6.3 Community (Equality, Poverty and Rural): Renewable energy developments are based in rural parts of Highland.

6.4 Gaelic Implications: None

6.5 Risk Implications: None

6.6 Legal Implications: None

Designation: Director of Development and Infrastructure

Date: 20 April 2018

Author: David Mudie, Team Leader - Development Management

APPENDIX 1

Proposed fee tariffs

<i>1. Subject matter of application</i>	<i>2. Current application fee</i>	<i>3. Proposed payment due at screening</i>	<i>4. Proposed payment due at scoping</i>	<i>5. Proposed total section 36 or 37 application fee</i>	<i>6. Proposed total section 36C variation fee</i>
Screening opinion in relation to an anticipated application for consent under section 36, 36C or 37 for a development (including any of the following)	N/A	£1,000	N/A	N/A	N/A
Overhead line with a total distance not exceeding 15 km which is not EIA development	£180		N/A	£2,100	N/A
Overhead line with a total distance not exceeding 15 km which is EIA development	£2,400		£6,000	£25,500	N/A
Overhead line with a total distance—					
(a) exceeding 15 km but not exceeding 50 km	£18,000		£43,750	£175,000	N/A
(b) exceeding 50 km but not exceeding 100 km	£30,000		£80,500	£322,000	N/A
(c) exceeding 100 km	£60,000		£146,250	£585,000	N/A
Construction or construction and operation of a generating station, which is not EIA development, of capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Construction or construction and operation of a generating station, which is EIA development, of capacity—					
(a) not exceeding 10 MW	£6,000		£2,700	£10,800	£10,800
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£13,500	£54,000	£54,000
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000

1. Subject matter of application	2. Current application fee	3. Proposed payment due at screening	4. Proposed payment due at scoping	5. Proposed total section 36 or 37 application fee	6. Proposed total section 36C variation fee
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(f) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension or extension and operation of a generating station, which is not EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Extension or extension and operation of a generating station, which is EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		£2,025	£8,100	£8,100
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£10,125	£40,500	£40,500
(b) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000
(c) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(d) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(e) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension of a nuclear generating station by retrofitting of emission control equipment	£6,000		£31,250	£125,000	£125,000
Any other extension of a generating station	£1,200		£6,250	£25,000	£25,000
Operation only or change to manner of operation of a generating station	£1,200		£6,250	£25,000	£25,000

APPENDIX 2

1. Do you agree or disagree the application fees should be revised to maintain and improve our service levels?

It is agreed that fees should be revised. The principle of seeking full cost recovery is welcomed. However, the fees should reflect the resource employed by local planning authorities in meeting the Energy Consent and Deployment Unit's anticipated service level.

The local planning authority would receive a fee of £125,000 for a typical windfarm of 49MW but under the proposed structure would be expected to undertake the same assessment process, and assume the same long term responsibilities, for a 50MW scheme with a fee of only £16,000.

The only significant difference between a planning application and consultation is that the Council does not consult with external agencies such as SEPA and SNH for their views. However, the views of these agencies will be taken into consideration during the Council's assessment and response to Ministers. The Council is still required to maintain its register, publish comments made directly to it, respond to enquiries and complaints, make its decision and then defend this at public local inquiry as necessary, as well as discharge the conditions and monitor the impacts over the lifetime of the development. The new planning fees, to an extent, recognise the whole life cycle cost to the local planning authority of such large scale development. The proposals for fees for applications under the Electricity Act do not.

2. Do you agree or disagree that we should continue to have a fixed fee structure as proposed?

Agree. A fixed scale is easier to understand.

Fees set in relation to generating capacity and length of line avoid red line boundaries being manipulated to reduce fees.

3. Do you agree or disagree with the proposal that application fees should be phased in the manner proposed, to spread the risk associated with potentially abortive or unsuccessful application costs?

Agree. However, not from the perspective of reducing risks to developers. The pre-application process, including screening and scoping, has not inconsiderable resource implications for the Energy Consent Unit and consultees; including local planning authorities.

Currently where proposals do not progress beyond the initial stages cost recovery is not achieved. The proposed fee structure provides an opportunity to cover some of the costs.

A phased payment at screening and scoping request stage is therefore a sensible proposal. Having said that, as the process involves the local planning authority, then a proportion of the fee payable to the authority would also be appropriate.

It is agreed that the fees payable at screening and scoping stage be subtracted from the eventual application fee.

There is a missed opportunity not to include provision for a payment for pre-application advice, again a proportion going to the local planning authority. This Council has such a service in place. This attracts a fee and many prospective developers take advantage of it. The Energy Consent Unit will often attend it. It is likely that more Council's will adopt this type of process, particularly as the Planning Bill proposes an ability for authorities to charge discretionary fees. It would be helpful for the current proposals to keep step with this.

4. Do you agree or disagree the existing arrangement should continue where the same fee is required for overhead lines exceeding 15km in length whether or not there is EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.

Agree.

While EIA development requires a greater level of assessment, it is unlikely that, for proposals over 15km in length, that the resource required to provide a response would be less than if it were not EIA development.

Again, a commensurate proportion of the fee should be provided to the local planning authority.

5. Do you agree or disagree with the introduction of a fee for processing applications for variations of consent, whether for EIA or non-EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.

Agree.

As the resource required by the Energy Consent Unit and the local planning authority can often be as significant as that required to assess the original application, the introduction of a fee is fully justified.

Again, a commensurate proportion of the fee should be made available to the local planning authority.

6. On balance, do you agree or disagree with the fee levels proposed? If you disagree, please specify which fee in Annex 1 you think should be reconsidered and provide a proposed alternative.

While the fees are a step in the right direction, they will not cover the costs; particularly if local planning authorities were to receive an appropriate apportionment consistent with the equivalent planning application fee.

In comparing the planning fee structure between Scotland and England, where the maximum fee can be as much as £300,000, and taking into account the current review of fees in Scotland, it is likely that the proposed fee structure will be quickly out of date. Fees for Electricity Act applications in Scotland would be roughly £300,000 less than the equivalent fee in England. There is no justifiable reason for this differential since no less assessment is required by the Energy Consent Unit or local planning authorities in Scotland.

Scotland has a large part to play in addressing the energy crisis currently facing the UK and renewable energy is expected to make a significant contribution towards meeting demand; in a part of the UK where the technology can operate more efficiently. The resultant lack of resource to deal with this work will undoubtedly have an impact on the ability to address this issue in its widest context.

Parity of fees across the UK should be sought, with the appropriate apportionment to local planning authorities given to ensure that sufficient resource is in place to address the matter.

7. Do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? If so please explain these.

There are financial and resource implications for local authorities.

It is considered that the Business & Regulatory Impact Assessment does not adequately cover the impacts on local planning authorities and is focussed too narrowly on the impacts on applicants/developers. The payment of a fair portion of the increased fees to local planning authorities would allow investment in staff and resources and the building of capacity to deal more effectively and efficiently with such applications.

Capping fees at their current level will act as a disincentive to local authorities to be more actively involved in pro-active pre-submission dialogue and this may result in poorer quality submissions with less chance of success and ultimately more refusals, all of which would contributed towards slowing down the application and consultation process and meeting renewable targets.

8. Do you have any other comments?

No.