EXPLANATORY MEMORANDUM TO

THE ELECTRICITY GENERATING STATIONS AND OVERHEAD LINES (INQUIRIES PROCEDURE) (ENGLAND AND WALES) RULES 2007

2007 No. 841

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These rules replace the existing procedural rules ("the old rules")[1] governing inquiries into applications for large electricity generating stations and overhead lines under the Electricity Act 1989 (hereafter referred to as "the rules").

2.2 The rules provide a range of tools which the Secretary of State or inspector can draw upon as appropriate in order to manage and conduct the proceedings of an inquiry held for applications for consent to construct, operate or extend large electricity generating stations and to install overhead power lines under sections 36 and 37 of the Electricity Act (1989) respectively[2]. They provide a framework to enable the Secretary of State and inspector to ensure that each inquiry is fit for purpose and allows appropriate exploration of the relevant issues.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 The old rules were made in 1990. No significant changes to the old rules have been made since then. The Energy Review publication 'Our Energy Challenge'[3] committed to updating the rules for inquiries held to consider applications made under sections 36 and 37 of the Electricity Act 1989.

5. Extent

5.1 These rules apply to England and Wales.

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[1] Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990, SI 1990/528.

[2] See paragraph 7.1.

[3] The Energy Challenge. Energy review report 2006 [Cm 6887] Available on www.dti.gov.uk/energy/review and can also be obtained through the Stationery Office Publications Centre, PO Box 29, Norwich NR3 1GN, telephone: 0870 600 5522.

6. European convention on human rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Electricity Act 1989 is the main legislation dealing with planning consent in order to construct, operate or extend generating stations and to install, or keep installed, overhead lines within England and Wales.[4] Under sections 36 and 37 of the Act, any application for consent for an onshore generating station with a capacity of greater than 50MW, an offshore generating station driven wholly or mainly by wind or water with a capacity of greater than 1MW within internal or territorial waters and greater than 50MW in the Renewable Energy Zone[5] and for overhead lines, is made to the Secretary of State for Trade and Industry. Smaller generating stations onshore are referred to the relevant local planning authority (LPA) for consent.

7.2 Schedule 8 to the Electricity Act 1989 requires a public inquiry to be held where an objection has been duly made and sustained by the LPA against any application under sections 36 or 37 of the Electricity Act. In other cases, the Secretary of State has a discretion as to whether or not to hold a public inquiry.

7.3 The substance of the old rules has not been updated since their introduction in 1990. By contrast, the inquiry rules for other infrastructure consented under the Town and Country Planning Act 1990 have been updated and improved several times; most recently in 2005[6], for major infrastructure projects granted consent under the Town and Country Planning Act.

7.4 The objectives of this instrument are to improve the efficiency of inquiries, provide more certainty for all participants on how long the inquiry stage of the planning process may last and deliver improvements quickly. The rules generally reflect and incorporate the appropriate best practice for inquiry procedures introduced for major infrastructure projects granted consent under the Town and Country Planning Act[7], thus creating greater consistency between inquiry procedures.

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[4] The provisions also apply in relation to Scotland, but the functions under these provisions, have been transferred to the Scottish Ministers in so far as they are exercisable in or as regards Scotland: SI 2006/1040 and SI 1999/1750.
[5] The Renewable Energy Zone is a designated area of sea outside the UK territorial waters which may be exploited for energy production, created through the Energy Act 2004.
[6] The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115.
[7] See footnote 6.

7.5 The change is not legally or politically important.

Commencement date

7.6 The rules come into force on 6th April 2007.

Consultation

7.7 The Department of Trade & Industry published a consultation document[8] on 9th November 2006 that included the proposed Electricity Act inquiry rules. Thirty-nine responses to the consultation were received regarding the proposals, from industry groups, local authorities, the planning community, non-government organisations, major generators and utilities.

7.8 Only two respondents were not in favour of the proposals. Other respondents supported the proposals because they believe that the proposals will lead to improved certainty and efficiencies without compromising scrutiny or the opportunity for participation in the inquiry.

7.9 There were a small number of concerns raised during the consultation. Many of these related not to the rules themselves, rather they centred upon how inquiries might be run in practice and the need for Government to set a clear energy policy, in order to maximise the effectiveness of the inquiry rules process. The Government is committed to providing this certainty through an Energy White Paper later in 2007.

7.10 Where concerns were raised about specific provisions, we have considered the issue and other consultation responses. Where the balance of evidence favours changing the provision from that proposed in the consultation, we have done so in finalising the rules.

7.11 Those who broadly disagreed with the proposals were concerned about potential participants' rights being curtailed. These concerns have been considered fully. The Government is confident that all potential participants will continue to be able to make relevant contributions at inquiries, because by providing a clear inquiry process and early circulation of information, it will be easier to identify whether and how interested parties wish to participate.

[8] Updating the Electricity Generating Stations and Overhead Lines Inquiry Procedure Rules in England and Wales: An Energy Review Consultation [URN 06/2082] Available on http://www.dti.gov.uk/files/file35086.pdf and can also be obtained through DTI Publications Orderline, telephone: 0845 015 0010.

7.12 The Council on Tribunals considered that the rules, taken as a whole, are proportionate and not unreasonable or objectionable.

7.13 Furthermore, the provisions give discretion to the Secretary of State or inspector on certain matters, which should enable them to ensure that all appropriate interests can be heard and relevant issues fully and fairly considered in each case. For example, in the event that a person had not registered and decided to participate at a very late stage, the inspector has the discretion to permit anyone to appear at the inquiry, which cannot be unreasonably withheld.

7.14 The media interest in the proposals was limited to a few articles which highlighted the start of the consultation.

Guidance

7.15 Guidance will be published on the DTI website[9] to accompany the regulations.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached at Annex A.

8.2 The RIA highlights that the impact on inquiry participants will result in some additional costs in the early stages of the process, but that these will not be significant and should have a positive balance over the whole inquiry. There will also be increased resource pressure on the LPA in the early stages, but again the balance against future savings is expected to be positive. It also concludes that the rules present no detriments to competition.

9. Contact

Louise Hilton at the Department of Trade & Industry (telephone: 020 7215 2533 or email Louise.Hilton@dti.gsi.gov.uk) can answer any queries regarding the instrument.

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[9] The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 Guidance [URN 07/782] Available on http://www.dti.gov.uk/energy/review/implementation/page31829.html and can also be obtained through DTI Publications Orderline, telephone: 0845 015 0010.

Annex A: The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 Final Regulatory Impact Assessment

The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 Final Regulatory Impact Assessment

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1. Title

This final Regulatory Impact Assessment (RIA) considers the potential impact of updating the inquiry procedures for large electricity generating stations and overhead lines, as set out in the draft rules: The Electricity Generating Stations and Overhead Lines (England and Wales) (Inquiries Procedure) Rules 2007 (hereafter referred to as the new inquiry rules).

2. Purpose and Intended Effect

2.1. Objective

Without imposing additional regulatory burden on business, the new inquiry rules should deliver the following:

- A simplified inquiry process for large electricity infrastructure
- Reduced time and cost of inquiries
- Greater consistency with best practice inquiry rules for other major projects.

The principal objective of these new rules is to improve and streamline the handling of large electricity infrastructure inquiries for the benefit of all parties, while retaining the existing high standards of fairness and impartiality. It will improve the performance of the consenting process for large electricity projects.

The rules streamline the inquiry procedures for applications to construct electricity generating stations greater than 50MW onshore, and within the Renewable Energy Zone[10] and 1MW offshore in territorial or internal waters and for overhead lines. The new rules will provide for shorter, more efficient public inquiries with more predictable durations.

The new inquiry rules are consistent with inquiry rules for other major infrastructure, notably the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, from which much of the best practice is taken.

2.2. Background

The new inquiry rules set out the procedures for public inquiries that may be held to consider whether to grant permission to construct an onshore generating station with a capacity of greater than 50MW, an offshore generating station with a capacity of greater than 1MW within territorial or

[10] The Renewable Energy Zone is a designated area of sea outside the UK territorial waters which may be exploited for energy production from water or winds, created through the Energy Act 2004

internal waters and 50MW offshore in the Renewable Energy Zone, or an overhead line.

These procedures have not been significantly updated since they were introduced in 1990. The 2006 Energy Review examined the difficulties experienced by participants of the Electricity Act consent regime. Respondents to the Review consultation commented on the planning system generally as well as specifically stating a desire for inquiry rules to be simplified. Following this analysis, and as a positive response to stakeholder views, in July 2006 the Government announced a package of measures to streamline the planning system for major energy infrastructure projects. A commitment was given to update the inquiry procedures under the Electricity Act consent regime.

Similar reforms were introduced by Government in 2005 for major infrastructure projects that are granted planning consent under the Town and Country Planning Act consent regime (which does not cover major electricity infrastructure). The new inquiry rules reflect the appropriate best practice from the new Town and Country Planning Act inquiry rules for major infrastructure projects. Many of the new provisions are discretionary, so should the inspector and/or Secretary of State think that the planning inquiry can be resolved more efficiently without using these new powers, then they will not have to do so.

These improvements will be implemented swiftly to provide immediate benefits, while Government considers longer-term fundamental changes to the energy planning system. In Spring 2007 the Government will publish a Planning White Paper setting out its more long-term proposals in response to Kate Barker's recommendations for land use planning, and for taking forward Kate Barker's and Rod Eddington's proposals for reform of major infrastructure planning.

2.3. Rationale within Government

Reduce delays at planning stage for energy developments

The 1990 Rules set out the procedures under which all interested parties in a particular proposal to construct a large generating station or overhead line can be heard in a public inquiry. Following the inquiry the appointed inspector then makes a recommendation to be considered by the Secretary of State for Trade and Industry to determine whether to grant consent for the proposed project.

However, the current system can impose significant costs on developers, central and local Government and other participants of any inquiries held. Many of these costs are directly related to the length of the inquiry, such as:

- Fees and possible provision of accommodation for the inquiry, Inspector and secretariat,
- Participants travelling and overnight costs and loss of earnings,
- Reproduction and circulation of documents,
- Preparation of cases and other legal and professional costs, including expert witnesses, and
- Legal representation at the inquiry itself.

Therefore, shortening the inquiry time will decrease the costs listed above as well as creating further benefits.

Evidence gathered as part of the 2006 Energy Review found that since the introduction of the current system, where a public inquiry has been held, that it has taken on average 36 months for projects to secure consent from the Secretary of State. The diverse nature of applications for electricity infrastructure means that there have been many projects subject to longer delays under the existing consenting procedures, for example the North Yorkshire grid upgrade that took 96 months to secure permission.

Lengthy delays at the planning stage can have major knock-on effects for developers because it is at this point that large investments are required in the project development stage. Industry estimates that for larger projects that these extra costs caused by delays to the inquiry can be in the quantum of millions in certain cases.

<u>Reduce number of market failures</u>

The current inquiry system can result in a number of market failures. Firstly, significant transaction costs, and costs associated with delays, can prevent projects coming forward that would otherwise be cost effective, resulting in a sub-optimal outcome for the economy. Secondly, the large costs associated with a planning inquiry can create a barrier to entry, with new firms prevented from entering the energy market. This results in reduced competitive pressures within the market and consumers facing higher energy prices as a result.

<u>More efficient allocation of resources by Government</u>

Similarly, the current system could be suffering from typical government failures. Government failure occurs when a government does not efficiently allocate goods and/or resources to government consumers, typically citizens. The current regulatory regime can generate more economic costs than

benefits by increasing the risk faced by private firms (if the regime is subject to frequent changes) and increasing transaction costs (as companies and other participants have to follow the lengthy inquiry procedure), therefore discouraging new investment and creating a barrier to entry.

Ensure growth and competitiveness of UK economy

Moreover, delays in the construction of new energy infrastructure could have significant effects on the wider UK economy: over the next two decades it is likely that the UK will need 25GW of new electricity generating capacity, representing approximately one third of current installed capacity. The timely delivery of these projects is important if we are to maintain reliable and affordable supplies of energy to both business and households.

In 2006 the UK dropped in a table of relative attractiveness for investment in renewables[11]. The reason stated was industry concern grows over grid and planning issues that are still holding back development momentum. This has a negative impact on the UK economy and negative implications for the growth of renewable generation and carbon emissions reductions.

It is not expected that there will be any unintended consequences to the new inquiry rules. For example, although they apply to all inquiries into applications made under the Electricity Act in England and Wales under sections 36, 36A and 37, they are sufficiently flexible to allow the Secretary of State and inspector to plan the inquiry process in a way that is appropriate for the application in question, whether it is a smaller project or a proposal for a large new major power station It should not be possible for participants of the system to use the new procedures to filibuster the planning inquiry process – they create extra powers for the inspector to keep the inquiry focussing on relevant issues, whilst ensuring that all relevant issues are fully and fairly considered, and through the deadline for the submission of their report, it creates an incentive for them to use their powers constructively.

3. Consultation

3.1. Within Government

The new inquiry rules have been developed as part of the cross-Government Energy Review. The Review team has been made-up of representatives of the interested departments: Department of Trade and Industry, Department for Communities and Local Government, HM Treasury, Department for Environment, Food and Rural Affairs, Department for Transport and the Prime Minister's Strategy Unit. In particular, the team has worked with experts from the planning division of the Department for Communities and Local Government (that has overall responsibility for the land-use planning system

[11] Renewables Energy Country Attractiveness Indices, Ernst and Young, February 2006

in England) and the Planning Inspectorate to ensure that the new rules are consistent with other consent regimes and the underpinning principles of the land-use planning system.

3.2. Public Consultation

The new inquiry rules have been developed in the light of comments and evidence submitted by stakeholders as part of the Energy Review consultation which ran from January 2006 to March 2006. This consultation elicited over 5000 responses, although only a proportion discussed planning issues. Of the responses from key stakeholders (including the UK Business Council on Sustainable Energy, non-governmental organisations, major utility companies and regulators) there was almost universal recognition of the need to reform the planning arrangements for major energy infrastructure so that they were in line with the need to reduce uncertainty, cost and delay for all participants of the system.

During this consultation period, and the subsequent months, Government held numerous stakeholder meetings where introducing new inquiry procedures taking account of existing best practice were discussed, and there was strong support for this as the minimum Government should do to streamline the planning process for large electricity infrastructure.

The new inquiry rules have also been drawn up taking into account the lessons learned by the Department for Communities and Local Government when they updated the rules for major infrastructure projects consented under the Town and Country Planning Act. Therefore, they are being introduced based on stakeholder comments and experience of rules already in place.

The draft inquiry rules also underwent a separate consultation which ran from November 2006 to February 2007. This was supported by stakeholder workshops attended by a representative cross section of stakeholders and at which the majority of views expressed about the proposed changes were positive.

Furthermore we received 39 written responses to our consultation. Of these responses, 35 were broadly in favour of the proposals, 2 were against and 2 were neither. The majority of responses supported the view that these changes to the planning inquiry rules will provide significant benefits to stakeholders.

The Council on Tribunals has also been consulted on the inquiry rules. They noted their support of the move towards greater consistency between these and other best practice inquiry rules. The Council considered that the rules were proportionate and not unreasonable or objectionable. They felt that, provided inquiries are held against the context of a clear energy policy, that

the Rules provide a framework within which the Secretary of State and inspector can ensure that the inquiry remains a forum in which all appropriate interests have a voice and all the relevant issues are fully and fairly considered.

4. Options

4.1. Do Nothing

This option would be to take no action and leave the current arrangements in place. This option would not have any impact in reducing the delays and costs experienced by all participants in the planning system.

The costs associated with this option are the continuation of excessive costs for all participants of the planning system as a result of long planning inquiries. The uncertainty associated with the need to secure planning consent will continue to increase the project risks and as such costs of new electricity infrastructure, which will increase prices for all consumers. There is also a risk that the necessary new infrastructure is not in place in time to ensure a reliable supply of electricity over the next two decades.

4.2. Proposed changes as per draft Rules for consultation

This option would be to implement new inquiry rules following on from the commitment given in section 7.43 of the Command Paper "The Energy Challenge" (Cm6887) issued by Government in July 2006 to update the rules for public inquiries held under the Electricity Act in England and Wales, having regard for the rules introduced in 2005 for other major infrastructure[12]. The changes are set out in more detail in the draft rules, but the principle streamlining measures are:

Qualifying Planning Authority Status

- Relevant planning authorities usually[13] must have registered any objections within the timeframes set out in the notice of application to become a qualifying planning authority and thereby automatically be entitled to appear at the inquiry.

Improved Pre-Inquiry Procedures

[12] The Town and Country Planning (Major Infrastructure Project Inquiries Procedure)(England) Rules 2005
[13] In inquires held under section 62 of Electricity Act 1989 application notices are not required, so planning authorities would not have been able to object, therefore they are automatically "qualifying"

- Requiring inquiry participants to indicate to the Inspector, the extent to which they wish to participate in the inquiry, to allow for better timetabling and information provision to the Inspector.
- Enabling the Inspector to appoint a Technical Adviser to assess evidence.
- Requiring a pre-inquiry meeting to be held.
- Creating requirements for the circulation of the Inspector's notes of pre-inquiry meetings and recommendations.
- Requiring more detail in statements of case submitted before the inquiry, including an obligation on the qualifying planning authority and qualifying objectors to identify in their statements of case which part of the applicant's statement of case they agree or disagree with.
- Enabling the inspector to direct that the applicant and relevant planning authority prepare a statement of common ground on agreed factual information on which they agree.

Improved Inquiry Procedures

- Requiring the Inspector to propose a timetable for the inquiry, which the Secretary of State may approve.
- Enabling the Secretary of State to set a deadline for the submission of the Inspector's report and recommendations.
- Requiring that where participants provide written proofs of evidence in excess of 1,500 words, they also provide a written summary to the Inspector, and the Inspector can require that only the summary shall be read as oral evidence at the inquiry.
- Enabling inquiries to be held in concurrent sessions by a number of Inspectors.
- Enabling the Inspector to direct that evidence on certain issues is given in writing only, although participants may make oral submissions on these issues at inquiry.

e-Government

- Enabling the use of electronic communications for notification and circulation of inquiry-related information.

4.3. Extra changes considered pre-consultation

Further changes have been considered to the inquiry rules that would have provided for even shorter and more predictable durations:

- Enabling certain issues to be handled solely through written procedures at the inquiry (i.e. without provisions for oral submissions).
- Obliging the Secretary of State to set a deadline for their response to the inspectors report and final determination.

These changes offer further reductions in the inquiry time by reducing the opportunity for oral submissions and they provide more certainty on the time taken to secure planning permission by regulating the post-inquiry decision-making process.

However, following legal advice it was decided that the risks associated with introducing these procedures as new inquiry rules would increase the likelihood of successful challenge against the rules on the grounds that they were no longer focussed purely on the process of the inquiry[14], and therefore outside the rule-making power in the Tribunals and Inquiries Act 1992 (under which power these Rules would be made).

This would create undue uncertainty for participants, increasing the risk that any decisions made by the Secretary of State could be overturned. This uncertainty outweighs the benefits outlined above; simply postponing the uncertainty to later in the process, at which time developers are investing even larger sums of money.

4.4. Changes adopted in light of consultation responses

During the consultation on the draft rules, some further changes to the rules were suggested to reduce the administrative burdens in the rules and provide greater incentives for participants in the planning inquiry to provide relevant information in a timely fashion so that the inquiry can proceed in the most efficient fashion. These additional changes (which are reflected in the final rules and will help realise the benefits as discussed in section 5 of this RIA) are:

- Requiring qualifying objectors to register (in accordance with Rule 6) in order to be entitled to appear at the inquiry. If they do not register, the inspector will retain the right to permit them to appear if they consider it appropriate.
- Giving the inspector discretion not to hold a pre-inquiry meeting. In practice, where an inquiry is less than roughly 8 days, experience from planning experts shows that a pre-inquiry meeting adds more time than it saves.

[14] The new inquiry rules would be made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992, this limits the rules to being “procedural” and not related to subject matter.

- Amending requirements to circulate inquiry documents to require circulation only to the relevant planning authority, applicant and qualifying objectors that have registered to play a major role in the inquiry (in accordance with Rule 6). This reflects current best practice and could avoid the need to circulate potentially thousands of documents to thousands of "minor" objectors.
- Creating provisions for offshore inquiries (that reflect the Electricity Act 1989 and draw upon the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006).

5. Costs and Benefits

The discussion that follows refers to our preferred option as set out in section 4.4 above, reflecting the changes that we have made to the Rules in the light of the recent consultation.

5.1. Benefits

5.1.1. Business

The new inquiry rules as set out in paragraph 4.2 will bring economic benefits for developers bringing forward proposals. As explored in the Energy Review, the costs of securing planning permission for large electricity infrastructure can run into millions of pounds, and a key driver of this cost is the length of the public inquiry. The new procedures will provide for shorter, more focussed inquiries, therefore reducing the direct costs for developers. By providing more certainty of duration they reduce the uncertainty faced by developers, which will in turn reduce the project risk and hence financing costs that they incur in funding large electricity projects. Business will also be able to secure the right resources (people and materials) on more definite timescales which would have increasing significance during high demand for such specialist resource.

The increased focus on the pre-inquiry process to resolve as many issues as possible, narrowing the areas of disagreement, leaving the smaller number of more complicated issues to be dealt with in the inquiry itself. This will allow business to focus their attention on the key areas, preventing money and time being wasted on side issues than can be negotiated outside of a formal inquiry hearing, rather than being the subject of protracted cross-examination.

It is not possible to give a figure for the scale of these benefits because each planning application is different (and there can be very large differences between them), so the costs and potential savings associated with them will differ. Furthermore, because the inspector has a duty to consider all the relevant issues, it is not possible to say in advance of an

individual application what they consider the relevant issues to be nor how many parties wish to play an active role in the inquiry and as such how long the inquiry will need to take. However, it is reasonable to assume that inquiries for the most complex developments will be materially shorter, providing real benefits for business.

A hypothetical example (based on previous experience) demonstrates the potential magnitude of savings. Under the current rules, it is reasonable to expect an inquiry into a major power station in a sensitive location to last several years. However, with an inspector making full use of the discretionary powers to focus the inquiry on the key issues and make use of the written procedures and pre-inquiry processes it is not unfeasible to expect the inquiry to be significantly shorter, perhaps in the region of less than one year, with proportionate savings in direct planning costs. It should be noted that these are estimates only and that there remain a number of uncertainties around making predictions for the duration of any planning inquiry out of context.

Furthermore, there will be wider benefits to business and the UK economy because of reduced uncertainty for developers in the electricity sector. As highlighted above, approximately one third of current capacity (25GW) needs to be replaced over the next two decades, it important that there is timely delivery of these projects to prevent tightness in the demand for and supply of electricity which leads to high prices for all consumers, business and private customers alike. Although it is important to note that the planning process is not the only cause of uncertainty and delay in the delivery of such projects. However, we believe these rules will help reduce the likelihood of an imbalance in two ways:

- Making it more attractive to invest in the electricity generation sector because of reduced regulatory uncertainty so that the necessary new capacity is constructed[15], and
- Increasing the likelihood that major new infrastructure is delivered on expected timescales to meet demand.

As part of the consultation we asked respondents to comment on the regulatory impact assessment and to suggest how to quantify the costs and benefits of these changes. <u>We did not receive any replies with quantitative data and several respondents agreed that it was difficult to specify the costs and benefits, one institute advising caution against such quantification attempts</u>. However, there was a general consensus amongst respondents, including experts from the planning sector, that the new Rules would provide economic benefits through reduced inquiry time, costs and as a result greater certainty.

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[15] As highlighted in the Renewables Energy Country Attractiveness Indices report by Ernst and Young in February 2006

Moreover, the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 on which these new inquiry rules are based, have not been implemented long enough to allow us to draw quantitative conclusions about their costs and benefits.

5.1.2. Government (Central and Local)

The shorter, more focussed inquiries will also provide economic benefits for central and local Government. The relevant local authority tends to be a major participant of any planning inquiry (often opposing the proposed development). As such, they face similar expenses as the developer: preparing a case, gathering supporting evidence, appearing at the inquiry, legal representation. Where the new rules provide for alternatives, such as the improved pre-inquiry procedures and mediation, to allow for shorter, more focussed inquiries, the local authority will also enjoy reduced costs, while maintaining the same ability to air their views on the proposed development. Again the same difficulty in quantifying these benefits resounds.

To support the Secretary of State in making their final decision, there is a Departmental function that handles applications, supports the planning inquiry and considers the advice of the inspector. Shorter, more efficient inquiries, with more predictable durations will enable Government to better manage its resources. The increased focus on pre-inquiry processes to reach positions of common ground should reduce the number of issues the inspector must consider in his final report, making it easier, and quicker, for the Secretary of State to make the final decision.

Shorter inquiries will also bring benefits to the Planning Inspectorate, because inspectors would be freed up more quickly to move onto other inquiries. The new rules should allow the Planning Inspectorate to better manage its resources also. Also, greater consistency with other planning inquiry rules will improve the efficiency of inspectors because they will have greater familiarity with how these inquiries should be run.

5.1.3. Voluntary Groups, Citizens and other participants of the planning system

<u>Economic</u>
A third group of major participants in inquiries are non-governmental organisations, charities and local groups such as environmental groups and local campaign groups. As such, they face similar expenses to the developer and the local planning authority. Therefore, they will enjoy the same cost savings as the two groups discussed above.

The lower the project risk, financing costs and inquiry costs, the lower the expected costs of new electricity infrastructure. This will provide economic benefit for developers, but they will also, in part, be passed through to consumers because of the competitive electricity market. This should result in lower prices for individuals and other businesses.

Increasing the certainty of projects and enabling a clearer timetable for their completion will make the UK more attractive for inward investment in energy infrastructure. This will have an economic benefit for the UK.

Social

The new rules will make it easier for all stakeholders to participate in the system: through the introduction of different classifications of participant and an increasing reliance on written procedures it will reduce the cost and time barriers for people to engage in the inquiry process for major electricity projects, allowing for a more democratic planning process.

The increased focus on early engagement and the pre-inquiry process is expected to force developers to involve local communities more in the development of their proposals. Such engagement and sharing of information at an early stage will help the local community to better understand the proposal, its purpose (including its national importance) and all the relevant issues, for example construction plans and health and safety considerations. In turn, they can explain, in a non-adversarial manner, the specifics of the local community and environment. This should lead to a more appropriately designed proposal that minimises the local impacts and a better ongoing relationship between the developer and the community. It will also reduce the need for protracted negotiations over conditions that have traditionally taken place post-application, because positions of common ground would have already been reached on many issues.

Environmental

Low carbon technologies tend to be those that attract the most controversy and as such the longest delays in securing planning permission. For example on wind, there are currently over 30 projects with a combined capacity of more than 1.5GW that have been awaiting a planning decision for more than 2 years[16]. In total, there is more than 11GW of renewables capacity awaiting consent under the planning system[17]. There are particular examples, such as the Scout Moor windfarm where the process has been particularly lengthy (23 months to secure consent).

[16] UK Wind Energy Database (UKWED)
[17] Renewable Energy Statistics Database

Accordingly, low carbon generation stands to benefit the most from the new inquiry rules, making them a more attractive prospect for developers. As the Energy Review highlighted, the need to increase low carbon electricity generation to replace the coal and nuclear-fired generation expected to come offline over the next two decades is critical if we are to tackle the challenge of climate change and the other associated problems, for example: rising sea levels and flood risks, rising temperatures, extreme weather conditions. Broadly speaking, for every gigawatt of low-carbon generating capacity replacing the equivalent gas-fired generation would reduce carbon emissions by approximately 0.7 million tonnes of Carbon annually.

As cited in section 2.3 above, the UK's relative attractiveness in terms of renewables has gone down due to industry concerns about planning issues. Therefore, these planning rules are likely to enable earlier implementation of renewable and other low carbon electricity generation leading to earlier reductions in carbon emissions as well as the possibility of greater reductions overall.

Another benefit of alleviating the planning system for low carbon generation will be an improvement in air quality because these generating sources do not produce the emissions produced as part of generation from fossil fuel plants.

5.2. Costs

The new rules provide the Secretary of State and his appointed inspector(s) with the power to design an inquiry that best suits each application, and call on pre-inquiry procedures as necessary, but they do not require that certain steps be taken. Where the Secretary of State and the inspector consider that the issues could be resolved more efficiently without making the full use of the new provisions, then they will retain the power to do so. The purpose of this is to prevent "over-engineering" of the process which would result in increased costs for all participants.

The new rules will be a direct replacement for existing legislation and will not impose further regulatory burdens on business, and the requirement for offsetting simplification has been considered. They will help make the planning process for large electricity developments more consistent with that for other major projects consented under the Town and Country Planning Act. They should reduce the complexity of the planning arrangements for energy infrastructure for business.

There will be some, minor, one-off costs as participants familiarise themselves with the new system. However, these will not be significant, given

the rules are based on the best practice already in operation for large infrastructure projects consented under the Town and Country Planning Act.

5.2.1. Business

The front-loading created by the new rules (pre-application engagement, pre-inquiry, statements of common ground, mediation) should deliver benefits to the developer in terms of reduced opposition and shorter inquiries, but it will result in some extra costs at the start of the process because of the need to provide more information up front. However, it is again not possible to provide a quantitative figure for this because it will depend on the individual proposal in question. We do not consider it unreasonable to expect these costs to be more than offset by the reduced costs arising as a result of the shorter inquiry process.

5.2.2. Government (Central and Local)

As above, there will be increased resource pressure during the early stage of an application for the relevant local authority so that they can assess the information provided by the developer and consider a response. Again our view is that the balance versus future savings is positive.

5.2.3. Voluntary Groups, Citizens and other participants of the planning system

The increased front-loading would also create more up-front costs for other major participants of a planning inquiry, although the same positive balance would apply over the whole inquiry.

Equity and Fairness

There are no significant negative race, health or rural impacts associated with the new rules. There are positive rural impacts such as improved consultation and information being provided on individual proposals to rural communities by the new procedures.

The new rules will not have any impact on individuals' human rights – they will not restrict people's ability to participate in the process, but will change the manner in which individuals can participate to make it more efficient and effective for all parties.

6. Small Firms Impact Test

The majority of large electricity generating stations and overhead lines are developed by a small number of large companies, such as the large generators and the owners of the transmission and distribution networks. The new rules are intended to be fully utilised by inspectors and the Secretary of State for the largest and most complex proposals, for example large low carbon generating

stations. Following consultation with the Small Business Service, we do not expect the new rules to have a significant impact on small firms. They are unlikely to put forward larger proposals because of the scale and cost of such developments.

However, because the new rules will apply to some more modest projects, such as a medium sized windfarm only just over 50MW, there is a chance that there will be an impact on small firms, although it is likely that for a smaller inquiry the wide range of provisions will not need to be used.

We expect small firms to enjoy the benefits of tighter-run, shorter planning inquiries, with more predictable durations. In these smaller projects the inquiry costs tend to be a greater proportion of the overall costs than for larger projects. This certainty will be especially important for small firms who might not have the resources to cope with continued delays.

It is also expected that because Inspectors will only use some of the new provisions if required, e.g. mediation, smaller firms will not face over-engineered inquiries.

On balance, the impact on small firms is not expected to be significant.

7. Competition Assessment

A simple competition test has been applied for the new inquiry rules; it shows that the risk to competition is low. There are two markets affected by these rules: the generation market and the electricity networks market.

The electricity networks market is a regulated market of regional monopolies and the rules would not affect market structure or disadvantage certain firms more than others since the need for an inquiry arises from the circumstances of a specific project rather than the nature of the market or the firm proposing a project. As regards new entrants, the market is characterised by mature electricity networks which are subject to changes in ownership as opposed to new entrants building new networks. It is a market not characterised by rapid technological change so all firms face the basic risks of overhead line projects being delayed at public inquiry.

The electricity generation market is a competitive market, albeit fairly concentrated, with some smaller players, especially in the renewables sector. The proposals are unlikely to affect market structure since they will apply to all market participants equally, with all developers submitting an application exposed to the same upfront costs and consequential overall reduction in cost. There is the possibility of making entry to the market more open if the overall costs of development are lower and less restrictive to new entrants.

We do not consider the rules to present any competition detriments.

8. Enforcement, Sanctions and Monitoring

The new rules will apply to all applications made under the Electricity Act 1989 to construct a generating station or overhead line. The Secretary of State through an appointed inspector for the inquiry will enforce the legislation. There are no criminal sanctions for non-compliance, but non-compliance may lead to a delay in the inquiry timetable and process, which provides an incentive for participants to comply. Parties involved in the inquiry process will retain the ability to lodge claims for costs against the applicant if they do not comply with the new rules.

9. Implementation and Delivery Plan

Following an assessment of the responses to the consultation on the new rules, we have considered potential amendments to the rules and the guidance and the relevant changes have been made, as discussed in section 4.4. A statutory instrument has been drawn up and laid before the House by the Department for Constitutional Affairs. Subject to parliamentary procedure, the Lord Chancellor will make the rules and they will come into effect on the common commencement date of 6th April 2007.

10. Post-Implementation Review

The Department for Trade and Industry, in conjunction with the Department for Communities and Local Government will monitor the efficiency of the new inquiry rules over a five-year period. Given the infrequency with which especially large and complex projects are likely to come forward that will make use of the full extent of the new rules, it is thought to monitor over a shorter period would not be useful. As part of the monitoring, the impact on resources over time for all participants in the planning process will be assessed and changes considered as necessary.