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Fractured logic—practical and political developments

Environment analysis: Recent months have seen a number of important legal developments to onshore oil and gas activity in the UK. Practical and political developments have been no less seismic. In the second part of this series, Tim Pugh, partner in the planning, environment and infrastructure team at Berwin Leighton Paisner, talks us through the latest developments.

What is the political backdrop to this discussion?

Wholesale oil and gas prices have plummeted, Scotland has announced a moratorium on fracking decisions, the next wave of Cuadrilla applications is due for decision in Lancashire and a General Election is due in May.

What have been the practical developments?

Oil and gas prices

During the last six months of 2014, wholesale crude oil prices halved from close on £67 per barrel to circa £35. Wholesale gas prices dropped between October and December 2014 from 52p per therm to approximately 47p.

Market commentators rationalised this by referencing market glut caused by OPEC members maintaining production at the same time as the US began to export shale oil and gas. The drop has been viewed as an attempt to force US shale oil and gas producers out of the market by reducing wholesale prices to levels at or below the cost of production.

In the UK, on 16 January 2014, in a blog entitled 'Has the gas price plunge made UK fracking unprofitable?', Greenpeace quoted studies by Ernst and Young, Bloomberg and the Oxford Institute for Energy Studies identifying European costs for shale gas extraction to be within a range between 49 and 102p per therm. Greenpeace also noted that the Department of Energy and Climate Change (DECC) projected gas prices as rising from 60p per therm in 2015 to 7 p by 2025. As of 1 February 2015, prices were at 50p per therm.

The implication of these projections and estimated extraction costs is that shale gas exploitation in the UK is either unviable or only marginally viable. Nevertheless, extraction costs are driven by a range of industry overheads and not just by costs of compliance with environmental regulation. The recent market shock has resulted in cost deflation in the oil and gas industry as well as reduction in sale prices.

Those already active and already funded in the UK market, such as Cuadrilla, have been bullish about the effects of reductions in wholesale prices. They argue that wholesale prices will be of concern during the extraction phase, whereas in the UK, with one or two long-standing exceptions, no-one has progressed beyond exploration. They predict that wholesale prices will not stay low in the longer term,

but that in the meantime market driven reductions in overheads will be helpful in driving a correction in costs. It is argued that this will be helpful not only for investigations but also come the extraction phase.

The one thing that remains clear at present is that the recent reduction in wholesale prices is a radical departure from trends over the last 25 years. Predicting its continuation is difficult. In the meantime, UK North Sea oil and gas reserves are dwindling and there is a national need for both energy security and sources of national revenue such as are enjoyed from North Sea reserves. At present, onshore shale oil and gas are an obvious means of meeting both needs. It is unlikely that they will be dismissed any time soon.

Lancashire planning decisions

In Lancashire, Cuadrilla has sought planning permission for exploratory wells and hydraulic fracturing activities at Preston Road and Roseacre Wood in Fylde. Despite the Environment Agency having granted environmental permits in mid-January 2015 for exploration activities, planning officers recommended refusal of both applications on technical grounds relating to noise and traffic effects.

In each case, officers assiduously worked through planning and policy arguments. They acknowledged strong arguments in favour (as had West Sussex Officers in relation to Celtique's Fernhurst refusal—currently under appeal), but based recommendations for refusal on local impacts.

As things stand, Cuadrilla has submitted further environmental information and planning decisions have been deferred to allow it to be considered. In the meantime, Lancashire County Council is consulting on supplementary planning guidance which sets out its expectations for onshore oil and gas applications.

The Lancashire planning determinations look set to be test cases for where the balance is found between local concerns and wider interests. If Cuadrilla's additional environmental information fills the gaps and addresses the concerns identified in officers' reports recommending refusal, will local members feel able to grant locally unpopular planning permissions?

Fourteenth onshore licensing round

Licences for Petroleum Exploration and Development (PEDLs) under Petroleum Act 1998 (PA 1998) are necessary for exploring for and extracting oil and gas. They are issued periodically by DECC. The deadline for applications under the fourteenth onshore round was 28 October 2014. It is understood that 95 applications were lodged for 295 licensing blocks, each of which is 10km by 10km. Reportedly, DECC expected to be ready to notify successful applicants by the end of January. Given recent market and parliamentary turbulence and toxic politics associated with fracking announcements, it remains to be seen whether notification will in fact take place any time soon or will be delayed until after the May general election. A practical cut-off point may be the beginning of the parliamentary purdah period toward the end of March 2015.

What have been the political developments?

Westminster

At a national level, onshore oil and gas has been even more politically charged than usual. Debate on the final stages of the Infrastructure Bill was particularly fierce. Politicians in areas subject to fracking applications were notably outspoken, as were those keen to demonstrate green credentials.

I have already mentioned how it proved necessary for the government to offer a cocktail of concessions in the Commons to ward off a combination back-bench revolt and a determined assault from the opposition as the price of the Infrastructure Bill passing through third reading. In many ways, the ‘concessions’ simply re-emphasised the importance of safeguards already within the current regulatory system being properly applied, but they were sufficient to defeat a motion for a moratorium on fracking. Any substance behind the smoke and mirrors applied in the Commons was swiftly dissipated when properly drafted clauses were debated in the Lords.

Scotland

Scottish parliamentarians at Westminster were, in the meantime, able to take advantage of the melee to assert further independence over consenting operations north of the border. Not only do fracking provisions of the Infrastructure Act 2015 (IA 2015) (notably rights of access to deep level land) not apply to Scotland (IA 2015, s 56(6)(c), ss 43–48 and s 50 do not apply in Scotland), but also on 28 January 2015, the Scottish Government announced a moratorium on the grant of planning consents for all unconventional oil and gas developments. The moratorium is to continue, pending completion of a full public health impact assessment, further work to strengthen planning guidance and full public consultation.

While PA 1998 licensing for onshore oil and gas remains a Westminster preserve pending the general election, following Smith Commission recommendations it is to be devolved to Scotland post-May 2015.

In effect, the moratorium announcement enables Scottish politicians to take a deep breath, take credit for environmental responsibility and avoid toxic arguments during the period before the General Election. Significant shale reserves have been identified in Scotland, but they are close to the Edinburgh conurbation. Coal bed methane resources look to be more widespread.

Wales

In Wales, the story has been similar. Welsh Government politicians, jockeying for electoral support, have been falling over one another to emphasise support for a moratorium in Wales. In practice, the position is less strong than in Scotland given the more limited devolution of powers and energy remaining reserved to Westminster. Plaid Cymru and Labour, competing for electoral share, have suggested similar devolution of licensing powers to that enjoyed by Scotland, if a Labour government is returned in May 2015. In the meantime, letters have been written to Welsh planning authorities requiring them to notify the Welsh Government of shale oil and gas applications—the implication being that they will be called in for central determination—thus giving the Welsh Government control over progress.

Interviewed by Jane Crinnion.

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