FWLC/002

IN THE MATTER OF

ELECTRICITY ACT 1989 (SECTIONS 36, 37, 62(3) AND SCHEDULE 8)

-and-

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

-and-

APPLICATION BY FFERM WYNT LLAITHDDU DATED 7TH MAY 2008 FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE A 66.7MW WIND TURBINE GENERATING STATION IN POWYS, MID WALES

PIM 18 FEBRUARY 2013

SUBMISSIONS ON BEHALF OF

FFERM WYNT LLAITHDDU

INTRODUCTION

1. The Inspector has received both a letter and a skeleton argument from the Alliance. A number of developers have replied with either skeleton arguments or letters. The Council has prepared written submissions dated 13 February 2013.

2. Fferm Wynt Llaithddu (FWL) has considered the serious matters which have been raised most carefully. It wishes to record at the outset its concern that questions of adjournment should arise in respect of a decision making process with which it first engaged some years ago. FWL is entitled to know the outcome of its application within a reasonable time, and the UK needs to secure it energy supplies with the utmost urgency.

3. Notwithstanding these very real concerns, FWL considers that there are significant practical difficulties which will arise if the Inquiry opens as currently envisaged. It considers that there is a real risk that an apparently shorter route will take longer. Key to taking this position has been the Council's submissions. The Council has indicated a desire for time to be made available to resolve issues. It will be observed that FWL's Outline Statement of Case very much encouraged the production of Statements of Common Ground on the issues which had been raised in respect of its application. FWL would welcome the opportunity to pursue such resolution outside of an inquiry, particularly one with so many constraining and complicating factors as this one.

4. This position is taken by FWL on the understanding that the appropriate Council officers and officers of the statutory consultees will provide responses to draft Statements of Common Ground and meet with FWL within reasonable timescales. Evidently, the Inspector cannot compel such co-operation, but if either the Council or any statutory consultee considers that it cannot provide responses and meetings within reasonable timescales, then it should say so at the PIM.

5. Having set out that position in overview, FWL submits as follows in respect of the Alliance and Council positions.

THE ALLIANCE LETTER

6. It has been helpful for the Alliance to have raised the issue in the way that it has, in advance of the PIM. FWL do not anticipate that the PIM will fully resolve the issues which are raised in either the letter or skeleton argument, but does consider that the essential case management question, namely whether to postpone the inquiry, can be answered.

7. The Alliance is concerned to ensure that cumulative impacts are assessed and that the environmental information necessary for that assessment is available to the inquiry. Of course, the reasonably necessary information, so far as there are cumulative impacts which

are required to be assessed by reason of their likely significant effects, falls to be considered. The extent of that requirement is a fact-specific matter upon which each party will have to take a view, and if there is said to be a deficiency, then it may be necessary for the Inspector to require further environmental information to be provided.

8. The conjoined inquiries are an unusual circumstance. The decision making process in respect of the various projects which are at large has been conjoined. It is a publicly accessible process which will extend over a considerable period. The process is capable of accommodating additional environmental information if it is required. Indeed, the entire inquiry process is one of acquiring further environmental information. Each proof of evidence and each letter of representation is capable of containing environmental information which will be required to be taken into account. Hence, FWL consider that this unusual circumstance is one which easily admits of production of material to address particular concerns, without causing prejudice.

9. The Alliance also raises the question of what 'the project' comprises. FWL does not agree that the schemes to be considered by the conjoined inquiries constitute one project. They are plainly not. This is not a case of project splitting such as the Madrid ring-road project nor the trans-boundary transmission line between Italy and Austria (two ECJ cases which deal with this topic). Rather, in this case, each proposal is an identifiable and distinct project. Non of the wind farms is dependent upon the construction of another. Of course, grid connection is necessary in order for any windfarm to be implemented, save where it is being re-powered. Environmental assessment of grid connection proposals will be considered by the inquiry, as will the EIA of each windfarm. There is no suggestion that any project falls outside of the scope of environmental assessment, which was the complaint in the two European cases mentioned above.

10. For these reasons FWL considers that the issue has been properly flagged by the Alliance at this stage. It does not, however, yield a legal basis not to hold the inquiry. Rather, it points to the need for any party (including those parties who will wish to volunteer further

information) or the Inspector to identify particular concerns as to the environmental information so that it may be provided in a timely way. Thus the real question is one of case management to permit the decision making to be undertaken with a reasonable balance between timeliness and resource burdens.

THE COUNCIL'S SUBMISSIONS

11. FWL is in broad agreement with the Council as to the benefits of providing a period the parties to reach common ground. FWL is encouraged by the approach which the Council intends to take, namely one of cooperation and a constructive approach to finding solutions to the issues which are presently at large.

12. However, that broad agreement is tempered by the need to make real progress in decision making. The task which is never started is the one which takes longest. The circumstances of this inquiry require active case management in order to ensure that issues are either resolved or come to a head; by way of example, it is necessary to determine reasonably quickly whether the curlews are a show-stopper, or not. If the relevant parties need a determination of that issue, then the inquiry should provide a means of resolving it reasonably quickly. An adjournment to the earlier Autumn ought to permit the parties to focus on the issues in a constructive way which is unlikely to occur if the Inquiry is to open in early June 2013. However, a longer adjournment would amount to consigning the Inquiry to the long grass and be unfair to those who await a decision on their applications, made some considerable time ago.

CONCLUSION

13. For the reasons outlined above, FWL makes clear that it does not agree that there is any legal impediment to the Inquiry proceeding. However, FWL does agree that there are very good reasons for the Inquiry timetable to be relaxed from its present, frankly ambitious, pace. So much would permit: (1) the resolution or narrowing of issues; (2) the provision of SEI without causing prejudice to others; (3) some clarification of the cumulative impact

issues, but noting that such can be addressed in due course via the unusually long inquiry process.

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