



Electricity Act 1989 (Sections 36, 37, 62(3) & Schedule 8)

Town and Country Planning Act 1990 (Section 90)

and the

The Electricity Generating Stations and Overhead Lines (Inquiries Procedure)(England and Wales) Rules 2007

Application by Vattenfall, dated 30 November 2007 for consent under Section 36 of the Electricity Act 1989 to construct and operate a 59.5MW wind turbine generating station in Powys, Mid Wales ('Llanbadarn Fynydd')

Application by Fferm Wynt Llaithddu Cyf, dated 7 May 2008 for consent under Section 36 of the Electricity Act 1989 to construct and operate a 66.7 MW wind turbine generating station in Powys, Mid Wales ('Llaithddu')

Application by CeltPower Limited, dated 9 May 2008 for consent under Section 36 of the Electricity Act 1989 to construct and operate a 126MW wind turbine generating station in Powys, Mid Wales ('Llandinam')

Application by RES UK & Ireland Limited, dated 27 March 2009 for consent under Section 36 of the Electricity Act 1989 to construct and operate a 100MW wind turbine generating station in Powys, Mid Wales ('LLanbrynmair')

Application by RWE NPower Renewables Limited, dated 11 December 2008 for consent under Section 36 of the Electricity Act 1989 to construct and operate a 130-250MW wind turbine generating station in Powys, Mid Wales ('Carnedd Wen')

Application by SP Manweb PLC, dated 2 December 2009 for consent under Section 37 of the Electricity Act 1989 to install and keep installed a 132kV overhead electric line connection from the proposed Llandinam Wind Farm to Welshpool Substation

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**Conjoined Public Inquiry**  
**Report and Recommendations on the Timetable for the Proceedings**  
**(Rule 12(2))**

**Procedural Matters**

1. On 4<sup>th</sup> February 2013 the Alliance of groups opposing the wind farms (the 'Alliance') wrote to the Programme Officer making a formal submission to the effect that the Inquiry should be halted or postponed.
2. A copy of the submission was immediately circulated to the main parties, with a request for comments in writing. Responses were received from Powys County Council and all of the applicants other than Fferm Wynt Llaithddu before the PIM. A response was received from Fferm Wynt Llaithddu at the PIM on 18 February.
3. The Alliance's submission was supplemented by a skeleton argument dated 15 February, and the submission was presented orally by the Alliance's advocate, Mr David Smith QC, with the assistance of speaking notes, at the PIM on 18 February.
4. References in square brackets [] are to Inquiry documents

**The Case for the Alliance** [ALL-02, ALL-03A, ALL-03B, ALL-03C, AAL-04D, AAL-04]

5. Four of the five wind farm proposals will depend upon the provision of new connections to the National Grid via new links to a new substation and a 400kV line. They are therefore part of a single overall project or group of projects, which are not yet formulated to an extent where the assessment of the environmental effects required by the European Environmental Impact Assessment Directive<sup>1</sup> (the EIA Directive) can be addressed. There is legal authority for the proposition that projects should not be split for the purposes of EIA<sup>2</sup>. A decision to approve any one of the wind farms would therefore be inescapably flawed. Because the grid connections constitute direct, indirect, secondary or cumulative effects an assessment would also be flawed under the *Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2000*<sup>3</sup> (the EIA Regulations). This is a fundamental difficulty recognised in paragraphs 4.9.2 and 4.9.3 of the *Overarching National Policy Statement for Energy* (NPS EN-1), which requires sufficient information to be provided to comply with the EIA Directive, including indirect, secondary and cumulative effects which will encompass information on grid connections. As direct, indirect, secondary and cumulative effects must be considered, the Llandinam wind farm proposal must stand and fall with the others.

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<sup>1</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, amended by Directives 97/11/EC and 2003/35/EC.

<sup>2</sup> *Vivienne Morge v Hampshire County Council* [2009] EWHC (Admin)

<sup>3</sup> SI 2000/1927 (as amended).

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6. In addition to the regulatory requirements, a clear procedural disadvantage would be imposed on the Alliance if proceedings are not halted or adjourned for a sufficient time for all the necessary information to be made available, and to allow it to be assessed.
  7. The Alliance therefore make a formal application, urging the Secretary of State to conclude that:
    - (a) there is no prospect of the Inquiry lawfully proceeding to recommend approval of the five wind farm applications, or any one of them;
    - (b) that the Secretary of State could not reasonably come to any other decision;
    - (c) that the Inquiry procedure should be halted now, to save time, resources and money, and to retain public confidence in due process;
    - (d) In the alternative, the Inquiry should not commence until all the required information has been made available and time has been allowed for its implications to be assessed.

### **The Responses for the Applicants**

#### Vattenfall [VATT-003]

8. Planning and energy policy, including NPS EN-1, recognises that there is no requirement for a grid connection to be applied for as an integral part of an onshore wind application. The question of sub-division is addressed in paragraphs 45 and 46 of Circular 02/99 and Welsh Office Circular 11/99. The guidance recognises that not all applications that may form part of a wider scheme have to be considered together, but reinforces the principle that the concern should be to ensure that there is no artificial sub-division of a scheme that could lead to significant environmental effects not being assessed within the development consent process.
9. Case law relating to outline planning applications recognises that in multi-stage development there may be a need for subsequent EIA if significant environmental effects are identified which have not already been assessed<sup>4</sup>.
10. In this instance there would be no point in any developer speculating about grid infrastructure that is outside its control and for which development proposals have yet to be submitted. It remains open to the decision maker to include the cumulative effects of any consented projects within the assessment of a subsequent application for a grid connection. There are therefore adequate safeguards in place to ensure that any subsequent approval of grid infrastructure is not pre-judged by the existence of consents for any of the proposed wind farms.

#### RES UK & Ireland Limited [RES-002]

11. It is plain that the requirement for environmental assessment in article 2(1) of the EIA Directive relates to the actual project for which consent is sought, and it is clear from the EIA Regulations that the requirement for EIA applies to the development that is the

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<sup>4</sup> R (on the application of Barker) v Bromley London Borough Council [2006] UKHL 52 HL & Case C-290/03 & [2006] ECRI-3949.

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subject of a particular application. This proposition is supported by case law<sup>5</sup>, and the same point is made in paragraph 45 of Circular 2/99. The advice contemplates that there may be wider implication which the decision maker may have to consider, but these do not have to be addressed in the EIA process for the particular project for which consent is sought. NPS EN-1 makes essentially the same point.

12. Similar submissions to those made by the Alliance were made by the local planning authority at the conjoined Inquiry into proposals at Steadings, Ray Estate and Green Rigg Fell in Northumberland<sup>6</sup>. The submissions were rejected by the Inspector, and two Secretaries of State shared the Inspector's view that even though the wind farms and grid connections would not proceed independently, they could be distinguished from each other and said to be separate projects. On that basis they concluded that each could be the subject of a separate application and appropriate EIA.
13. In accordance with EIA Directive article 5(1) and section 4(1)(b) of the EIA Regulations, in providing an Environmental Statement (ES) or additional information, a developer is only expected and required to provide information that can reasonably be required and which can be reasonably required to compile, having regard to current knowledge and methods of assessment. The courts have repeatedly emphasised this point<sup>7</sup>, and the same point is made in Circular 2/99 which provides that an ES should be made on a realistic basis without unnecessary elaboration.
14. It is open to the Secretary of State to require further information during or after the Inquiry if necessary. Moreover, if it were to be deemed to be essential to make concurrent decisions on the application and the grid connections it would be open to the Secretary of State to issue a 'minded to approve' letter. In any event, there are no grounds to halt or adjourn the Inquiry.

#### RWE Npower Renewables [RWE-003]

15. The Secretary of State will make an overall judgement on the environmental information before him, based in the Inspector's Report and on any other environmental information required. The National Grid works will constitute EIA development and will require consent, presumably through Planning Act 2008 procedures. There is therefore no risk whatsoever of the Carnedd Wen project proceeding without every element of it having been assessed individually and where necessarily, cumulatively.

#### SP Manweb [SPM-002]

16. It is not agreed that the proposed free-standing wind farms and their connections amount to a single project. It is for the developers, and thereafter the decision maker, to judge the extent of the assessment of cumulative effects that can be required under the Regulations. The SP Mid Wales Connections project requires development consent

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<sup>5</sup> R(Candlish) v Hastings BC: [2005] EWHC 1539 (Admin) 1 P&CR @ paras 58-61

<sup>6</sup> Appeal Ref 2039188. Inspector's Report dated 27 November 2009.

<sup>7</sup> R(Candlish) v Hastings BC, R(Littlewood) v Bassetlaw DC [2008] EWHC 1812 (Admin) [2009] ENV LR 407 @ para 32, and Brown V Carlisle CC [2010] EWCA Civ 523 [2011] Env LR 71 @ paras 28-31.

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under the Planning Act 2008. SPM is currently part way through the pre-application process. It expects to announce proposed line routes in Autumn 2013. It is expected that any development consent application will be made in mid 2014. To the extent that it will be necessary to consider any cumulative effects with the Mid Wales Connection Project, the proposed line routes should therefore be known during the course of the Inquiry.

Celt Power [CPL-004]

17. The Alliance's submission accepts implicitly that the application for the proposed development at Llandinam involves a grid connection which has been formulated to an extent where an environmental assessment can be undertaken. There is therefore no reason why this application cannot be heard, even if it is decided to halt or adjourn the Inquiry into the other windfarm applications. It is incorrect to state that the Llandinam application 'must stand or fall with the others'.

Fferm Wynt Llaithddu

18. This is not a case of project-splitting, such as the Madrid ring-road project or the trans-boundary transmission line between Italy and Austria which have been the subject of cases in the European Courts of Justice. There is no suggestion that any proposal would fall outside the scope of environment assessment, which was the complaint in the cases above. Each proposal is individually identifiable and distinct. None of the wind farms would be dependant on the construction of another, though grid connections would of course be necessary for any wind farm to be operated. There is therefore no legal impediment to the Inquiry proceeding.
19. However, providing a period for the parties to achieve common ground would be of benefit as it would permit the parties to focus on issues in a constructive way towards the resolution or narrowing of issues, the provision of SEI without causing prejudice to others, and so far as the necessary information can be reasonably required, the clarification of some cumulative impact issues.

**The Response for Powys County Council** [OBJ-002-002]

20. The Council's approach to this Inquiry will be constructive and co-operative. Discussions are therefore ongoing on a range of issues including highways, ecology, cultural heritage and noise.
21. Landscape and visual impact will be the main and most complex issue. In this respect, the power line and hub infrastructure is likely to be of central importance. Also, in addition to the schemes before the Inquiry there are seven wind energy applications under the Town and Country Planning Act, six pending National Infrastructure Projects, and the pending hub application – twenty wind energy related applications in total. These are subject to separate consent procedures, but are inevitably interlinked and likely to reach decision-making stage within months of each other. This gives rise to many interlocking considerations. This is an extraordinary situation and calls for a strategic approach. The Council therefore proposes that the Inquiry be adjourned to allow other applications to be called in and dealt with jointly, and to allow the Environmental Information relating to the grid infrastructure applications to be considered at the same time. All the material information will then be before the same Inquiry. Although there would be some delay this approach would be more coherent,

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strategic and less challengeable. It takes of account for the need for SEI in respect of some of the applications. It would also allow time to narrow issues through discussion.

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## Inspector's Conclusions

22. None of the five wind farms before the Inquiry would be dependant on the construction of another, and they could be operated independently of each other. Although, with the exception of the Llandinam application, the proposed wind farms could not operate without new connections to the National Grid via new links to a new substation and a 400kV line, a large part of the necessary new grid infrastructure would also serve the area in general, including other potential application sites. As advised at paragraph 2.13 of *Technical Advice Note 8: Planning for Renewable Energy*, as well as being vital to the realisation of generating capacity, the reinforcement of the network through the construction of new high voltage distribution lines is also vital to providing a stronger, more reliable network for electricity users in the western mid Wales area. The proposals before the Inquiry and the necessary grid infrastructure can therefore be distinguished from each other and said to be separate projects, not part of a single overall project. They are very different in this respect to the proposal referred to in the *Morge* case, and other cases that I have been referred to which were found to be in breach of the EIA Directive or the EIA Regulations.
23. The proposed wind farms and each element of the necessary grid infrastructure will be subject to separate consent procedures and appropriate EIA. This is not a case of artificial sub-division of a scheme that could lead to significant environmental effects not being assessed within the development consent process.
24. Paragraph 4.9.2 of NPS EN-1 recognises that it may not always be possible, nor the best course in terms of delivery of a project in a timely way, for applications for new energy generating stations and related infrastructure to be submitted in tandem or integrated.
25. I consider for the above reasons that the applications before the Inquiry can be considered individually and separately from the necessary new grid infrastructure. The direct, indirect, secondary or cumulative effects of each individual project would be assessed on the basis of the environmental information that the developer can reasonably be required to compile. There would therefore be no conflict with either the EIA Directive or the EIA Regulations. I do not consider that a decision to approve any one of the wind farms would be inescapably flawed.
26. Some of the applicants have submitted, or intend to submit Supplementary Environmental Information (SEI) before or during the Inquiry. It is also expected that proposed line routes for the SP Mid Wales Connections project will be announced in the autumn of 2013. The environmental information that will be assessed is therefore likely to change and develop during the Inquiry. However, this would not be unusual. In accordance with the rolling programme discussed at the Pre Inquiry Meeting (PIM), applicants would be required to submit any necessary SEI and other information 12 weeks in advance of the relevant Inquiry session. The time available for alliance and all other parties to assess the information and to prepare final statements of case and proofs of evidence would therefore be in accordance with the norm. I therefore do not consider that the Alliance, or any other party, would suffer a procedural disadvantage if the Inquiry were to commence, as originally envisaged, on 4 June 2013.
27. Turning to Powys County Council's response to the application, in my experience, the submission within a short time period of a number of schemes with interlocking

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considerations is not unusual. For reasons given above, the proposals before the Inquiry, the other wind energy applications before Powys County Council, and the pending grid infrastructure proposals can be seen to be separate projects. I therefore do not consider that there is a need for them to be considered under a single process. Assessments of the merits of individual proposals will necessarily involve consideration of indirect, secondary and cumulative effects, and on how the effect of the applicant's proposal would combine and interact with the effects of other development<sup>8</sup>. The Inquiry should also consider how the accumulation of, and interrelationship between effects might affect the environment, economy or community as a whole<sup>9</sup>. I do not consider that a more strategic approach is called for or necessary as part of this Inquiry. I consider for these reasons that the Council's proposal that the Inquiry be adjourned to allow other applications to be called in and dealt with jointly, and to allow the Environmental Information relating to the grid infrastructure applications to be considered at the same time, would cause unnecessary and unjustified delay.

28. I conclude for these reasons that the Alliance has not shown that the Inquiry procedure should be halted or postponed, and find no other reason for that course of action.

### **Recommendation – Alliance Application**

29. I recommend that the Alliance's application be refused.

### **Inquiry Timetable**

30. On balance, strong preference has been expressed for the Inquiry format to be topic based, on a rolling programme, and arranged to include separate sessions on SSA B, SSA C, the Llandinam grid connection, and cumulative effects. On the first day of the PIM (18<sup>th</sup> February) working groups were established to develop detailed programmes for these sessions, to assist in the determination of the amount of Inquiry time necessary. The programmes thus developed were then reviewed. They were found in most instances to be longer than expected. In the case of the session on cumulative effects the programme was found to be much longer than anticipated.
31. A draft timetable, based on the topics identified by the working groups, was put forward for discussion with a group of representatives of all the interested parties on the resumption of the PIM on 25 February 2013. Following clarification of the purpose and scope of the Inquiry, and subject to amendments including longer breaks between some sessions, it was generally agreed that the draft timetable, as amended, would provide a realistic amount of Inquiry time for each session. The draft timetable was further developed during the discussions to include opening and closing sessions, and final dates for submission of information including SEI, full statements of case, statements of common ground, and proofs of evidence.
32. In accordance with the draft timetable it is proposed that the Inquiry will be opened on June 4 2013, as originally envisaged. However, the preparation of final information for the Llandinam grid connection will not be completed in time to allow the relevant

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<sup>8</sup> NPS EN-1, paragraph 4.2.5.

<sup>9</sup> NPS EN-1, paragraph 4.2.6

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Inquiry session to proceed until the New Year. To avoid the Inquiry sitting during the school holiday period when the availability of participants would be limited, and to avoid a lengthy hiatus once the hearing of evidence about individual applications has commenced, it is proposed to adjourn after the opening session until September. This will allow time for discussions aimed at narrowing down areas of disagreement and reaching common ground, as suggested by both Powys County Council and Fferm Wynt Llaithddu. It is proposed to 'case manage' discussions during this period, with a view to significantly reducing the overall amount of Inquiry time necessary.

33. Minor amendments have been made to the draft timetable circulated shortly after the PIM, to take into account comments by SP Manweb [SPM-003]. These requirements have been incorporated into the final draft of the timetable. The final draft is attached at Annex A.

**Recommendations – Timetable**

34. I recommend the proposed timetable, as attached at Annex A.

*A D Poulter*

**INSPECTOR**

10<sup>th</sup> April 2013

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## **Annex A – Final Draft Inquiry Timetable**

**(NB minor amendments have been made to the timetable following SPM's comments on the first draft, letter dated 12 March 2013)**

### **Opening Session**

Topics: opening submissions, planning and energy policy (interpretation and application)

<b>Tuesday 4 June – Friday 7 June 2013</b>
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### **Session 1: SSA C**

Topics: landscape, cultural heritage, noise and health, local transport, peat/hydrology, wildlife

<b>Tuesday 3 September – Friday 6 September 2013</b>
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<b>Tuesday 10 September – Friday 13 September 2013</b>
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<b>Tuesday 17 September – Friday 20 September 2013</b>
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<b>*****Break*****</b>
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<b>Tuesday 1 October – Friday 4 October 2013</b>
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<b>Tuesday 8 October – Friday 11 October 2013</b>
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<b>Tuesday 15 October – Friday 18 October 2013</b>
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### **Deadlines for submissions: SSA C**

<b>Supplementary Environmental Information &amp; other information</b>	<b>12 June 2013</b>
<b>Full statements of case and statements of common ground</b>	<b>9 July 2013</b>
<b>Proofs of evidence</b>	<b>6 August 2013</b>

### **Session 2: SSA B**

Topics: landscape, cultural heritage, noise and health, local transport, construction/peat/hydrology/ forestry, wildlife

<b>Tuesday 5 November – Friday 8 November 2013</b>
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<b>Tuesday 12 November – Friday 15 November</b>
<b>Tuesday 19 November – Friday 22 November</b>
<b>*****BREAK*****</b>
<b>Tuesday 3 December – Friday 6 December</b>
<b>Tuesday 10 December – Friday 13 December</b>
<b>Tuesday 17 December – Friday 20 December</b>

**Deadlines for submissions: SSA B**

<b>Supplementary Environmental Information &amp; other information</b>	<b>13 August 2013</b>
<b>Full statements of case and statements of common ground</b>	<b>10 September 2013</b>
<b>Proofs of evidence</b>	<b>8 October 2013</b>

**Session 3: Llandinam Grid Connection**

Topics: design, need, landscape, cultural heritage, wildlife and ecology, way-leaves & easements.

<b>Tuesday 21 January – Friday 24 January 2014</b>
<b>Tuesday 28 January – Friday 31 January 2014</b>
<b>Tuesday 4 February – Friday 7 February 2014</b>
<b>*****Break*****</b>
<b>Tuesday 18 February – Friday 21 February 2014</b>
<b>Tuesday 25 February – Friday 28 February 2014</b>

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**Deadlines for submissions: Llandinam Grid Connection**

<b>Anticipated date by which SEI will be available (SPM estimate)</b>	<b>30 September 2013</b>
<b>Latest date for SEI &amp; other information</b>	<b>29 October 2013</b>
<b>Full statements of case and statements of common ground</b>	<b>26 November 2013</b>
<b>Proofs of evidence</b>	<b>24 December 2013</b>

**Session 4: Matters in Common/Cumulative Effects**

Topics: landscape, transport (strategic), socio-economic effects including tourism, wildlife and ecology.

<b>Tuesday 18 March – Friday 21 March 2014</b>
<b>Tuesday 25 March – Friday 28 March 2014</b>
<b>Tuesday 1 April – Friday 4 April 2014</b>
<b>*****Break*****</b>
<b>Tuesday 15 – Wednesday 16 April 2014</b>
<b>(Easter bank holiday)</b>
<b>Thursday 24 – Friday 25 April 2014</b>

**Deadlines for submissions: Matters in Common/Cumulative Effects**

<b>Supplementary Environmental Information &amp; other information</b>	<b>24 December 2013</b>
<b>Full statements of case</b>	<b>21 January 2014</b>
<b>Proofs of evidence and statement of common ground</b>	<b>18 February 2014</b>

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## **Closing Session**

Topics: planning balance, general conditions/legal undertakings, closing statements, other applications.

<b>Tuesday 20 May – Friday 23 May 2014</b>
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<b>Wed 28 May – Friday 30 May 2014 (Monday 26 May = bank holiday)</b>
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## **Deadlines for submissions: Closing Session**

<b>Proofs of evidence</b>
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<b>6 May 2014</b>
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### **Notes:**

Topics listed are provisional

Deadlines for submissions are generally:

SEI and other information: 12 weeks before the relevant session

SCG and full statements of case: 8 weeks before the relevant session

Proof of evidence: 4 weeks before the relevant session

Rebuttal proofs are not encouraged, but if rebuttals are to be submitted they should be exchanged at least 2 weeks before the relevant session.

The dates for submission of SEI & other information relating to the Llandinam grid connection reflects SP EN's indication that SEI and other information will be available by 30 September 2013, and that it may include design changes that will require careful consideration by other parties.

The deadline for submission of proof of evidence for the closing session relates to evidence on planning balance only. It reflects the need for witnesses to take evidence presented in the matters in common / cumulative effects session into account, and the nature of such evidence.