

Electricity Act 1989

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

Statement of Case on behalf of RES UK & IRELAND LIMITED in connection with an application dated 27 March 2009 for consent to construct and operate a 100 MW Wind Turbine Generating Station in Powys, Mid-Wales (the Llanbrynmair Wind Farm) in respect of the Hearing Session on energy and planning policy of the conjoined inquiry which is also considering proposals by:

VATTENFALL, in connection with an application dated 30 November 2007 for consent to construct and operate a 59.5MW Wind Turbine Generating Station in Powys, Mid-Wales ('Llanbadarn Fynydd')

FFERM WYNT LLAITHDDU CYF in connection with an application dated 7 May 2008 for consent to construct and operate a 66.7MW Wind Turbine Generating Station in Powys, Mid-Wales ('Llaithddu')

CELTPOWER LIMITED in connection with an application dated 9 May 2008 for consent to construct and operate a 126MW Wind Turbine Generating Station in Powys, Mid-Wales ('Llandinam')

RWE NPOWER RENEWABLES LIMITED in connection with an application dated 11 December 2008 for consent to construct and operate a 150MW Wind Turbine Generating Station in Powys, Mid-Wales ('Carnedd Wen'); and

SP MANWEB PLC in connection with an application dated 2 December 2009 to install and keep installed a 132kV overhead electric line connection from Llandinam Wind Farm to Welshpool Substation in Powys, Mid-Wales

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1.0 **Introduction**

1.1 The Applicant has been engaged with the other five Applicants in agreeing a Statement of Common Ground in respect of a wide range of matters covering energy and planning policy. For the purposes of the Statement of Case, RES UK and Ireland Ltd is satisfied that the material agreed jointly with the other applicants provides a comprehensive review of the international, European Union, UK national and Welsh Government energy policy such that there is no need to repeat any of that material as part of their Statement of Case. In the event that Powys County Council, as the Respondent Planning Authority, is not willing or able to agree the contents of the Statement of Common Ground agreed amongst the Applicants, then clearly RES reserves the right to address all or any of the matters in the joint Applicants' Statement of Common Ground in the Hearing Session through their planning witness, David Stewart. However, for the purposes of the current Statement of Case there is no benefit in repeating all of the matters that have been set out.

1.2 Similarly, the Applicants' Statement of Common Ground provides a very detailed review of a wide range of planning policy matters relevant to the Llanbrynmair application. In particular, there is a review of the main provisions of the two National Policy Statements of particular relevance to the Llanbrynmair proposal, namely EN-1 and EN-3, and the statement that in dealing with applications for development consent under the Electricity Act, the primacy of the adopted Development Plan which is provided for under Section 38 (6) of the Planning and Compulsory Purchase Act 2004 does not apply.

1.3 Schedule 9 to the Electricity Act 1989 deals with preservation of amenity in England and Wales. Sub-paragraphs 1 and 2 are relevant to the Applicants and the decision maker in this case. Sub-paragraphs 1 and 2 of Paragraph 1 state:

1). *'In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate, transmit, distribute or supply electricity*

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- a). *shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archeological interest; and*
  - b). *shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*
- 2). *In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to –*
- a). *the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and*
  - b). *the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.’*

1.4 S.38(6) of the Planning and Compulsory Planning Act 2004, which requires that -

*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*

- is not engaged in decisions on whether to grant consent under the Electricity Act 1989.

1.5 This has been confirmed in various decisions on s.36 and s.37 projects and was considered by the High Court in January 2012 in the case of *R (ex parte Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Energy and Climate Change*. In this case it was held that a ‘direction’ that planning permission shall be deemed to be granted does not constitute a ‘determination’ under the Planning Acts. The judge

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stated that *'as a matter of construction I consider that it is a direction that such determination is not required'*. As such, there was no duty upon the Secretary of State to comply with s.38(6) of the Planning and Compulsory Planning Act 2004.

- 1.6 It is acknowledged that the provisions of the Development Plan are a consideration to be taken into account in the determination of a Section 36 Electricity Act application, but only as part of the overall policy matrix. It is to the National Policy Statements that the attention of the Planning Inspectorate (in place of the Infrastructure Planning Commission under the provisions of the Localism Act of 2011) needs to be drawn. The up to date expression of national policy is in the NPSs whilst the general duty to determine in accordance with the NPSs under s104 of the Planning Act 2008 does not arise in this case that is simply because the application was made prior to the provisions of the PA coming into effect – the application is one which if made now would be covered by the NPSs and there is no reason why full weight should not be given to the NPSs. Part 1.2 of EN1 makes it clear that the NPSs are relevant in determining TCPA applications and also applications under s36 EA in coastal waters – this emphasises the importance of the NPS.
- 1.7 The Statement of Common Ground highlights the point that in the context of what is a Nationally Significant Infrastructure Project the need for the development is a given. That relates not just to the benefits that arise in the field of combating climate change through the provision of sustainable low carbon energy, but also the creation of new generating capacity in assisting with security of supply and a contribution to the economic benefits of meeting the need for new capacity in the system as older plants are decommissioned. It should not be necessary to spend time at the Hearing debating the benefits of securing new capacity in renewable energy as a matter of principle, nor the merits of onshore wind power against other forms of renewable or low carbon energy. As the Statement of Common Ground sets out in the clearest terms, there is a pressing need for new capacity to be commissioned and delivered to meet our international commitments and our targets at the UK and Welsh levels. The procurement of onshore wind is highlighted at every level of advice both in the UK as

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a whole and in Wales in particular, where there are targets for the delivery of onshore wind that are not only more closely defined than for the rest of the UK, but are on a much tighter timetable than elsewhere in the UK. For example, wind energy, both onshore and offshore, is targeted to deliver its enhanced figures of installed capacity not by 2020 as set out in the UK Renewable Energy Strategy but by 2015-2017.

- 1.8 Having regard to the Agreed position set out in the Statement of Common Ground, RES intends to highlight at the Hearing the position with regard to the unique (in UK terms) status that applies as a result of the work to identify Strategic Search Areas through which the greater part of the delivery of onshore wind is to be achieved. The Agreed Statement sets out a summary of the position that had been reached in each of the seven Strategic Search Areas defined in TAN8 in July 2005, but did not draw conclusions as to the way in which the delivery within those areas has taken place. RES will wish to emphasise the importance that now has to be placed on delivery in those SSAs having regard to the failure to date to reach the intended target figures for 2010 by a very wide margin, especially given the emphasis placed by the Minister John Griffiths in his letter to all Councils in July 2011 in which the primacy of the SSAs in delivering more than three quarters of the entire onshore wind capacity by 2017 was restated.
- 1.9 The structure of the evidence to be presented at the Hearing is therefore to examine the following issues:
- a) how the process of delivery in the seven SSAs has proceeded, along with a discussion of the reasons why delivery has been held back;
  - b) reference to the contribution towards the overall 2000MW of onshore wind by 2017 that has been made from sites outside the SSAs;
  - c) an examination of the position in respect of the figures for SSA Area B within which the Llanbrynmair site is located in terms of the initial TAN8 target and the

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revised 2017 target set out in the Griffiths letter of July 2011, having regard to both built and consented schemes within the SSA and the Carnedd Wen scheme, and the status of the Carno Wind Farm which is only partly within the TAN8 boundary;

d) reference to the refinement exercises that have been carried out by ARUP on behalf of Powys County Council in 2006 and 2008 and the Interim Development Control Guidance prepared by Powys but not formally adopted as SPG and not part of the Development Plan;

e) the implications for Area B of any further consents being granted on wind energy schemes currently the subject of planning applications either through a local consent or on a Section 78 appeal;

f) It is not proposed to analyse the policies within the Powys Unitary Development Plan as they apply to the Llanbrynmair Wind Farm at this stage of the inquiry process as this will be a matter for consideration at the end of the process once all the evidence on specific topics has been heard.

**2.0 Delivery to date within the Strategic Search Areas in TAN8**

2.1 It is considered to be especially important in the present inquiry process for there to be a clear understanding of the way in which the delivery of onshore wind has taken place under the aegis of a strategic spatial approach which is unique in the United Kingdom. Not only were the areas for strategic delivery defined at the Welsh national level, but specific figures were ascribed to each of the seven SSAs in TAN8 to secure the delivery of an additional 800MW of onshore wind from them by 2010.

2.2 The clear belief of the Government in publishing TAN8 in 2005 was that an

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additional 800MW of installed capacity of onshore wind by 2010 could indeed be met from the seven Strategic Search Areas (SSAs) that the document went on to define. Many of the SSAs contained large areas of land owned by the Forestry Commission, i.e. by the Government itself, and there has been a long drawn out process since then of selecting potential tenderers from within the wind industry to develop this Forestry Commission land in the SSAs. Sites outside the SSAs which were consented under other categories (brownfield sites up to 25MW, extensions to existing wind farms, and smaller sites up to about 5MW) counted towards the balance of a further 200MW that was expected to come by 2010 from other sources including offshore wind. It can be noted that PPWales now contains separate and specific targets for technologies other than onshore wind.

- 2.3 Following the final publication of TAN 8, Councils throughout Wales which had SSAs within their areas commissioned a series of studies by ARUP to refine the boundaries of the relevant SSA. As a result of this, they produced a series of rankings of sites with recommendations as to which sites in each SSA performed best against their criteria and should be used to deliver the installed capacity needed by 2010. The result of this was that the SSAs have generally been reduced in area by as much as two thirds of their size. This was however not what TAN8 envisaged as it made it clear that Local Planning Authorities may:

*“...make minor adjustments to the SSA boundaries when translated into their local planning documents. This will facilitate the inclusion of development on the margins of SSAs where local conditions recommended (Annex D paragraph 1.3).”*(the emphasis is the Applicant’s)

- 2.4 Each SSA was allotted a figure for installed capacity of onshore wind by 2010, based on the work by Garrad Hassan and ARUP up to 2005 on the potential capacity of each area which reflected their view (in the first half of the last decade) as to the nature of the constraints which had been identified within the boundaries of each SSA and an assessment of the developable areas. The actual figures of maximum capacity amounted to 1666MW but given that the target for

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2010 was an additional 800MW from these areas, the Garrad Hassan/ARUP figures were reduced by a third in TAN8 to a total of 1120MW which was believed to provide a degree of flexibility at the local level in identifying the best sites. The boundaries of the SSAs were always shown to be “broad-brush”, one of the purposes of the broad-brush approach to the definition of the SSAs being that land within and immediately outside (within 5km of the boundary) the defined areas would be able to be assessed in refinement exercises to see whether it should be included within the SSA, as finally defined, in greater detail.

2.5 Before looking at the detailed position in SSA B, it is considered useful to look at the overall position for the seven SSAs against the target figures first for 2010 and then for 2015-17. In respect of the former, the position can only be described as very disappointing. The target set out in TAN8 at Paragraph 1.4 was for 800MW of additional installed capacity (after July 2005) to come from onshore wind sources. In respect of the forestry sites which were to provide the key land areas across several of the SSAs, it was only in November 2007 that the final announcement was made by the First Minister of the successful tenderers, and none was producing electricity by 2010, due in part of course to the selection process that has been undertaken. The refinement processes in which ARUP were commissioned to undertake further studies to identify the final boundaries of each SSA and the preferred zones within them to meet the indicative targets have also resulted in lengthy delays in delivering sites as Councils appeared to be reluctant to commit to projects until the more detailed assessments had been completed. Even then the identification of sites as being both within the SSA and within the refined areas has not carried with it the degree of certainty that the Government and the wind industry no doubt hoped for, as a number of the projects within the refined areas have only been consented after an appeal process.

2.6 By July 2005, there had been 254.8MW installed onshore in Wales, including Tir Mostyn which started generating in July 2005, with two more sites consented and under construction at Mynydd Clogau and Ffynnon Oer (14.5 and 32MW respectively) taking the effective pre-TAN8 figure up to 301.3MW. By contrast,

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the number of new permissions that were given post TAN8 and implemented by 2010 amounted to only 110.45M. What TAN8 was all about was delivering a stated amount of electricity to the grid, and not a stated amount of planning permissions by the end date of 2010, and so TAN8 effectively only delivered 14% of its intended target. Given the lead-in time for major infrastructure projects even after planning permission has been obtained, this is a crucial key to understanding where we are today.

2.7 In terms of the movement towards the nationally set targets, the figures for built, under construction and consented wind farm developments across Wales have been analysed, including all sites with turbines in excess of 100kW. This reveals that within the SSAs the total is 824MW with a further 251MW on sites that are not within the SSAs - this is treating the Llandinam site as being outside the boundaries of Area C, although this status is a matter for discussion at the Hearing as it has a bearing on the way in which the Area C figures are calculated in respect of both the repowering of Llandinam and the capacity available for other projects. It also treats the whole of the Carno wind farm (both its original consent and its later extension) as being within Area B as it straddles the boundary as shown in TAN8. Similarly, the figures for Area E include Mynydd y Betws as that too straddles the boundary, but for Area F exclude Ferndale, Mynydd Portref and Taff Ely which lie outside the boundary (and also outside the refined areas ARUP have assessed). As explained in the Statement of Common Ground the figure for the largest consent in Wales at Pen y Cymoedd has been taken not as the maximum on the consent form of 299MW but the more realistic 250.8MW which is for the 3.3MW machines that are now understood to be the likely option for the site (a number of turbines having been deleted by agreement from the original 299MW application).

2.8 The position in respect of the capacities for all the SSAs has now changed since the 2010 first target date has been passed. The Energy Policy Statement issued by the Welsh Government in 2010 set out a new figure of 2000MW of onshore wind not by 2020 but by 2015-17. A year later, the Energy Minister John Griffiths sent

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out a letter to planning authorities in which he advised that in the context of PPWales and its new figures for onshore wind (which had taken the Energy Policy Statement figures verbatim into the new PPWales), the emphasis on development in the SSAs would remain but “new” maximum figures for each SSA were included within his letter. In fact all that has been done is to take the original Garrad Hassan/ARUP figures of capacity (reduced by a third for TAN8) and restore them to their original level prior to TAN8. Hence, instead of an “indicative capacity target” for each of the SSAs set out in TAN8 totalling 1120MW we now have a new figure of 1666MW which simply restores the one third reduction. The figure for SSA B is now given as 430MW.

2.9 The strategic picture thus still reveals a very significant shortfall against the 1700MW which is required to be built in the SSAs within at the very most four and a half years, especially given that only 300MW of that 824MW figure has actually been built to date and no less than 384MW of the consents are derived from three recent permissions at Brechfa West (Area G) Mynydd y Gwair (Area E) and Pen y Cymoedd (Area F) which are a long way from starting construction. We also know that almost all of the 212MW required capacity from Area D is likely to come from a single wind farm (Nant y Moch) which has only just been submitted for approval; and that the current inquiry, scheduled to run unto the middle of 2014, is handling proposals for a further 400MW of available capacity in SSAs B and C. The prospects of any of these being operational by 2017 are debatable given the inquiry timetable, the period for a decision, condition satisfaction, tendering and construction, together with the need for grid reinforcements. Thus it appears to be improbable that the planning system and the industry can deliver the total of 1700MW from the SSAs by the end of 2017 and this serves only to underscore the importance of utilising sites which do come forward within the original SSAs and which fulfil the requirement for development in the SSAs set out in the Welsh planning guidance.

2.10 The calculations for each SSA have been put forward for inclusion in the Statement of Common Ground but for ease of reference they are as follows:

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SSA	Garrad Hassan/ARUP (used by Mr Griffiths)	Built/under construction and consented
Area A	212MW	121MW
Area B	430MW	100MW
Area C	98MW	0MW
Area D	212MW	10MW
Area E	152MW	109MW
Area F	430MW	381MW
Area G	132MW	107MW
<b>Totals</b>	<b>1666MW</b>	<b>824MW</b>

2.11 It is clear from the above that the major under-performance in respect of the seven SSAs has arisen in Areas B, C and D which account for some two thirds of the current shortfall in terms of built and consented schemes. While this can be attributed at least in part to issues relating to grid and strategic highways issues, the fact remains that it is now critical that sites within areas B and C are brought forward in order to meet the Welsh strategic commitments for the end of 2017, as it is known that the major site in Area D has only just entered the application stage, so is well behind those being considered at this inquiry.

3.0 **Development outside the SSAs.**

3.1 On the sites outside the SSAs, the figure of 251MW of built and consented schemes is a little over two thirds of the way towards the 334MW which when added to the 1666MW in the SSAs would take us to 2000MW. However it needs to be borne in mind that a large slice of this 251MW figure is derived from three 1990s permissions on Anglesey with 72 turbines, 31MW at Llandinam and the Section 36 consent at Cefn Croes, altogether totalling 123MW – not the sort of permissions that would be replicated under current planning policy.

4.0 **The position in Area B**

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- 4.1 The position in Area B is relatively straightforward as regards the current commitments and the proposals before the inquiry in the context of the figure of 430MW set out in the Griffiths letter. There is not the issue which arises in Area C as to how one treats the Llandinam wind farm's 31MW where the site lies entirely outside the SSA C boundary (but for the most part inside the proposed boundary in the refinement exercises) and where the three proposals in combination amount to two and a half times the 98MW identified in the Griffiths letter.
- 4.2 The position in respect of Carno is very different to that at Llandinam. The Carno site straddles the TAN8 SSA B boundary, such that we have calculated that of the 68 turbines in the scheme as extended 40 of them lie within the original TAN8 area. As noted below, all of them lie within the refined areas (the southernmost of the four separate defined areas that ARUP identified in 2008 out of the original TAN8 boundary). It is entirely sensible therefore that the capacity of Carno at just under 50MW is taken into account in assessing the overall capacity for Area B, even though the process of assessment undertaken by Garrad Hassan/ARUP was only in respect of the actual TAN8 SSA boundary – thus excluding about a third of the Carno site area.
- 4.3 The current position in respect of the capacity of Carnedd Wen and Llanbrynmair on the basis of their amended proposals is that they Carnedd Wen with 50 turbines would be expected to deliver between 100MW and 150MW as their choice of turbine is still between a 2MW and a 3MW machine. At Llanbrynmair, with 30 turbines all likely to be at 2MW installed capacity the total would be 60MW. These are the largest of the proposals in Area B by some margin as the only other proposals in the system are below 50MW and being dealt with as planning applications. They are therefore essential to the delivery of the capacity which is required from SSA B by 2017. With a maximum of 210MW at Carnedd Wen and Llanbrynmair would provide a total installed capacity for Area B of about 360MW once the sites at Carno, Mynydd Clogau, Mynydd y Cemmaes and Tirgwynt are added in – still some 70MW short of the 430MW figure, thus

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providing some scope for additional planning applications to be approved within the target figure in due course. The calculation has followed the same approach as has been taken for Pen y Cymoedd in Area F where a number of turbines were deleted and the realistic capacity is now short of the theoretical one provided for on the consent form. In both Carnedd Wen and Llanbrynmair the number of turbines has been reduced and the likely capacity reduced accordingly.

4.3 The Inspector clearly needs to know what the relationship is between the layout of the Llanbrynmair turbines and the boundaries of the SSA and the refinement exercises carried out subsequently and this is addressed below.

5.0 **Refinement exercises and the IDCG in Powys**

5.1 The text supporting E3 in the draft UDP, which originally emerged at about the time of the draft TAN8 back in 2004, made it clear that Powys County Council was looking to encourage the Welsh Government to undertake some form of review of the SSA position emerging in TAN8. This may be due to the fact that they have the whole of two of the SSAs in their area as well as part of SSA D. This concern may also explain why there is no mention of the SSA issues in their policy at all, even though at the time of the adoption of the UDP in 2010 the Welsh Government had confirmed the importance of the developments in the SSAs in March 2010 in the Energy Policy Statement. The text supporting E3 in the final version of the UDP does however refer to the view of the Council that a criteria-based policy may not be enough on its own and that the Council should be pro-active in guiding wind energy developments to the most suitable locations.

5.2 That position does of course reflect the way in which Powys (and to be fair every other Council with an SSA) responded to TAN8 by commissioning from ARUP refinement studies of the SSAs. The first report covering both SSAs B and C was published in January 2006, following which the County Council issued draft Interim Development Control Guidance based on the refined boundaries which involved radical changes to the extent of the SSAs B and C. In that first

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refinement exercise the proposal was for two separate areas, one focussed on Carno (with all 68 of its turbines within the refined area) and the other along the ridges to the north-east which includes the sites of Carnedd Wen and Llanbrynmair. Of the 43 turbines in the original Llanbrynmair layout, 41 lie within the refined area as well as the original TAN8 boundary, with the two north-easternmost turbines (numbered 40 and 43 on that original layout) lying just outside the north-eastern refined boundary (but still over 1 km inside TAN8.

5.3 The refinement exercise in 2006 (as indeed the review of it in 2008) has to be read in the context of the fact that the target then being sought was that for 2010 and hence the lower figures for each SSA. The revised figure for 430MW has clear implications for the selection of the various zones that might be needed to achieve the new target. In the 2006 study, Zone B6 which covers the greater part of Llanbrynmair featured as a zone which would be needed to meet the 2010 target; so did Zone B3 covering the south-western end of the wind farm. Zone B1 which covers the north-eastern end of the Llanbrynmair site was included in the initial assessment as another zone which would be needed for 2010, although later adjustments to split one of the other zones placed B1 just below the threshold of zones that might be needed (for 2010).

5.4 Following publication of the draft IDCG, and consideration of an appeal decision affecting the ARUP refinement exercise for SSA Area A (Wern Ddu in Denbighshire), ARUP were asked by Powys to review their own refinement exercise. This revised assessment radically changed the layout of the refined areas since it created four zones instead of two and it amended the refined boundary close to Llanbrynmair such that even the turbines at the north-eastern end (in Zone B1) now fall inside the revised refined area. That is even before regard has to be had to the fact that even the 2008 revised version was still looking at the 2010 target figure which has now been raised substantially, although the terms of the brief to ARUP do need to be noted. At 1.2 of the Review Exercise dated April 2008, they state that the new local refinement exercise was to follow the principles set out below:

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- *It was to comply as far as possible with the guidance contained within TAN8 Annex D.*
- *It was not to serve to 'cap' development levels at the TAN8 indicative capacities (in MW) for each SSA where the data indicated that greater levels of development might be possible i.e. the outcomes were to be driven by the landscape capacity of the area, within the context of an overall national policy objective to allow landscape change.*

That approach effectively looked forward to the post-2010 position where the TAN8 figures were unlikely to be regarded as definitive as to the capacity of each SSA and in the knowledge that Garrad Hassan/ARUP had already provided higher levels of capacity for each SSA as far back as 2005.

5.5 Despite the first draft having been published in 2006, and having had a later refinement exercise, the IDCG has not yet been taken forward into a final version, due in part, it is understood, to advice that they are likely to have to carry out Strategic Environmental Assessment of the document before it can be adopted. Nevertheless, the latest position on the refinement exercises still has some material weight for Llanbrynmair in view of the detailed evaluation of the different zones and the final conclusions in 2008 that not only do all of the 30 remaining Llanbrynmair turbines lie within the original TAN8 boundary but also within the latest refined boundary for this SSA. That is a matter to which it is submitted the Inspector can accord some significant weight even though the IDCG has not been formally adopted in an amended form, since the whole purpose of the approach being pursued by the County Council (and reinforced in their adopted UDP) is that they regard the areas within the reviewed refined areas as their preferred areas for strategic wind farm development, and as such that creates a general presumption in favour of a wind energy development within them, as opposed to any sites that lie outside. Not only that, but three separate independent assessments (for TAN8, and in two subsequent refinement exercises) have identified the Llanbrynmair site as being suitable for strategic wind farm development, and it remains one of the only two sites within those studies which

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have been brought forward for the major site developments that are need to deliver the overall SSA target figures.

6.0 **Implications of other sites in Area B being consented**

6.1 At the time of the consideration of the wider policy issues at this inquiry it is understood that none of the planning applications within Area B already within the planning system at Powys will have received a planning permission. However, that position may change as the inquiry proceeds. Clearly if Powys County Council were to consent one or more of these schemes it will be necessary to add their installed capacity to the committed figures for Area B (and of course take into account the additional cumulative effects of changing the planning baseline from an unconsented scheme to a committed one). The headroom that is available within Area B from the figures discussed above is such that even consenting two of the four schemes currently in planning (Cemmaes 3, Waun Garno, Mynydd Clogau extension and Mynydd Waun Fawr), would not breach the Area B target as currently defined. If schemes in planning were to be refused planning permission or the applicants were to exercise their right to appeal against non-determination, then a different scenario arises. This is because an appeal would be made to the Welsh Government and would be determined by an Inspector through delegated powers from the Welsh Government or be recovered for a decision by the Ministers at Cardiff. While there is a precedent for a Section 36 Electricity Act application and a Section 78 planning appeal to be co-joined and for joint decisions to be issued by DECC and DCLG in England, such a combination would not appear to be provided for under the relevant legislation in a Section 36 case and a Section 78 planning appeal in Wales. Thus the prospect of one or more planning appeals arising from decisions in the coming months being fed into the current conjoined inquiry does not arise, and a separate appeal process might therefore lead to one or more decisions to allow such appeals being taken entirely separately from the conjoined inquiry Inspector's process. In effect, that could happen at any time during the passage of the current inquiry up to May 2014 and indeed for a number of months after that while the Inspector writes his report and before DECC issue their decisions. Again given the headroom that is available it appears unlikely

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that in the context of Area B there would be an issue of exceedence of the current SSA limit of 430MW.

- 6.2 Of course it remains the case that even if all of the current Area B planning applications were to be consented prior to decisions on Carnedd Wen and Llanbrynmair, that does not mean that these schemes should be denied consent or scaled back to come within the Area B target figure. TAN8 is a material consideration, but in the context of a Section 36 application the decision that has to be made is whether the cumulative effects are acceptable, having regard to the merits of the proposal and not merely as mathematical exercise against the TAN8 figures,

7.0 **Powys UDP issues**

- 7.1 It is not the intention in this part of the inquiry to analyse the degree of compliance with the local plan as adopted – the Statement of Common Ground is intended to record the development plan position, but an assessment of the degree of conformity with the development plan will follow on from consideration of the detailed evidence in respect of a wide range of different topic areas.

8.0 **Conclusions**

- 8.1 In the context of the national planning and energy policy advice under which the Welsh Government has published policies to concentrate more than two thirds of their onshore wind target in seven Strategic Search Areas, the Llanbrynmair proposal is able to derive significant support from its location entirely within one of these seven SSAs. Not only that, but as a result of refinement exercises, the radically revised boundaries of the SSA in the latest version still provide that all of the 30 turbines in the proposal would lie within the refined area and thus the proposal can derive not only national strategic support but also support from local guidance in locational terms. Finally, the stated capacity of this SSA would not be breached even if both

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Carnedd Wen and Llanbrynmair were to be consented, and indeed there would remain significant headroom for other schemes to be consented as well.

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9.0 **References**

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