

Electricity Act 1989

Town and Country Planning Act 1990

Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000

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

Application by RWE npower renewables Limited for consent under Section 36 Electricity Act 1989 to construct and operate a wind turbine generating station at Carnedd Wen, Powys with a maximum installed capacity of 150MW and for a Direction that planning permission be deemed to be granted for the proposed development under Section 90(2) Town and Country Planning Act 1990

---

## SESSION 2 (Area B)

### STATEMENT OF CASE ON BEHALF OF THE RWE NPOWER RENEWABLES LIMITED

---

10 September 2013

## 1. **INTRODUCTION**

- 1.1 This is the Statement of Case of RWE npower renewables Limited ("RWE") for the Carnedd Wen Development and it should be read alongside RWE's Outline Statement of Case submitted on 21 January 2013. This statement sets out RWE's position on the matters to be covered in Session 2 of this inquiry and defines the Development.
- 1.2 RWE's Outline Statement of Case set out the matters identified by the Secretary of State for Energy and Climate Change that he wishes to be considered at a public inquiry. The scope of the evidence which RWE intends to lead in Session 2 is addressed below. Session 2 will cover these matters individually in relation to Carnedd Wen and cumulatively in relation to Area B.
- 1.3 A draft timetable for Session 2 is currently circulating between parties and will be submitted to the Inspectors for approval in due course.

## 2. **UPDATES**

- 2.1 On 11 December 2008 RWE applied under Section 36 Electricity Act 1989 for consent to construct and operate a wind farm at Carnedd Wen with a maximum installed capacity of 250MW and for a Direction under Section 90(2) Town and Country Planning Act 1990 that planning permission be deemed to be granted for the Development.
- 2.2 On 5 March 2013 RWE notified the Department of Energy and Climate Change ("DECC") of a proposed amendment to the terms of the Section 36 Application so as to specify a maximum installed capacity of 150 MW. This amendment was not connected with any physical changes to the scheme and was solely concerned with reflecting the appropriate maximum installed capacity proposed for the Development. DECC responded on 13 March 2013 to accept the amendment.
- 2.3 RWE submitted further environmental information ("SEI 2013") on Friday 2 August 2013 and representations may be made in relation to the SEI 2013 until 12 September 2013. This is to be read in conjunction with the previously submitted environmental statement and previous SEI. The SEI 2013 consists of:-
  - 2.3.1 Volume 1 – Main Text
  - 2.3.2 Volume 2 – Appendices
  - 2.3.3 Volume 3 – Figures

2.3.4 Volume 4 – Plans

2.3.5 Volume 5 – Non Technical Summary

### **3. APPLICATION FOR CONSENT TO CONSTRUCT WORKS ON COMMON LAND**

3.1 A small part of the Carnedd Wen site is designated as common land, namely Esgair Y Maes/Fridd Goch Common (MCL081) (“the Common Land”). Therefore consent to construct the wind farm on the Common Land is required before those works can be undertaken on the Site. The application (“the Commons Application”) will be made to Planning Inspectorate Wales on or before the 13 September 2013 under section 38 of the Commons Act 2006 for:

3.1.1 The erection of four wind turbines each, with its own transformer and the surfacing of interconnecting access tracks to and between the turbines, trenching for electrical cables and surfacing of crane hardstandings.

3.1.2 The erection of temporary fencing around the open excavation for the turbine foundation works for safety purposes. The temporary fencing will only be required during the construction phase for each turbine, anticipated to be a period of no more than one month for each of the four turbines.

3.1.3 The laying of electrical cables along the access tracks to take the electricity generated to a substation located off the Common.

3.2 RWE has asked the Planning Inspectorate to confirm it will be possible for the Commons Application to be considered within the public inquiry. RWE believes this will sit best within Session 2.

### **4. RWE’S CASE FOR SESSION 2**

4.1 The Council’s objections, the Secretary of State’s statement of matters and the Outline Statements of Case received to date during the inquiry process have raised the following issues for consideration in oral evidence:

4.1.1 The individual landscape and visual impact of the proposed Development and the cumulative impacts with other wind farms in Area B;

4.1.2 The cultural heritage impact insofar as it applies to the historic landscape;

4.1.3 To the extent required, any noise or health issues;

- 4.1.4 Transport issues solely relating to proposed Carnedd Wen development (and cumulative transport issues taking into account the proposed Llanbrynmair proposed wind farm);
  - 4.1.5 Peat, hydrology, construction and forestry;
  - 4.1.6 Ecology and wildlife
- 4.2 RWE's case at the inquiry will be led by Marcus Trinick QC, partner at Eversheds LLP supported by Mr Paul Maile (partner at Eversheds LLP) on transport matters to the extent required. At present it is anticipated that Mr Trinick and Mr Maile will call the witnesses listed below.
- 4.2.1 Mr Jeffrey Stevenson (Jeffrey Stevenson Associates) - Landscape and Visual Effects;
  - 4.2.2 Mr Stewart Lowther (Atmos) – Ecology;
  - 4.2.3 Dr Andrew Mills (Halcrow) – Geology and peat;
  - 4.2.4 Dr Alan Edwards (SLR) - Hydrology;
  - 4.2.5 Mr Chris Piper (CJ Piper & Co) – Forestry;
  - 4.2.6 Mr Morgan Houtmeyers (RWE npower renewables) - Construction;
  - 4.2.7 Mr Karl Cradick (Savills) - Common Land Issues
  - 4.2.8 Dr Andrew Bullmore (Hoare Lea) – Noise (\*) and
  - 4.2.9 Mr Stuart Atkinson (Stuart Michael Associates) – Transport (\*);
- 4.3 (\*) At present RWE does not see a need to call Dr Bullmore or Mr Atkinson to give oral evidence, but a final decision on this point will be made following the receipt of other Statements of Case. We have still included them in our witness list and provided details of the case on noise and transport below for completeness.

## 5. **PRESENTATION OF THE APPLICANT'S CASE**

- 5.1 The evidence to be presented on behalf of the Applicant will address: -
- 5.1.1 The objections of the Council;
  - 5.1.2 The Statement of Matters
  - 5.1.3 Responses to the Application by consultees;

5.1.4 Responses to the Application by third parties including members of the public; and

5.1.5 Responses to the Commons Application

RWE was able to provide much of the information below in its initial Outline Statement of Case. However, this has been updated below in relation to particular topics. We believe it will be of assistance to keep this statement as a standalone document and we have therefore included the text from our Outline Statement (where required) for completeness.

## 6. **SCOPE OF THE APPLICANT'S EVIDENCE IN SESSION 2**

### Landscape and Visual Effects – Referable to Statement of Matters - 4

6.1 In his evidence Mr Stevenson will: -

6.1.1 Describe the baseline landscape character and visual amenity resource relevant to the proper consideration of the Development on an individual basis and cumulatively;

6.1.2 Describe the process by which the Development has evolved from an initial 65 turbine development to that which now forms the basis of the Application (50 turbines) and thereby demonstrate that careful consideration has been given to minimising potential landscape and visual effects in the siting, design process and composition of the Development;

6.1.3 Describe the potential landscape and visual effects of the Development individually and cumulatively, paying particular regard to those effects relevant to the Snowdonia National Park;

6.1.4 Demonstrate that significant effects on landscape character and visual amenity are an inevitable consequence of modern commercial wind turbines and that this is recognized and accepted within TAN8 and National Policy Statements;

6.1.5 Make reference to the evolution of the TAN8 boundary in this area;

6.1.6 Make reference to Mr Lowther's evidence concerning the potential effects arising with respect to landscape character and visual amenity as a result of forestry removal and subsequent habitat enhancement;

6.1.7 Express the opinion that, whilst effects may be deemed significant and harmful, they do not have to be rendered harmless to be acceptable. Further, many people are positively disposed towards

wind farm development, both in concept and in practice. These are perceptions that must be recognised and respected given the European Landscape Convention's definition of landscape;

- 6.1.8 State that, while the Development would have significant effects on local landscape character, it would not be an unacceptable detraction from the open, rural nature and character of the local and wider area. The Development will be read as broadly consistent with the pattern and trend of the host environment and, when considered alongside TAN8, will be consistent with what might be expected from the reasonable application of landscape planning policy.
- 6.1.9 Demonstrate that it was the professional opinion of the Planning Officer and the Council's Landscape Consultants that the impacts of the Development on the landscape and on the visual amenity enjoyed in the area did not give rise to harm which would justify the refusal of planning permission;
- 6.1.10 Demonstrate that the extent of potentially significant effects on the visual amenity of residents in the area has been appropriately assessed as part of the Application and the results set out in the ES and associated documents. Parts of the Development would be visible from a number of residential properties as well as properties within settlements but it will be shown that Carnedd Wen Wind Farm will not convert any property into one which could be regarded as an unattractive and unsatisfactory place in which to live;
- 6.1.11 State there is a strong inter-relationship between landscape and climate change and indicate that respected landscape professionals consider that the development of renewable energy, is an essential aspect of climate change mitigation, and ensuring protection and enhancement of landscape character and its condition are not mutually exclusive objectives;
- 6.1.12 State that the Development will be a sustainable form of development from the perspective of safeguarding the long-term landscape resource for the future and from the perspective of long-term visual amenity; and
- 6.1.13 Finally, making reference to the Council's Planning Officer's Report to Committee and paying regard to the Council's Landscape Consultant's professional advice, Mr Stevenson will align with the Council's professional opinion which demonstrates how the

Council's policies on landscape and visual impact should be read in the context of national, regional and local policies on renewable energy all of which provide broad support for the Development. Particular reference will be had to paragraph 8.4 of Annex D of TAN 8 which states that *"..within (and immediately adjacent) to the SSAs, the implicit objective is to accept landscape change i.e. a significant change in landscape character from wind turbine development.."*

6.1.1 Address the implications of the Development for the historic landscape aspect of the relevant LANDMAP units.

6.2 In doing so, Mr Stevenson will have reference to parts of the following: -

6.2.1 The ES (2008);

6.2.2 The Cumulative SEI 2009;

6.2.3 The SEI 2011;

6.2.4 The SEI 2013; and

6.2.5 The Planning Officer's reports and supporting documents.

#### Ecology- Referable to Statement of Matters - 7

6.3 In his evidence Mr Stewart Lowther will: -

6.3.1 Demonstrate that sufficient information has been provided to the Inquiry to enable the ecological effects of the Development, including those relating to peat habitats, to be determined.

6.3.2 Demonstrate that the Development would be able to maintain biodiversity, nature conservation and the amenity value of habitats and avoid any significant adverse effect on conservation interests.

6.3.3 Set out the benefits of the Development, through the habitat restoration and management plan, and demonstrate that the Development will result in a significant positive benefit to biodiversity and nature conservation, in line with policy at local, Welsh and UK levels.

6.3.4 Consider any adverse cumulative effects of the Development in terms of other existing or proposed development in the area.

6.4 In doing so, Mr Lowther will refer the following material:

- 6.4.1 Volume 1 Chapters 7 and 8 of the ES;
- 6.4.2 Volume 1 Chapter 8 of the Cumulative SEI 2009;
- 6.4.3 Volume 1 Chapters 7 and 8 of the SEI 2011;
- 6.4.4 The SEI 2013.

Geology and Peat – Referable to Statement of Matters - 13

6.5 In his evidence Dr Andrew Mills will: -

- 6.5.1 Demonstrate that sufficient information has been provided to the Inquiry to assess the effects of the Development on peat deposits within the application boundary.
- 6.5.2 Demonstrate through provision of a peat management plan how peat excavation and re-use has been designed to minimise peat losses and support the habitat restoration and management plan.
- 6.5.3 Demonstrate through provision of a peat stability assessment report how peat instability risks have been identified and will be satisfactorily managed.

6.6 In doing so, Dr Mills will refer to the following material:

- 6.6.1 Volume 1 Chapters 7 and 12 of the 2008 ES;
- 6.6.2 Volume 1, Chapters 7 and 13 of the SEI 2011;
- 6.6.3 The SEI 2013.

Hydrology– Referable to Statement of Matters - 12

6.7 In his evidence Dr Alan Edwards will: -

- 6.7.1 Demonstrate that sufficient information has been provided to the Inquiry to document and assess the hydrological and hydrogeological effects of the Development, with particular reference to the peat and bog habitats;
- 6.7.2 Demonstrate that significant hydrological impacts, such as increased flood risk, would not occur from the Development;

6.7.3 Demonstrate that significant ecological impacts, which are related to hydrology and hydrogeology, would not occur from the Development;

6.7.4 Demonstrate that appropriate mitigation and management hydrological measures have been identified, as and when appropriate, to both reduce the potential impacts of the wind farm development and to promote the proposed habitat restoration.

6.8 In doing so, Dr Edwards will refer to the following material:

6.8.1 Volume 1 Chapters 7, 12 and 13 of the 2008 ES

6.8.2 Volume 1, Chapters 7 and 13 of the SEI 2011

6.8.3 The SEI 2013.

Forestry – Referable to Statement of Matters 7,8,12 and 13

6.9 In his evidence Mr Piper will:-

6.9.1 Demonstrate how future management of the existing plantation forestry within the application area will facilitate the delivery of the proposed habitat restoration and management plan, if the Development proceeds.

6.9.2 Demonstrate how the delivery and associated benefits of the habitat restoration and management plan will be achieved over a significantly shorter timescale than under the existing (without wind farm) forest management objectives.

6.9.3 Set out the rationale, timing, design and methodologies of the forest management proposals and demonstrate how these are integrally linked to the delivery of the habitat management and restoration plan.

Construction – Referable to Statement of Matters 5, 7, 12, and 13

6.10 In his evidence Mr Morgan Houtmeyers will: -

6.10.1 Review the Development in terms of construction. In particular he will address access tracks, crane and other hardstandings, wind turbine foundations, borrow pits, sub-station construction, and subsequent proposals for restoration in order to demonstrate that

what is being proposed can realistically be achieved in practice during the construction period.

- 6.10.2 Review the construction inputs required for transport, peat, hydrology, ecology and forestry to ensure that the details contained therein are in line with construction practices gained on previous experience of constructing windfarms.
- 6.10.3 Provide appropriate environmental safeguards through a Construction Environmental Management Plan (CEMP) that will be necessary to address the individual and cumulative impacts of the Development. The CEMP will demonstrate typical construction methodologies and mitigation used for access track, hardstanding, foundation, construction compound, borrow pit, cable laying and sub-station works.

Transport– Referable to Statement of Matters - 5

6.11 In his evidence Mr Stuart Atkinson will:

- 6.11.1 Review the Development in terms of the access arrangements (form, location and implementation) and summarize the Development’s potential traffic generation and demonstrate how this can be managed effectively during the tree removal, construction and post commissioning periods.
- 6.11.2 Make reference to the 2008 ES (Chapter 14) and the SEI 2011 (Chapter 14) and how the refinements to the Development made since the Application was submitted in 2008 will result in reduced traffic movements upon the adjoining highway network.
- 6.11.3 Review the position reached with the Welsh Government regarding:-
  - 6.11.3.1 Access and construction details
  - 6.11.3.2 Implementation of the strategic Traffic Management Plan
  - 6.11.3.3 Implementation of appropriate conditions
- 6.11.4 Review the position reached with Powys County Council regarding their Reasons for Refusal and their updated position together with any mitigation measures being implemented.
- 6.11.5 Matters relating to wider strategic transport issues will be dealt with by Mr Atkinson in cumulative session 4 of the Inquiry.

Noise – Referable to Statement of Matters - 6 and insofar as issues arise - 9

6.12 In his evidence, Dr Bullmore will: -

- 6.12.1 Address noise arising from the construction of the Development and from construction traffic;
- 6.12.2 Refer to the noise limit criteria contained within ETSU-R-97 and demonstrate that the noise levels generated by the operation of the proposed wind turbines will meet those criteria at all neighbouring dwellings to the Site;
- 6.12.3 Taking account of ETSU-R-97 and all other relevant policy guidance, demonstrate that noise effects due to the Development will be acceptable;
- 6.12.4 Consider the cumulative effects of the Development in terms of other wind energy proposals in the area and conclude that any such effects can be properly addressed and monitored via the imposition of a set of suitably worded planning conditions;
- 6.12.5 To the extent that appears to be required address human health issues as required by the Secretary of State (matter 9).

6.13 In doing so, Dr Bullmore will have reference to the following materials: -

- 6.13.1 Chapter 9, Volume 1 of the ES 2008
- 6.13.2 Chapter 9, Volume 1 of the Cumulative SEI 2009;
- 6.13.3 Chapter 9, Volume 1 of the SEI 2011;
- 6.13.4 The SEI 2013.

Cultural Heritage – Referable to Statement of Matters – 10 and 11

6.14 RWE is not currently intending to bring evidence specifically on the topic of cultural heritage (outside of historic landscape). This point is addressed at paragraph 6.1.1 above.

**7. The Common Land Exchange and the Common Land Consent**

7.1 As stated the Commons Application is to be made under Section 38 Commons Act 2006 to construct works on common land.

7.2 Evidence in relation to the Commons Application will be given on behalf of RWE by Mr Karl Cradick.

- 7.3 Mr Cradick will show that an area of 1.5 hectares will be taken by the Development (including hard standing areas and access tracks). It has been agreed with the landowner that an additional area of approximately 8 hectares in total will be temporarily disturbed during the construction period of approximately 12 months. As compensation for any disturbance of land during construction of the Development and to provide land to replace that which will be occupied by the Development, additional land extending to 8.3 hectares will be dedicated as access land under the Countryside and Rights of Way Act 2000. The additional land is significantly larger than the land being taken out of the common. Evidence will also be provided to illustrate that the land exchange is not subject to grazing rights.
- 7.4 During the course of the construction of the proposed works it will be necessary to carry out such operations which will impede access to the common land. RWE will call evidence to demonstrate that these works are necessary in the interests of safety and good practice during the course of the Development and that it is expedient to grant consent for the works having regard to the benefit of the neighbourhood. It will be demonstrated that in granting the consent to construct works on the common, the proposed works would not detrimentally affect the common in that freedom of access will be maintained and there would be no significant loss of openness following the construction phase of the Development.
- 7.5 Evidence will be given by Mr Cradick which will arise from the Common Land Application which will demonstrate that there would be no material adverse effect on the value of the land for its use as a common and for its use for recreation or other public enjoyment (beyond the construction period).
- 7.6 In all the circumstances it will be demonstrated that the common land consent should be approved.

#### **Other Matters Arising**

- 7.7 RWE reserves the right to call evidence as necessary (either oral or written) to deal with any other issues raised by third parties or consultees in correspondence with DECC or the Planning Inspectorate as part of the inquiry process in so far as it is considered necessary.
- 7.8 Witnesses will be called to give oral evidence unless RWE confirms otherwise. Those witnesses indicated may provide evidence by way of written statement in the event that this is considered appropriate. However, RWE reserves the right to call those witnesses to give oral evidence in the event that this is deemed necessary following the receipt of proofs of evidence from third parties or otherwise.

8. **STATEMENT OF COMMON GROUND, CONDITIONS AND PLANNING OBLIGATIONS**

8.1 RWE has been engaged in the production of Statements of Common Ground on the following topics:

8.1.1 **Planning and energy policy:** In May 2013, a comprehensive statement of common ground on planning and energy policy was agreed and submitted by the six developers of the projects under consideration at the Mid-Wales wind farms conjoined public inquiry.

8.1.2 Since the opening session of the inquiry, attempts have been made to agree a statement of common ground on planning and energy policy between the six developers and the Council, Snowdonia NPA and Natural Resources Wales. An amended version of the developers' SoCG has been provided by the Council on behalf of the three public authorities. Whereas much of the revised statement would be acceptable to the six developers, differences remain between the parties on a few important points of policy interpretation. The Council's planning witness advised that the public authorities were unprepared to discuss these differences, and it is understood that a statement of common ground on planning and energy policy between Powys CC, Snowdonia NPA and Natural Resources Wales was submitted to the Inspector on 27 August 2013.

8.1.3 **Landscape and visual effects:** RWE has agreed a statement of common ground with the Council. A final form is being submitted with this statement. We are obtaining signatures and a signed copy will be forwarded shortly. Snowdonia National Park and Natural Resources Wales have been provided with draft statements of common ground but despite our efforts to progress this both parties have so far declined to respond. The most recent drafts are submitted with this statement.

8.1.4 **Noise:** RWE is seeking a statement of common ground with the Council and RES. This is almost agreed and should be ready for submission shortly.

8.1.5 **Peat, Forestry, Hydrology and Ecology:** RWE have met with Natural Resources Wales and will seek a statement of common ground with the Council and Natural Resources Wales.

- 8.1.6 **Transport:** RWE has agreed a statement of common ground with the Council, and Welsh Government Transport and this is being signed. A signed copy will be forwarded.
- 8.2 RWE will seek to agree a set of conditions with the Council for discussion at the inquiry.
- 8.3 RWE will also seek to negotiate planning obligations in order to secure relevant project provisions including a habitat restoration and management Plan.
9. **CORE DOCUMENTS**
- 9.1 Attached is a draft list of proposed core documents specific to Carnedd Wen for Session 2 which may be referred to during the inquiry. RWE will seek to refine this list with the other parties to the inquiry before Session 2 opens.

**EVERSHEDS LLP  
1 Callaghan Square  
Cardiff CF10 5BT  
10 September 2013**