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For the attention of Inspector A D Poulter BA BArch RIBA

4th February 2013

**By email only**

Dear Sir,

**The Mid Wales (Powys) Conjoined Public Inquiry into 5 Windfarm Applications and a 132kV overhead Electric Line Connection.**

**Overview**

1. This submission by the Alliance of groups opposing the windfarms, and other interrelated infrastructure proposals which will be promoted to serve them, asks the Inspector to decide at this stage that applications for the 4 free-standing windfarms (Llanbadarn Fynydd, Llaithddu, Llanbrynmair and Carnedd Wen) are
  - (i) not accompanied by sufficient information to enable the Secretary of State to discharge his obligations contemplated by the EU Directive relating to Environmental Assessment of 'project(s)' and or in the alternative,
  - (ii) that the Inquiry and Secretary of State cannot discharge the obligations imposed by domestic EIA Regulations for any one or more of the windfarm applications.

The Alliance contends that it can be determined now that the information submitted by the promoters is insufficient and that the Inquiry should be halted or alternatively postponed until deficiencies are met.

**Short Point**

2. The short point is that 4 of the 5 windfarm proposals<sup>1</sup> depend upon the provision of a new connection to the Grid via new links to a new substation. They are part of an overall project or projects which are not yet formulated to an extent where

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<sup>1</sup> Llanbadarn Fynydd, Llaithddu, Llanbrynmair and Carnedd Wen.

an assessment of the environmental effects and information contemplated by the EU Directive for the project(s) can be addressed. The decision to approve any one of those windfarms would be inescapably flawed and scarce human and financial resources of the Alliance (and public bodies) will be wasted. These Inquiries should be, if not cancelled, then postponed until after the relevant information (which is said to be on its way) has been provided. Even at a purely domestic and disaggregated level under the Electricity Works EIA Regulations, the missing elements of description and environmental assessment lead to the same practical result because they constitute inextricably related effects of the windfarms – which might be characterised as direct, indirect, secondary or cumulative effects.

3. The Inquiry for the 5<sup>th</sup> windfarm (Llandinam) (which has an associated 132kV application) must stand or fall with the others in order for the direct, indirect, secondary and cumulative effects of all the projects to be considered together and in respect of each.
4. The Alliance is not a commercial undertaking. Its members need to make time to engage with these inquiries (and the preparation required for them) either from paid or unpaid leave or from what otherwise would be family or leisure time. They have also contributed their own money to a fund which can support some limited elements of professional assistance. It is wholly unacceptable for the Alliance to be faced with a need to address a project (or collection of projects) which is not yet fully described and whose constituent parts, claimed to be needed in order to deliver electricity to the Grid (and deliver claimed benefits), are not yet formulated and in respect of which no complete ES can be or has been presented. In short, unless and until (i) the constituent parts of the project(s) are described and (ii) the related environmental information is available, the Inquiry should be halted or adjourned.

### **The Project(s)**

5. The Combined PI is expected to consider applications for 5 proposed electricity generating stations: 4 free-standing wind farm applications<sup>2</sup> and a 5<sup>th</sup> with an associated 132kV line application<sup>3</sup> (albeit likely to be amended, it seems). The

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<sup>2</sup> Known as Llanbadarn Fynydd, Llaithddu, Llanbryn-mair and Carnedd Wen.

<sup>3</sup> Known as Llandinam.

proposals have been brought together at a combined inquiry so that, *inter alia*, the Inspector can report to the Secretary of State upon their indirect, secondary and cumulative effects as part of an overall balance which weighs any benefits with 'disbenefits'. The benefits relating to energy generation cannot (self-evidently) be achieved without the ability to deliver the electricity to the users.

6. As far as the Alliance can discover, it is expected that the 4 free-standing windfarms will be connected into the National Grid at a connection in England. (So too, would the 5<sup>th</sup> windfarm be connected but via Welshpool and a 132kV line promoted at this Inquiry). They could not otherwise function for their desired purpose.
7. Expressed shortly, and as the Alliance currently understands matters, it is presently expected that SPEN will bring forward proposals for new 132kV lines from each of the 4 free-standing windfarms into a single new substantial 'Hub' which will include transformer equipment etc in order to convert the power from 132kV to 400kV. That Hub would then be connected to the Grid at a place in England by a new 400kV line to be promoted by National Grid.
8. The nearest point on the grid at which a connection can be made has been said by National Grid to be at or around Lower Frankton in Shropshire. National Grid has stated that its preferred site for a new intermediate Hub or substation is presently in or around Cefn Coch. It is being assumed that each of the four windfarms would be connected to the Grid via this Hub or substation. The new grid connection from the new Hub would be via a new 400kV line, either overhead or underground, or perhaps a mix of the two, and would have a length approaching 50km. National Grid is exploring potential alignments for the 400kV line running through the Powys Uplands, one of two variant routes along the Vyrnwy Valley and open land to the south and east of Oswestry. None of the planning for any of this new infrastructure has reached a stage at which an application can be made. Each part of it is likely to have substantial effects on a range of different environmental factors, to be highly contentious and to be environmentally disruptive.
9. Each of the 4 windfarm applications is thus only one part of a single project (or a part of a group of projects) which includes the new 132kV lines, the new Hub and

the new 400kV line. Whilst these other parts are expected to be promoted through different processes, this remains a single project (or group of projects) made up of those different but fundamentally interrelated elements. The objective of the EU Environmental Assessment Directive is that environmental assessment should be engaged for any 'project' (art 1(2) <sup>4</sup>). Each of the 4 windfarm proposals is (either individually or collectively) part of a "project" as contemplated by the Directive. The environmental effects of each project - as a project - need to be addressed as part of any decision-making process for any part of that project. The environmental assessment itself and the environmental information garnered through due process, needs to be as thorough and comprehensive for any one part as for any other part. And a necessary precursor is a description of the project and an Environmental Statement which addresses each constituent part as well as the whole. Only then can the process of addressing the direct and indirect, secondary, cumulative, short, medium and long-term, permanent and temporary effects of the project begin.

10. There are as yet

- no formulated proposals - and no ES - for the new 132kV lines expected to serve the 4 free-standing windfarms;
- no formulated proposals - and no ES - for a new 132kV/400kV transformer Hub <sup>5</sup>; and
- no formulated proposals - and no ES - for any new 400kV link from it.

Thus this Inquiry is at a stage where the project(s) has not even yet been described (a further basic tool expected by the Directive), let alone assessed as a whole - together with its own indirect, secondary, cumulative (etc) effects.

11. Even then, those effects of these additional parts (once identified and described) are and will be effects of the project. Thus the environmental effects (say) of any new 400kV line in Shropshire, or of a new Hub at or in the vicinity of Cefn Coch, or of any new 132kV lines from windfarm(s) to Hub are effects of the project(s) of which the 4 windfarms are but a part. An assessment of the environmental effects

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<sup>4</sup> Of Directive 2011/92/EU – the 'consolidated' EIA Directive, available eg at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>

<sup>5</sup> The Alliance understands that an earlier suggestion for two hubs (at Cefn Coch and at Abermule) has been superseded, but notes that the OSoC for the LLaitthddu proposals indicates that this understanding may be wrong (see §2.5 of that OSoC).

of each and every part of the project(s) is necessary before giving approval to any part of the project(s). Moreover, the balance of effects of, say, the 400kV line part of the project may be such that the benefits claimed by other parts cannot be delivered: the balance of the project as a project (and the balance for any constituent part) will or may be different as a result of the consideration given to another part. The analysis may be expected, to a greater or lesser extent, to be iterative.

12. In short, the Secretary of State cannot presently discharge his obligations contemplated by the Directive for any of the 4 freestanding windfarm proposals.
  
13. This is a fundamental difficulty of a kind which the Alliance perceives the Secretary of State has already recognised when setting out his policy and advice in EN1 (albeit specifically in contemplation of 2008 Act applications). We reproduce below for the sake of convenience paragraphs 4.9.2 and 4.9.3 of EN1 but first draw attention to the careful use of the words 'project' and 'elements', and the reference to the EU EIA Directive contained in the following extracts.

*4.9.2 The Planning Act 2008 aims to create a holistic planning regime so that the cumulative effect of different elements of the same project can be considered together. The Government therefore envisages that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application to the IPC or in separate applications submitted in tandem which have been prepared in an integrated way. However this may not always be possible, nor the best course in terms of delivery of the project in a timely way, as different aspects may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls). So the level of information available on the different elements may vary. In some cases applicant(s) may therefore decide to put in an application that seeks consent only for one element but contains some information on the second. Where this is the case, the applicant should explain the reasons for the separate application.*

*4.9.3 If this option is pursued, the applicant(s) accept the implicit risks involved in doing so, and must ensure they provide sufficient information to*

*comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections. The IPC must be satisfied that there are no obvious reasons why the necessary approvals for the other element are likely to be refused. The fact that the IPC has decided to consent one project should not in any way fetter its subsequent decisions on any related projects.*

14. Clearly this is written in the context of projects and elements of projects promoted under the 2008 Act, but the requirement to address the *project* and the *EIA Directive* (not simply domestic regulations relating to any constituent part of any project) is central to and lies behind that advice. That much is also plain from para 4.9.3 where the SoS is contemplating the "*implicit risk*" of an approach which pursues constituent parts separately, but making it plain that each part so pursued is still only "*one element*" of the project – as highlighted in para 4.9.2. Whilst the risk is borne by the promoter, it also casts a financial and resources burden on other participants.
15. The Secretary of State is plainly recognising (and alerting promoters to) the points made above.
16. In this matter, other constituent parts of the project(s) are currently being prepared, although they are not yet at a state which could contribute to a complete description of the project(s) nor to the overall assessment of environmental effects of the project(s).
17. SPM, for example, has made it plain that (for the new 132kV lines) it expects to be in a position to identify which of 3 route options will be selected as the preferred route – but not until autumn 2013. And that it expects to be able to make an application for consent – but not until mid 2014 (SPM 001 §§15 - 17). Even apart from any slippage, the earliest date for the production of an ES which is compliant with the 2008 Act processes might be somewhere between those two dates, but probably closer to the second. Thus that element of the project(s) cannot be known until about mid 2014. And the consideration of the environmental effects of that part of the project(s) by the decision-maker and members of the public involved in the environmental assessment and decision-making process cannot begin until then.

18. The position of National Grid for any new 400kV connection is even more vague, but the Alliance understands that National Grid is prepared to offer a date as being "during 2013" for submission of any formulated proposals for a new 400kV line and for a new Hub (presumably together with any associated ES). Again, two further crucial elements of the project(s) (and the ability to assess their effects as part of that project or at all) are simply missing.
19. Moreover, any persons who discover that they are affected by any one or more of these additional parts of the project once formulated may (upon discovering the position) have something to say about any one or more of the windfarm parts of the project (or other parts of the new infrastructure) and thus on the project as a whole as well as any one or more identifiable parts. The Directive substantively requires sufficient time to be given to the public in order effectively to prepare for and to participate in decision-making relating to projects (Art 6(6)) and the decision-maker puts his ability to comply with Art 8 in jeopardy.
20. There is, in addition to these factors a clear procedural fairness disadvantage which would be imposed on the Alliance if proceedings are not halted or adjourned for sufficient time. When it is known (as it is) that material which is likely to be important for the Alliance's case will be provided in a time frame which is known (subject to slippage) a failure to call a halt or to adjourn proceedings so that it can be considered would be fundamentally and incurably unfair.

### **The Electricity Works EIA Regulations**

21. Although related and similar, a different point arises from the 'domestic' regulations which are engaged for all the applications before this Inquiry. The effect on the Alliance and on public administration and on fairness is similar and calls for the same result.
22. The Inspector will be familiar with The Electricity Works EIA Regulations<sup>6</sup> which apply in relation to all the applications before this Inquiry. Schedule 4 (Part 1)

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<sup>6</sup> The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 SI 2000/1927 (as amended).

repeats the message from the Directive and from similar regulations applicable elsewhere and includes a requirement to address

*a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:*

*(a) the existence of the development; ... (para 3)*

and a non-exhaustive list of environmental topics to be addressed as appropriate is set out at para 2, viz

*... population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.*

23. As described above, and in the alternative, even if each of the 4 free-standing windfarms is not part of a 'project', each will be unavoidably associated with the impacts attributable to any new 132kV lines, new Transformer Hub and new 400kV grid connection. The proposed form and location of each is not described and there is in respect of each no ES addressing the topics listed above (or at all) and no material sufficient to comply with the 2000 Regs available. It is all on its way (it seems) but not yet prepared or available.

### **Formal Application**

24. Under these circumstance we urge you to conclude at this stage:

- (a) that there is no prospect of this inquiry (lawfully) proceeding to recommend approval of these five windfarm applications or any of them;
- (b) that the Secretary of State could not reasonably come to any other decision;
- (c) that to save time, resources and money, and to retain public confidence in due process, this conclusion should be made now, and the Inquiry procedure halted.
- (d) In the alternative, should you be confident that the required information (and all of it) will be made available within a reasonable timescale, the Inquiry should not commence until time has been allowed for its implications to be assessed by the parties to the Inquiry and by members of the public who may have an interest and wish to participate at the Inquiry as a result. To commence without that information being available would place unreasonable burdens on those who may have to assess its impact and respond to it. It would not be reasonable, in our

view, to commence on the expectation that this information, which is essential to the case the Alliance will be making, would become available at some time in the future, since we could neither commence our case, nor could we fully prepare our case in the absence of the information. It would be incurably unfair.

25. We anticipate that this application may be addressed at the PIM (where we intend formally to raise it) but in the meantime, we continue to endeavour to observe your advice on procedure given on 28<sup>th</sup> November 2012. But the Alliance also notes that further and additional supplementary Environmental material (different from that considered above) is promised via some of the Outline Statements provided to date. The Alliance will address the implications of that aspect at the PIM after first trying to ascertain the likely embrace of that material.

Yours sincerely

The Alliance