



The Planning Inspectorate
National Infrastructure
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our reference JLW/1095291/O42683125.1/JLW

Your reference EN010069

13 March 2019

Dear Sirs

Application by Abergelli Power Limited ("APL") for the Abergelli Power Project ("APP")

We write on behalf of Abergelli Solar Limited ("ASL") in respect of the above matter.

We can confirm that ASL has reached agreement with APL as described within their Relevant Representation submitted on 1 August 2018 and subsequent letter to the ExA dated 3 October 2018. ASL now therefore withdraws their objection to the APP.

This withdrawal is provided on the condition agreed with APL that the DCO for the APP shall include the Protective Provisions for the benefit of ASL in the form attached to this letter.

Yours faithfully


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SCHEDULE 1

AGREED WORDING FOR PROTECTIVE PROVISIONS

Application

1. For the protection of the solar operator as referred to in this Part 6 of this Schedule 11, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

Interpretation

2. In this Part of this Schedule—

“apparatus” means any electrical cables, fibre optic cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

“in” in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

“solar farm permission” means full planning permission granted by the City and County of Swansea on 28 May 2013 for the installation of ground mounted array of solar panels, inverter substations and 2.4m fencing on the land at Abergelli Farm, Felindre, Swansea, SA5 7NN (ref 2013/0135);

“solar farm site” means the site on which planning permission was granted by the solar farm permission;

“solar operator” means Abergelli Solar Limited being the operator of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

Acquisition of land

3. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any apparatus or extinguish any easement or other interest of the solar operator otherwise than by agreement (such agreement not to be unreasonably withheld).

Access

4. If in consequence of the agreement reached in accordance with paragraph 3 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the solar operator to maintain or use the apparatus no less effectively than was possible before such obstruction.

Apparatus in streets subject to temporary prohibition or restriction

5. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), the solar operator is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Specified Works

6.—(1) Not less than 28 days before starting the execution of any specified work in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 6 metres of any apparatus, or

will or may affect any apparatus, the undertaker must submit to the solar operator a plan, section and description of the specified works to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the solar operator for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the solar operator is entitled to watch and inspect the execution of those specified works.

(3) Any requirements made by the solar operator under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the solar operator notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

7. The undertaker must pay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, alteration or protection of any apparatus which may be required in consequence of the execution of any specified work.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the solar operator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the solar operator for any other expenses, loss, damages, penalty or costs incurred by the solar operator,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the solar operator, its officers, servants, contractors or agents.

(3) The solar operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The solar operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 8 applies. If requested to do so by the undertaker, the solar operator shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by the solar operator.

Expert determination

9.—(1) Article 43 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 43 (arbitration).