

The North Wales Wind Farms Connection Project

**SP Manweb's Written Summaries of Oral
Evidence (DCO Hearing 10th Decem-
ber 2015) Including Action Notes**

21st December 2015

Application Reference: EN020014
Deadline 9 Submission



The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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North Wales Wind Farms Connection Project – Written Summaries of Oral Evidence (DCO Hearing 10th December 2015) Including Action Notes submitted to PINs 14 December 2015

**Written summary of sp Manweb's (the "Applicant") Oral Case put at the ISSUE
SPECIFIC HEARING on THE DRAFT DCO**

10th December 2015

1. INTRODUCTORY REMARKS

- 1.1 This document summarises the Applicant's case as presented at the Issue Specific Hearing (the "**IS Hearing**") held on 10th December 2015 at Denbigh Town Hall, Denbigh.
- 1.2 The note addresses each of the agenda items set by the Examining Authority, as published on the Planning Inspectorate's website on 30 November 2015 (the "**Agenda**"). Issues on which submissions were made are grouped under the headings provided in the Agenda.
- 1.3 Please note that in this document the terms "the Applicant" and "SP Manweb" are used interchangeably.

2. INTRODUCTION OF THE PARTICIPATING PARTIES

- 2.1 Speaking on behalf of the Applicant:-
 - 2.1.1 Mark Westmoreland Smith of Counsel (Francis Taylor Building); and
 - 2.1.2 Richard Griffiths (Partner at Pinsent Masons LLP)
 - 2.1.3 Huw Thomas (SP Manweb)

3. ITEM 3

4. Article 12- To examine the revised wording of article 12 in Draft DCO v4 and to establish whether this now has been agreed with DCC and whether the details within the other articles between 10-16 have also been agreed with DCC

- 4.1 Mark Westmoreland Smith confirmed, on behalf of the SP Manweb, that on the 9th December 2015 Denbighshire County Council agreed to the wording of articles 10-16 of the DCO relating to highways matters. This agreement will be recorded in a Statement of Common Ground to be submitted to the Examining Authority.
- 4.2 Under this agenda item the Examining Authority, also considered a number of further amendments to the DCO. These included:
 - 4.2.1 That the DCO should include a mechanism to certify the key documents supporting the application for development consent by the Secretary of State. It was suggested that amendments should be

made to Article 2/Schedule 2, Requirement 1 together with the inclusion of an additional Schedule with the relevant documents listed.

4.2.2 Amendments to Article 22 (Funding) so that it includes a requirement for SP Manweb to provide a bond/guarantee.

4.2.3 Amendments to Article 33 (Disapplication of legislation provisions)

Certification of documents

4.3 Mr Westmoreland Smith confirmed that the Applicant would consider the inclusion of a Schedule detailing those documents to be certified by the Secretary of State. It was considered in may be necessary for the Schedule to be split out between those documents to be certified by the Secretary of State and those documents to be approved by the relevant planning authorities, but that SP Manweb would consider this point further.

Article 22(Funding)

4.4 Mr Westmoreland Smith stated that he would seek instructions from SP Manweb regarding an amendment to Article 22 to mirror the Hornsea DCO, but that at present the position is as set out at paragraph [12] in the written summary of the Applicant's oral representations made at the Issue Specific Hearing of the 9 December 2015 and submitted to the Examination for Deadline nine.

Article 33 (Disapplication of legislation provisions)

4.5 It was confirmed that Article 33 will be updated to reflect the current position of Natural Resources Wales ("NRW") on the disapplication provisions and the protective provisions. Those amendments would require the deletion of Article 33(b) and possibly Article 33(a), depending on whether Section 109 of the Water Resources Act 1991 applied to the local authorities. In addition Part 3 of Schedule 9 would be amended to remove reference to NRW from those protective provisions.

4.6 Mr Westmoreland Smith informed the Examination that the local authorities are the consenting authorities for water courses other than main rivers in the area and that both local authorities had agreed to the protective provisions as drafted. As such, Part 3 of Schedule 9 would apply only the local authorities in the next iteration of the DCO submitted at Deadline nine.

ITEM 4

6. **Schedule 1 - To examine, on a 'without prejudice basis' whether there is potential for a hybrid scheme with some parts of option A and some parts of option B and whether a further draft DCO is required for such a scheme.**

6.1 The Examining Authority stated that Option B is the preferred scheme, but that Mr Dewi Parry considers the plans issued to be unclear. It was stated

that the decision as to whether a hybrid scheme is required is dependent upon the decision of Mr Parry as to his option preference. SP Manweb agreed to discuss the confusion with Mr Parry to enable him to make an informed decision on this.

7. **ITEM 5 REQUIREMENTS**

8. **Examination of the proposed consultation process required by requirement 5 (landscaping) and the implications that this could have on proposed landscape mitigation.**

8.1 The Examining Authority asked SP Manweb to reflect on a further amendment to requirement 5 (Schedule 2) such that the landscaping scheme would be agreed with the relevant landowners. Further, what would the outcome be if the relevant planning authority sought landscaping which conflicted with the wishes of the landowner. How would this conflict be resolved?

8.2 Mr Westmoreland Smith explained that SP Manweb is unable to add wording into requirement 5 to the effect that the landscaping plan would be agreed with landowners. The final approved landscaping scheme under Requirement 5 must be approved by the relevant planning authority and SP Manweb cannot remove this discretion. The reason for this is that the landscaping mitigation is a requirement of the environmental impact assessment and must be delivered to mitigate the impacts of the Proposed Development. However, to try and assist with landowner concerns, SP Manweb offered to write into the requirement an express duty to have regard to the consultation responses from landowners over the location of landscaping.

8.3 Further, much of the concern that has been expressed by landowners is in relation to highways safety. Mr Westmoreland Smith noted that these concerns are unlikely to materialise given that the proposals for landscaping are to be approved by the local planning authorities, who are also the highway authority.

8.4 It was acknowledged that there may be conflicts that SP Manweb is unable to resolve. However it would attempt to manage these conflicts through early discussion with the LPA and landowners and any that compensation is available for resolution where necessary.

9. **Examination of whether requirement 6 (implementation and maintenance of landscaping) is necessary.**

9.1 Mr Westmoreland Smith explained that Requirement 6 was incorrectly titled and does not address implementation and maintenance, which are covered by Requirements 5(3) and 7(3). Instead, it was noted that Requirement 6 deals with planting where it is removed, dies or becomes seriously damaged or diseased, which is distinct from maintenance.

- 9.2 It was agreed that SP Manweb would consider whether the remit of Requirement 6 could be encompassed in Requirement 5 or 7, or, if it is considered that there is benefit in it remaining a distinct requirement, that this be reflected in the wording and/or re-titling of the requirement.
10. **Further examination of requirement 10 (construction hours) in light of responses received since the first set of hearings.**
- 10.1 The Examining Authority said they had noted the concerns voiced about the construction hours provided for in Requirement 10 by local residents and the local authorities. SP Manweb was asked to reflect on this and further justify those hours referred to in requirement 10. Further, the Examining Authority requested that SP Manweb considered whether further restricted hours could be adopted for HGVs deliveries.
- 10.2 SP Manweb provided an explanation of the proposed construction working hours at the hearing. Mr Westmoreland Smith explained that the results of the environmental impact assessment had informed the proposed construction hours. Those assessments take into account the baseline scenario (i.e. a rural location with low background noise). Further, the construction working hours must be considered in the context of the authorised development being a linear project and construction in any one location will be for a limited period of time. Further, Huw Thomas on behalf of the Applicant explained that:
- 10.2.1 SP Manweb requires the use of long days to construct difficult sections of the line safely;
- 10.2.2 The community and agricultural liaison officers will agree timings of activities with farmers, landowners and local communities that will limit disruption to a minimum. For example, to avoid farming activities, school activities, poor weather, movement of livestock etc.;
- 10.2.3 SP Manweb has connection agreements in place to deliver the connection by March 2017 and the construction working hours are required to deliver the authorised development by that date. If there was slight slippage in the programme SP Manweb would require those working hours to meet the delivery date; and
- 10.2.4 From SP Manweb's experience in constructing overhead lines on farmland, landowners and communities generally want developments completed as quickly as possible to minimise disruption. If the construction working hours are reduced then this would result in a longer working programme and prolonged disruption.
- 10.3 It was confirmed that the use of HGV's will be limited to Broadley's farm and this will involve 1-2 deliveries a week. Therefore it would be possible to implement more restricted hours for HGV deliveries.

- 10.4 Notwithstanding the above, SP Manweb committed to reviewing requirement 10 and making amendments to it where appropriate for Deadline 9.
11. **Examination of whether the draft Construction Environmental Management Plan (the CEMP) includes the details listed in requirement 13 (CEMP) and whether there is the need to further add to this list.**
- 11.1 In response to a question raised by the Examining Authority, Mr Westmoreland Smith confirmed that it is the intention of SP Manweb to make sure that the environmental management plans reflected commitments made to Interested Parties. The Examining Authority referred to an example that the current version of the TMP did not commit to deliveries taking place outside of school hours so as to relieve the impact on local residents. It was noted that this is reflected in paragraph 2.4.5 of the Traffic Management Plan ("TMP") Version 2, submitted at Deadline Four, which reads:
- 11.1.1 "As provided for in section 8.3 of the CEMP, the Community Liaison Officer will establish, in conjunction with the relevant highway authority, the road network that is affected by school drop offs and pick ups and the period when that road network should not be used by construction traffic for the Proposed Development. SP Manweb will ensure that traffic associated with the construction of the Proposed Development does not use the identified road network during the school drop offs and pick ups period. All construction vehicles shall be to Euro standard IV class."
- 11.2 SP Manweb confirmed that those matters listed at subparagraphs 1(a), (b) and (c) of Requirement 13 are not intended to be exclusive and that the environmental management plans could include other matters. The requirement would be amended to reflect this.
12. **Further examination of the need for Requirement 16 (amendments to approved details) and whether it would meet the relevant test for planning conditions imposed on planning permissions under the Town and Country Planning Act 1990 and Welsh Government Circular WGC 016/2014: The Use of Planning Conditions in Development Management.**
- 12.1 Mr Westmoreland Smith explained that Requirement 16 makes it clear that the undertaker may apply to the relevant planning authority to revise a plan or scheme that the planning authority has approved under the requirements. Sub-paragraph (2) of the requirement ensures that the amended plan or scheme does not give rise to any new or materially different environmental effects in comparison to the authorised development as approved. The requirement specifically excludes variations of land plans, works plans and access, rights of way plans.
- 12.2 The courts have previously held that tail-pieces are unlawful and therefore the correct mechanism to vary the terms of a plan or scheme in a planning permission context would be under section 96A of the Town and Country Planning Act 1990. Requirement 16 provides a mechanism, on the face of

the order, which allows variations of approved plans or schemes, subject to the approval of the local planning authority. This approach is considered lawful and a helpful approach to take to ensure that SP Manweb retains a suitable amount of flexibility when constructing the authorised development.

- 12.3 The Examining Authority asked why SP Manweb felt the flexibility is required and asked to work through an example. Discussions focused on the Hedgerow Management Plan ("**HMP**") and specifically the Examining Authority asked SP Manweb to consider changes to Requirements 5,6,7 and 13 if the matter in which SP Manweb require flexibility are limited to the landscaping scheme, the reinstatement planting plan and the environmental management plans.
- 12.4 Mr Westmoreland Smith explained that Requirement 16 could be incorporated into Requirement 5, 6, 7 and 13 but that this may be construed as a tail-piece and that the courts would consider the requirements unlawful. Requirement 16 as it stands is considered more appropriate; Requirement 16(2) provides that the Applicant consult with NRW and limits changes that can be made under the requirement to those within the remit of the Environmental Statement. Requirement 16 is clear that any revisions to approved documents must still be within parameters of the environmental statement. The requirement is therefore clear, precise, necessary and beneficial to the undertaker and the relevant planning authority.
- 12.5 Further to a question from the Examining Authority, it was stated that the genus of Environmental Impact Assessment is to assess the likely significant effects of a development. The wording of Requirement 16, incorporates this and the use of the word 'unlikely' is considered acceptable and has been accepted by the Secretary of State in previous made Orders, including the Progress Power (Gas Fired Power Station) Order 2015 which also included a linear connection.
- 12.6 Notwithstanding SP Manweb's submissions at the hearing, it was agreed that SP Manweb would consider the comments made by the Examining Authority and respond for Deadline 9.
13. **Examination of the proposed wording of requirement 18 (decommissioning) and whether this addresses the concerns raised at the first set of hearings (and at DL6) and whether it would meet the relevant test for planning conditions imposed on planning permissions under the Town and Country Planning Act 1990 and the Welsh Government Circular WGC 016/2014: The Use of Planning Permission Conditions for Development Management.**
- 13.1 The Examining Authority explained that they considered that the decommissioning requirement failed the policy tests that apply to conditions requirements. Specific reference was made to the terminology "at some future date" and "likelihood".
- 13.2 Mr Westmoreland Smith stated that the wording "at some future date" can be deleted. The words "*are no longer in use*" are clear and precise, as "use" is

defined in the order. When SP Manweb no longer utilises the overhead line as part of its distribution system then the overhead line would be no longer in use. The principle evidence of whether the development is in use is if there is a connection agreement in place.

- 13.3 The words "*no likelihood of*" are also clear and precise. Mr Westmoreland Smith explained that in the event that the overhead line was no longer in use, then SP Manweb would need to produce evidence to the relevant planning authority that there was a likelihood of the line being in use otherwise the requirement would come into effect. Mr Westmoreland Smith confirmed that it is for the LPA to determine that likelihood, but in essence, SP Manweb would need to demonstrate that a connection agreement or connection offer, for example (using the current process) was in place.
- 13.4 In response to a question from the Examining Authority, Mr Westmoreland Smith confirmed that the LPA has the right to ask the Applicant whether a requirement is being complied with at any time. It was agreed that wording would be added to the requirement to expressly enable the LPA to request SP Manweb to demonstrate use of the line.
- 13.5 SP Manweb confirmed that they would re-consider the drafting of requirement 18 in the context of the discussions at the hearing.

14. **SCHEDULE 8 AND DETAILS IN COLUMN THREE – THE APPLICANT WAS REQUESTED TO SUPPLY THE EXAMINING AUTHORITY WITH BETTER DESCRIPTIONS**

- 14.1 Mr Westmoreland Smith explained that SP Manweb's current position was that Schedule 8 already provided the clarity that the Examining Authority was looking for. Schedule 8 identifies the land to which Article 27 applies. Paragraph 1(a) – (e) of Article 27 explains the works that can take place on the land referred to in Schedule 8.
- 14.2 It was explained that columns 3 and 4 must be read in conjunction with one another. Column 3 refers to the works to be undertaken and where those works are not simply construction works further wording has been added to the table, for example for Plot 1B reference is made to felling or lopping of trees; Plot 8B relates to access and Plot 53B refers to the site compound at Broadleys Farm. Column 4 explains what construction works will be undertaken with reference to the works described in Schedule 1. This approach provides a clear basis upon which to determine what construction works will take place on each plot.
- 14.3 It was stated that as SP Manweb had removed from its request for compulsory acquisition powers for the construction of the authorised development. It would therefore have to rely upon the powers in Article 27.
- 14.4 Mr Westmoreland Smith noted that SP Manweb could not provide additional detail in respect of the construction works that can take place on each plot as SP Manweb does not have the ability to limit the contractors, who will carry out the construction of the authorised development. For this reason,

the Applicant does not consider that it can further particularise the works without impacting on the ability of contractors to build the line.

14.5 Following a request from the Examining Authority, Mr Westmoreland Smith confirmed that the Applicant would consider the insertion of the wording: "include, but not necessarily limited to" into the schedule.

15. **REQUIREMENT 18**

15.1 The Examining Authority explained its concerns in respect of Requirement 18 (decommissioning) particularly in light of its concerns over the cultural heritage impacts at Berain. It was indicated that reducing the period of impact from in perpetuity to a temporary period may assist in the planning balance, when considering impacts on the cultural heritage at Berain against the benefits of the renewable generation. SP Manweb confirmed that it would consider the drafting of Requirement 18 in the light of the comments from the Examining Authority.

15.2 It was agreed that where possible the Applicant would make the changes to the requirements as requested by the Examining Authority and that these would be reflected in the revised draft DCO to be submitted for deadline nine.

15.3 In addition, if suggestions are not possible to incorporate that an explanation as the reasoning for this would also be provided for Deadline nine.

Actions

No	Action	Appendix Number	Deadline
1	The Applicant is to prepare a schedule of certified plans and documents to be included in the draft DCO to ensure version management and provide clarity to the LPAs. The last editions of the Environmental Management Plans submitted before the end of the Examination are to be included in Requirement 1 as certified documents.	One	9
2	The Applicant to provide confirmation in a SoCG with DCC that agreement has been reached on Articles 10 to 16 of the draft DCO	Two	9
3	Article 22 – the applicant is to reconsider the wording in order to provide a financial guarantee (or bond) to secure the funding for the compulsory acquisition of rights as provided for in the Hornsea One Offshore Wind Farm Order 2014.	Three	9
4	Article 33 should be amended to reflect NRW's positions, which will also require corresponding changes to Schedule 9	Four	9
5	The title of Requirement 6 should be amended to more suitably reflect the content	Five	9
6	The Applicant should reconsider the need for hours currently included in Requirement 10 of the draft DCO and consider the possibility of limiting HGV movements to week day working hours only	Six	9
7	The Applicant should consider including the following wording in Requirement 13; "should include but not limited to"	Seven	9
8	The Applicant should consider removing and/or consider wording with particular reference to the	Eight	9

SP Manweb: Appendices to the Applicant's Oral Summary to the DCO Hearing held on 10th December– Deadline Nine Document Submission

No	Action	Appendix Number	Deadline
	term “unlikely” in Requirement 16		
9	Notwithstanding the panel’s remarks, the Applicant should also look at removal of superfluous terms such as “at some future date” in Requirement 18	Nine	9
10	The Applicant should consider the provision of additional information presented in a tabular format which could include the provision of wording “included but not limited to” in Schedule 8	Ten	9
11	The applicant is to report back to the ExA following the site meeting discussions that are to be held with Mr Dewi Parry w/c 14 December regarding his preference (if any) for Option A or Option B pole locations in the vicinity of College Farm bungalow.	Eleven	9
12	The Applicant is to consider the provision an edition of the draft DCO based on Option B at DL9 which reflects all of the changes that were identified by the Panel at the end of the DCO hearing. This is to be provided as (i) a track changed edition (compared with the first edition of the Option B draft DCO) and also (ii) a clean copy with track changes accepted and (iii) a Word edition of the clean copy.	Twelve	9

* The numbering of the appendices corresponds to the numbering of the actions list set by the Examining Authority, as published on the Planning Inspectorate's website on 14 December 2015 (the "Actions List").

Appendix 1 – Action Point 1

The Applicant is to prepare a schedule of certified plans and documents to be included in the draft DCO to ensure version management and provide clarity to the LPAs. The last editions of the Environmental Management Plans submitted before the end of the Examination are to be included in Requirement 1 as certified documents.

This amendment has been made in the revised version of the DCO submitted for Deadline 9.

Appendix 2 – Action Point 2

The Applicant to provide confirmation in a SoCG with DCC that agreement has been reached on Articles 10 to 16 of the draft DCO

SP Manweb can confirm that agreement has been reached on Articles 10 to 16 in the draft DCO with DCC. The SoCG has been signed by both parties. SP Manweb refers the Examining Authority to section 4.5.1 of that document for such confirmation.

Appendix 3 – Action Point 3

Article 22 – the applicant is to reconsider the wording in order to provide a financial guarantee (or bond) to secure the funding for the compulsory acquisition of rights as provided for in the Hornsea One Offshore Wind Farm Order 2014.

This amendment has not been made to the revised version of the DCO submitted for Deadline 9. The explanation of why this amendment has not been made is included in the explanatory text at the front of the DCO. Please refer to this text.

Appendix 4 – Action Point 4

Article 33 should be amended to reflect NRW's positions, which will also require corresponding changes to Schedule 9

This amendment has been made in the revised version of the DCO submitted for Deadline 9.

Appendix 5 – Action Point 5

The title of Requirement 6 should be amended to more suitably reflect the content

This amendment has been made in the revised version of the DCO submitted for Deadline 9.

Appendix 6 – Action Point 6

The Applicant should reconsider the need for hours currently included in Requirement 10 of the draft DCO and consider the possibility of limiting HGV movements to week day working hours only

SP Manweb has amended the draft DCO and this has been submitted for Deadline 9. The explanations of those changes are included in the explanatory document at the front of the DCO. Please refer to that text.

Appendix 7 – Action Point 7

The Applicant should consider including the following wording in Requirement 13:
“should include but not limited to”

This amendment has been made in the revised version of the DCO submitted for Deadline 9.

Appendix 8 – Action Point 8

The Applicant should consider removing and/or consider wording with particular reference to the term “unlikely” in Requirement 16

SP Manweb has removed requirement 16 from the DCO submitted for Deadline 9. The consequential amendments are shown in the revised DCO submitted for Deadline 9 and described in the explanatory text at the front of the DCO. Please refer to this text.

SP Manweb: Appendices to the Applicant's Oral Summary to the DCO Hearing held on 10th December– Deadline Nine Document Submission

Appendix 9 – Action Point 9

Notwithstanding the panel's remarks, the Applicant should also look at removal of superfluous terms such as "at some future date" in Requirement 18

SP Manweb has redrafted requirement 18 in the DCO submitted for Deadline 9. Please refer to the DCO and the explanatory text at the front of the DCO.

Appendix 10 – Action Point 10

The Applicant should consider the provision of additional information presented in a tabular format which could include the provision of wording “included but not limited to” in Schedule 8

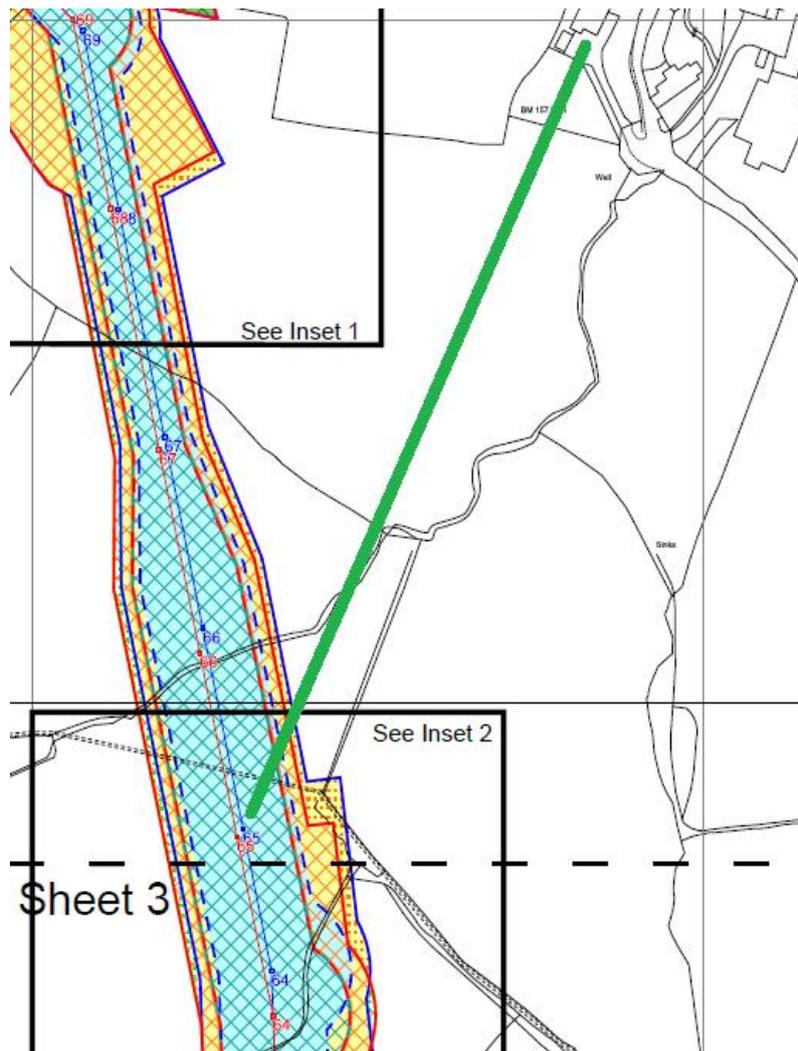
This amendment has not been made to the revised version of the DCO submitted for Deadline 9. The explanation of why this amendment has not been made is included in the explanatory text at the front of the DCO. Please refer to this text.

Appendix 11 – Action Point 11

The applicant is to report back to the ExA following the site meeting discussions that are to be held with Mr Dewi Parry w/c 14 December regarding his preference (if any) for Option A or Option B pole locations in the vicinity of College Farm bungalow.

SP Manweb has reviewed the representation made by Mr Dewi Parry on the 8th December (no Document Library reference at time of writing). SP Manweb considers that the statement made in its responses to second written questions (REP7-005) is accurate and that the comparison plans are also correct.

SP Manweb has checked the line of sight from College Farm. Given the position of pole 65 in Option B is 4m southwest (not southeast) from its original position it will continue to be screened by the two intervening mature tree's referenced by Mr Parry in his representation. Please see below an extract from Comparison Plan Sheet No. 4 (Document library reference OPB-013), annotated with a green line showing the line of sight from College Farm southwest towards pole 65. Please note that Option A is Blue and Option B is Red.



On 18th December 2015 Mr Parry's agent confirmed to SP Manweb that My Parry would favour Option B over Option A. SP Manweb also considers that Option B is more beneficial to Mr Parry than Option A. .

Appendix 12 – Action Point 12

The Applicant is to consider the provision an edition of the draft DCO based on Option B at DL9 which reflects all of the changes that were identified by the Panel at the end of the DCO hearing. This is to be provided as (i) a track changed edition (compared with the first edition of the Option B draft DCO) and also (ii) a clean copy with track changes accepted and (iii) a Word edition of the clean copy.

SP Manweb has revised the DCO for Option A and Option B. It has decided to submit a draft DCO for Option A and B for the sake of completeness. It has submitted the following documents for deadline 9:

1. Draft DCO for Option A (version 5);
2. Draft DCO for Option B (version 2);
3. Tracked change version of the Draft DCO for Option A showing the changes between version 4 and version 5;
4. Tracked change version of the Draft DCO for Option B showing the changes between version 1 and version 2;
5. Draft DCO for Option A (version 5) (word version); and
6. Draft DCO for Option B (version 2) (word version).

The draft DCO has an explanatory document at the front of each version of the DCO which explains those changes that have been made together with an explanation of those changes which SP Manweb has been unable to accommodate.