

Summary of Oral Representations made on behalf of ScottishPower Renewables at the Preliminary Meeting and Issue Specific Hearing held on 6 February 2019 in respect of the A30 Chiverton Cross to Carland Cross DCO

1. Introduction

- 1.1 At the Preliminary Meeting and Issue Specific Hearing into the DCO held on 6 February 2019, Mr Colin Innes and Miss Stephanie Mill of Shepherd and Wedderburn LLP made the following submissions on behalf of ScottishPower Renewables (“SPR”).

2. Preliminary Meeting

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Deadlines for submission of Statements of Common Ground

- 2.1 Mr Innes referenced the Interim Position Statement between the Applicant and SPR submitted by the Applicant prior to the Preliminary Meeting and explained that the Position Statement identifies that the focus of SPR and the Applicant’s efforts at this stage is to resolve the technical issues and that progress has been made in this regard. However, it is only once the technical issues have been resolved that the parties can move on to work out the consequences in terms of the works plans, protective provisions and legal agreement. The imperative is therefore to resolve the technical issues which both parties are working hard to do and there is a good element of co-operation between both SPR and the Applicant to achieve this.
- 2.2 Mr Innes echoed the Applicant’s comment that it is unlikely that SPR and the Applicant will have anything meaningful in terms of a Statement of Common Ground (“SoCG”) by Deadline 1. Mr Innes suggested that Deadline 2 may be a more achievable timescale however, even at Deadline 2 the parties may not have a fully completed SoCG in relation to all issues although we would hope to have closed off the technical issues and identified where we are going with other matters that arise from these. This will then drive the discussion around whether any additional works plans are required, the content of the protective provisions, etc.

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Hearings and Accompanied Site Inspection

- 2.3 Mr Innes noted that SPR have no specific request at the current time for a site inspection but this is dependent upon resolving the technical issues and if the issues are not resolved then a site inspection may be beneficial. Equally, if the Examining Authority (“ExA”) would like to visit Carland Cross Windfarm (“the Windfarm”) then SPR can facilitate this.
- 2.4 Mr Innes noted that SPR would like to reserve its position at this stage in respect of the need for an Issue Specific Hearing (“ISH”) in relation to the technical issues between the A30 Scheme and the Windfarm which are not resolved. If both parties are able to reach agreement on the technical matters then it is unlikely that an ISH will be necessary however at this stage the focus is on trying to resolve the issues.
- 2.5 If the technical issues are resolved then SPR’s involvement in the hearings is likely to focus on any further ISHs into the DCO and the Compulsory Acquisition Hearings.

3. Issue Specific Hearing into the DCO

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The function and structure of the submitted dDCO

- 3.1 SPR anticipates that protective provisions and a private legal agreement will be required to protect SPR’s position in respect of the impacts of the A30 Scheme on SPR’s Carland Cross Windfarm.

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Specific issues and questions bearing on the dDCO, raised by the ExA

- 3.2 Question 1.5.12

Paragraphs 4.22 – 4.25 of the EM refer to article 8 of the dDCO, which provides for deviation laterally or vertically from the authorised development with respect to certain specified works. Although reference is made to recent example Orders where this was used, it is my understanding that in the M20 and A14 the ability to exceed the maximum limits of deviation was limited to vertical, not lateral and in the M4 no such power was set out.

a) Would it be appropriate to exceed the vertical and horizontal limits of deviation without applying for a change to the DCO in accordance with the processes set out under the 2008 Act?

b) Given that the limits of deviation are themselves designed to permit flexibility to deviate from the proposed scheme, what processes would be put in place for the Secretary of State to determine whether or not the development proposed, in excess of the limits, would give rise to any new or worse environmental effects? Although there is a process in place for the discharge of requirements set out in Part 2 of Schedule 2 (requirements 16 and 17) there is no similar provision for the submission of any information to the Secretary of State in accordance with article 8.

3.3 Mr Innes highlighted that SPR has concerns about vertical and horizontal alignment at various locations as set out in SPR's Relevant Representation ("RR"). Mr Innes noted that SPR's ability to access the Windfarm is highly sensitive to the horizontal and vertical design and therefore a wide power to vary the vertical and horizontal alignment of works (in particular Work No. 5) could have detrimental effects upon SPR in the context of accessing the Windfarm.

3.4 The carve out at the end of Article 8 for limits of deviation to be extended requires the Secretary of State, following consultation with the relevant planning authority and highway authority to be satisfied that variations to the vertical or horizontal alignment in excess of the limits specified would not give rise to any new or materially worse environmental effects. The wording does not however account for the fact that there may be private interests affected by alteration to the alignment (for example, SPR).

3.5 At this point in time, SPR are not objecting to the specific wording of the Article however if it is retained, it enhances the need to crucially examine the wording of the protective provisions that may be appropriate for parties likely to be adversely affected by alterations to the alignment.

3.6 Question 1.5.14

Article 10 paragraph (4) of the dDCO sets out that the benefit of the Order could be transferred or leased to others by the undertaker.

How can it be confirmed that these parties would be able to meet the CA compensation costs if the DCO permitted transfer of the CA powers and TP powers to these bodies without further consideration by the Secretary of State?

3.7 Miss Mill noted that SPR are not expecting to be transferred powers under the order which would result in SPR being required to meet compulsory acquisition compensation costs or obligations and therefore SPR would not expect to be required to provide any sort of security or guarantee in respect of such costs.

3.8 Question 1.5.17

Article 13 places obligations on the highway authority in relation to the construction and maintenance of new, altered or diverted streets and other structures.

a) Has this been discussed with you as the relevant highway authority?

b) Are you satisfied that the provisions of this article would be appropriate?

3.9 Mr Innes noted that SPR and the Applicant are considering the consequences of the mitigation measures being proposed in respect of the A30 Scheme (for example, over-run areas), some of which may end up in the control of Cornwall Council.

3.10 It will therefore be necessary for the parties to engage with Cornwall Council in respect of how mitigation measures will be secured and maintained if they end up in the control of Cornwall Council.