

ScottishPower Renewables' response to Highways England's Response at deadline 8, which responded to the Examining Authority's request for further information dated 22 July 2019 in respect of the A30 Chiverton Cross to Carland Cross DCO

1. Introduction

- 1.1 This document provides a response to Highways England (HE) regarding their response to the Examining Authority's requirement for further information dated 22 July 2019 in respect of the A30 Chiverton Cross to Carland Cross DCO.

2. Response to HE submission on SPR statutory undertaker status

- 2.1 For the avoidance of doubt, ScottishPower Renewables (SPR) maintains its position that SPR is a statutory undertaker for the reasons set out in their response at deadline 8. This submission responds to the claim that SPR may not be a statutory undertaker in terms of the 2008 Act and in particular, under the definition provided by Section 127.
- 2.2 SPR agrees with HE that SPR would only qualify as a statutory undertaker for the purposes of s.127 Planning Act 2008 if it holds a licence that includes compulsory acquisition powers conferred by Schedule 3 to the Electricity Act 1989.
- 2.3 SPR does not agree that its licence does not include these compulsory acquisition powers conferred by Schedule 3 to the Electricity Act 1989, nor does it accept that it is subject to the definition of 'generating stations' with a capacity of at least 50MW. The reasons for this are set out below.

Definition of "statutory undertaker"

- 2.4 As set out in SPR's previous response, a second definition of "statutory undertaker" can be found in the 2008 Act at section 127. This section states that "statutory undertakers" has the meaning given by section 8 of the Acquisition of Land Act 1981 and also includes undertakers which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment.
- 2.5 Paragraph 2 of Schedule 16 of the Electricity Act 1989 states that a licence holder who is entitled to exercise any power conferred by Schedule 3 of the Electricity Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of a number of specified enactments, including the Acquisition of Land Act 1981.
- 2.6 It states at paragraph 2, sub-paragraph (2):

(2) A licence holder who is entitled to exercise any power conferred by Schedule 3 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—

[...]

(g) the Acquisition of Land Act 1981

It further states at sub-paragraph (9):

"(9) It is immaterial for the purposes of this paragraph whether any power conferred by, or by any provision of, Schedule 3 or 4 to this Act on the holder of a licence under section 6(1)(a) or (2) of this Act is qualified by restrictions, exceptions or conditions included in the licence."

- 2.7 Schedule 3 of the Electricity Act 1989 sets out the compulsory acquisition powers of licence holders.

Reasons why SPR is a statutory undertaker

- 2.9 As explained in SPR's previous response, Ofgem issued a direction under section 11A of the Electricity Act 1989. As a result of this modification, standard licence condition 14 and 15 of all electricity generation licences were turned on. Standard condition licence 14 is the relevant condition which required to be 'switched on' for the compulsory purchase powers to apply.

- 2.10 As a result of this modification, SPR's electricity generation licence includes standard condition licence 14, making SPR a licence holder who is entitled to exercise powers conferred by Schedule 3 of the Electricity Act 1989.
- 2.11 Paragraph 2 of Schedule 16 to the Electricity Act make it clear that a licence holder, regardless of any qualifications, exceptions or conditions included in the licence, shall be deemed to be a statutory undertaker for the purposes of the 1981 Act.
- 2.12 As SPR is deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981, it is therefore in turn, a statutory undertaker under section 127 of the Planning Act 2008.
- 2.13 SPR is also a statutory undertaker in terms of the definition first set out in the 2008 Act at Section 138. This is fully set out in our response for further information provided at deadline 8.