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27 October 2022

Our Reference: ECU00003439

Dear Denis O'Kane

APPLICATION FOR CONSENT UNDER SECTION 37 OF THE ELECTRICITY ACT 1989 AND DIRECTION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 THAT PLANNING PERMISSION BE DEEMED TO BE GRANTED TO INSTALL AND KEEP INSTALLED AN OVERHEAD LINE FOR THE CONNECTION OF BENBRACK WIND FARM SUBSTATION WITHIN THE PLANNING AUTHORITY AREA OF DUMFRIES AND GALLOWAY COUNCIL

Application

I refer to the application made by SP Transmission Plc ("the Company") dated 25 February 2022 for consent from the Scottish Ministers under section 37 of the Electricity Act 1989 ("the Electricity Act") to install and keep installed a 132kv wood pole overhead line between the proposed Benbrick windfarm substation (NX 52121 99096) and a defined point on the DE Route transmission line (NS 53770 00418) between Dalmellington and Carsphairn located in the planning authority area of Dumfries and Galloway (the "proposed Development").

The Development (as described in Annex 1) is located in the Planning Authority area of Dumfries and Galloway Council. This letter contains the Scottish Ministers' decision on the application.

Planning Permission

In terms of section 57(2) of the Town and Country Planning Act (Scotland) 1997 the Scottish Ministers may on granting consent under section 37 of the Electricity Act direct that planning permission be deemed to be granted in respect of the overhead line and any ancillary development. This letter contains the Scottish Ministers' decision on such a direction.

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that deemed planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Ministers consider

that a 5 year time scale for the commencement of the development is appropriate to allow and enable co-ordination where appropriate with other electricity development, and have therefore made a direction under section 58(2) of the Town and Country Planning (Scotland) Act 1997 as part of the determination for this consent.

Consultation

In accordance with statutory requirements, advertisements of the application required to be placed in the local press and Edinburgh Gazette. Ministers note that these requirements have been met.

Under Schedule 8 to the Electricity Act, notice of the application requires to be served on the Planning Authority. The planning authority was consulted on the application on 8 April 2022. No response was received. On 30 September 2022 a set of draft conditions was shared with the planning authority. Dumfries and Galloway Council confirmed on 24 October 2022 they were content with the conditions.

Consultation Responses

The Energy Consents Unit consulted the following organisations regarding the proposals: Dumfries & Galloway Council, Scottish Environmental Protection Authority (“SEPA”), NatureScot, Historic Environment Scotland (“HES”), British Horse Society, BT, Civil Aviation Authority – Airspace, Crown Estate Scotland, Defence Infrastructure Organisation (“DIO”), Fisheries Management Scotland, John Muir Trust, Mountaineering Scotland, NATS Safeguarding, RSPB Scotland, Scottish Rights of Way and Access Society (“ScotWays”), Scottish Water, Scottish Wildlife Trust, Visit Scotland, Carsphairn Community Council, Dalmellington Community Council, RAF, National Grid, The Coal Authority, Galloway Fisheries Trust (“GFT”), Game and Wildlife Conservation Trust, JNCC, National Farmers Union of Scotland, National Trust for Scotland, OFCOM, Ramblers Associated (Scotland), Saving Scotland’s Red Squirrels, Scottish Badgers, Scottish Outdoor Access Network, Sustrans, The Woodland Trust, Transport Scotland and Scottish Forestry.

The following organisations did not respond to the consultation: British Horse Society, Civil Aviation Authority – Airspace, Crown Estate Scotland, Fisheries Management Scotland, John Muir Trust, Mountaineering Scotland, RSPB Scotland, ScotWays, Scottish Wildlife Trust, Visit Scotland, Carsphairn Community Council, Dalmellington Community Council, National Grid, The Coal Authority, Game and Wildlife Conservation Trust, JNCC, National Farmers Union of Scotland, National Trust for Scotland, OFCOM, Ramblers Associated (Scotland), Saving Scotland’s Red Squirrels, Scottish Badgers, Scottish Outdoor Access Network, Sustrans, or The Woodland Trust.

The following organisations raised no objections or raised any concerns for their interest - BT, RAF, HES”, NATS Safeguarding, SEPA, and Transport Scotland.

Scottish Forestry - did not object.

Scottish Forestry note that no existing woodlands or ancient woodland sites appear to be affected by the alignment of this proposed line. They note that it will cross some rich peatland habitats and that mitigation is proposed through the use of trackways to minimise the impact on the ground.

Scottish Water - did not object.

Scottish Water advised that the proposed activity falls partly within a drinking water catchment where a Scottish Water abstraction is located noting that whilst the activity is sufficient distance from the intake that it is likely to be low risk. Notwithstanding care should be taken and water quality protection measures must be implemented. The applicant is advised to make sure that Scottish Water are notified in advance of works commencing onsite so operational teams remain aware when there will be activity taking place in the catchment.

Galloway Fisheries Trust (“GFT”) – did not object.

GFT advised habitat and population surveys should be undertaken of watercourses. GFT also advised fisheries surveys must be undertaken in advance of construction and appropriate mitigation measures in place for during construction/watercourse crossing. Scottish Ministers have attached a condition within Annex 2, which gives effect to GFT’s recommendations.

Defence Infrastructure Organisation (“DIO”) – did not object.

Whilst DIO have no statutory safeguarding objection to the proposed Development, they commented that the height of the poles in this location has the potential to introduce a physical obstruction to low flying aircraft operating in the area. On this basis aeronautical charts and mapping records will require amendments. DIO therefore recommend that the developer notify UK DVOF & Powerlines at the Defence Geographic Centre of certain information prior to the commencement of any development. Scottish Ministers have attached a condition within Annex 2, which gives effect to DIO’s recommendation.

NatureScot – did not object.

NatureScot advised that there are natural heritage interests of both national and international importance within 7 km of the proposed Development but these will not be affected by the proposal. Noting that there are also some sensitive habitats and protected species to consider with regards to the proposed Development, and these include Merrick Kell’s Special Area of Conservation (“SAC”), and Merrick Kells and Loch Doon Sites of Special Scientific Interest (“SSSI”), otters, badgers, ornithology and habitats/peatland.

In their view due to the separation distance and lack of connectivity to the proposed Development to designated sites they considered that significant effects on European sites are not likely and therefore an Appropriate Assessment is not required.

In regards to protected species they recommended given the age of the otter and badger survey data the applicant should undertake pre-construction surveys.

NatureScot concluded that the proposed Development does not raise significant issues affecting nationally or internationally important natural heritage receptors provided that the proposed Development is carried out strictly in accordance with their recommendations regarding pre-commencement surveys and peat and habitat management and the mitigation measures proposed in the Environmental Statement. Scottish Ministers have attached conditions within Annex 2, which gives effect to NatureScot's recommendations.

Conservation of Habitats and Species Regulations

The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require Scottish Ministers to consider whether the proposed Development would be likely to have a significant effect on a European site, as defined in the Habitats Regulations.

The only European site which may have connectivity to the proposed Development is the Merrick Kells Special Area of Conservation ("SAC"), which lies within 7km of the proposal. NatureScot advised that the conservation objectives for the SAC's qualifying interests will not be undermined and that in their view no likely significant effects would arise from this proposal upon any European sites, and in their view an Appropriate Assessment is not required. Scottish Ministers agree with NatureScot that an Appropriate Assessment is not required.

Public Inquiry

Under paragraph 2 of Schedule 8 to the Electricity Act, if the Planning Authority make an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry (PI) to be held. In this instance, the relevant Planning Authority did not object to the proposed Development and therefore, paragraph 2 is not applicable.

Paragraph 3 of Schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of regulations made under that paragraph, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a PI should be held with respect to the application and, if they think it appropriate to do so, they must cause a PI to be held. The Scottish Ministers have taken all material considerations into account and do not consider it is appropriate to cause a PI to be held.

The Scottish Ministers' Considerations

Environmental Matters

In accordance with paragraph 3 of Schedule 9 to the Electricity Act the Scottish Ministers have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of

architectural, historic, or archaeological interest. The Scottish Ministers have also had regard to the extent to which the Company has complied with its duty to do what it can to mitigate the effects of the Development.

The Scottish Ministers have considered fully and carefully the application, the accompanying documents and all responses from consultees and third parties. The Scottish Ministers have assessed the environmental impacts of the Development and taken into account the extent to which any environmental effects will be mitigated by measures the Company will be required to take under the conditions attached to the Section 37 consent or the conditions attached to the deemed planning permission.

The Scottish Ministers' Determination

The proposed overhead electric line would allow the Company to comply with its statutory duty to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. The Scottish Ministers consider such infrastructure to be essential, and taking into account the impacts of the Development and the views of consultees, consider that the balance of weight is in favour of the grant of consent.

Subject to the conditions set out in Part 1 of Annex 2, Scottish Ministers **grant consent** under section 37 of the Electricity Act 1989 to keep installed above ground an electric line as described in Annex 1.

The consent is granted for a period of 40 years. Scottish Ministers consider that this period provides sufficient certainty for operators of electricity transmission and distribution systems while ensuring, in view of the lifespan of such developments, that the line is able to continue operating effectively.

This consent may, at any time after the expiry of a period of 6 months from the date of the consent, be varied or revoked by the Scottish Ministers under section 37(3)(b) of the Electricity Act 1989.

Subject to the conditions set out in Part 2 of Annex 2, Scottish Ministers direct under section 57(2) of the Town and Country Planning (Scotland) Act 1997 that **planning permission be deemed to be granted** in respect of the Development described in Annex 1.

Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply to the deemed planning permission but that the permission is to lapse on the expiration of a period of 5 years from the date of this direction unless the Development has begun before the expiration of that period.

Copies of this letter and the consent have been sent to Dumfries and Galloway Council as the relevant Planning Authority. This letter has also been published on the Scottish Government Energy Consents website: www.energyc consents.scot

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of

administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent.

The rules relating to the judicial review process can be found on the website of the Scottish Courts –

<http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=8>.

Yours sincerely

REDACTED

Ruth Findlay
A member of the staff of the Scottish Ministers

Annex 1

Description of Development

Install and keep installed a 132kv wood pole overhead line between the proposed Benbrack windfarm substation (NX 52121 99096) and a defined point on the DE Route transmission line (NS 53770 00418) between Dalmellington and Carsphairn located in the Planning authority area of Dumfries and Galloway, all as more particularly described in the application made to the Scottish Ministers by the Company on 25 February 2022, as shown on plans comprising Annex 3 to this decision letter.

Annex 2

CONDITIONS

Part 1

Conditions applying to section 37 consent

1. Commencement of Development

- (1) The Commencement of the Development must be no later than the date occurring 5 years after the date of this consent, or such other period as the Scottish Ministers may direct in writing.

Reason: To ensure the Commencement of the Development is within a reasonable time period.

2. Non-assignation

- (1) This consent must not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may assign the consent (with or without conditions).
- (2) The Company shall notify the planning authority in writing of the name of the assignee, principal named contact and contact details within fourteen days of the consent being assigned.

Reason: To ensure obligations of the consent if transferred to another company.

3. Serious Incident Reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within 24 hours of the incident occurring including confirmation of remedial measures taken and/or to be taken to rectify the breach.

Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest.

Part 2

Conditions applying to deemed planning permission

4. Implementation in accordance with approved plans and requirements of the section 37 consent

- (1) Except as otherwise required by the terms of this section 37 consent and deemed planning permission, the Development shall be undertaken in accordance with the application dated February 2022 and other documentation lodged in support of the application.

Reason: To ensure that the Development is carried out in accordance with the approved details.

5. Construction Hours

- (1) All construction work associated with the development must be carried out and all audible construction activities shall be limited to 07:00 to 19:00 on Monday to Friday inclusive and 07:00 to 16:00 on Saturdays, with no audible activity taking place on Sundays or on local and national bank holidays.
- (2) Outwith these periods, works at the site shall be limited to emergency works and dust suppression, unless otherwise approved in writing by the Planning Authority. The local planning authority shall be informed in writing of emergency works

Reason: In the interests of local amenity.

6. Limits of deviation and micro-siting

- (1) The towers shall be constructed in the location, and to the height not exceeding 19 m as set out in the Environmental Appraisal dated January 2022. The location of the towers may be adjusted within the following Limits of Deviation: no pole shall be positioned more than 25m on the horizontal axis from the proposed OHL alignment.
- (2) No later than one month after the Date of Final Energisation, the Company must submit a finalised site plan to the Planning Authority, copied to Scottish Ministers, showing the final position of the overhead line, all towers, access tracks, and associated infrastructure forming part of the Development. The plan must also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the approval from the ECoW or Planning Authority, as applicable.

Reason: ensure that the development is built in accordance with the description in the Environmental Statement to allow tolerance for re-siting infrastructure within the limits of deviation so as to take account of local ground conditions.

7. Aviation Safety

(1) Prior to the commencement of development hereby approved, the applicant shall notify UK DVOF & Powerlines at the Defence Geographic Centre with the following information and evidence has been provided to Dumfries and Galloway Council that this has been done:

- (a) Precise location of development
- (b) Date of commencement of construction.
- (c) Date of completion of construction.
- (d) The height above ground level of the tallest structure.
- (e) The maximum extension height of any construction equipment.
- (f) Details of aviation warning lighting fitted to the structure(s) if applicable.

Reason: In the interests of aviation safety.

8. Private Water Supplies

(1) There shall be no Commencement of Development unless a method statement has been submitted to and approved in writing by the Planning Authority, detailing all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and which may be affected by the Development. The method statement shall include water quality sampling methods and shall specify abstraction points. The approved method statement shall thereafter be implemented in full.

Reason: To maintain a secure and adequate quality water supply to all properties with private water supplies which may be affected by the development.

9. Pre- Construction Species Survey Work

- (1) Prior to the Commencement of Development, surveys for protected species (including but not limited to otters, badgers and marine) shall be carried out by a suitably qualified person or persons in a manner appropriate to the phasing of the development.
- (2) The results of these surveys shall be used to inform preparation of a Species Mitigation and Management Plan.
- (3) There shall be no Commencement of Development until the Species Mitigation and Management Plan has been approved in writing by the Planning Authority.
- (4) The approved Species Mitigation and Management Plan shall be implemented in full.

Reason: To minimise disruption to protected species and their habitats.

10. Construction and Environmental Management Plan

(1) There shall be no Commencement of Development unless a Construction and Environmental Management Plan ("CEMP") outlining site specific details of

all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority in consultation with NatureScot and SEPA.

(2) The CEMP shall include (but shall not be limited to):

- (a) a site waste management plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- (b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- (c) a dust management plan;
- (d) site specific details for management and operation of any concrete batching plant (including disposal of pH rich waste water and substances);
- (e) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- (f) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (g) soil storage and management;
- (h) a peat management plan, to include details of vegetated turf stripping and storage, peat excavation (including volumes), handling, storage and re-use;
- (i) a habitat management plan;
- (j) a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources;
- (k) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- (l) sewage disposal and treatment;
- (m) temporary site illumination;
- (n) the construction of the access into the site and the creation and maintenance of associated visibility splays;
- (o) the method of construction of tower foundations and erection of steel lattices;
- (p) details of watercourse crossings;
- (q) post-construction restoration/ reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- (r) a wetland ecosystems survey and mitigation plan
- (s) a felling and tree management plan

(3) The development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority in consultation with NatureScot and SEPA.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA report accompanying the application, or as otherwise agreed, are fully implemented.

11. Ecological Clerk of Works

- (1) There shall be no Commencement of Development unless the Planning Authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW) in consultation with NatureScot and SEPA. The terms of appointment shall;
 - (a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Appraisal and other information lodged in support of the application, the Construction and Environmental Management Plan, including the Habitat Management Plan approved in accordance with condition 10.
 - (b) Require the ECoW to report to the Company's nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
 - (c) Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site; and
 - (d) Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity.
- (2) The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 10(q).

Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

Definitions

In this consent and deemed planning permission:-

“the **Development**” means the development described in Annex 1.

“**Commencement of the Development**” means the initiation of the Development by the carrying out of a material operation within the meaning of section 27(4) of the Town and Country Planning (Scotland) Act 1997;

“the **Company**” means the person for the time being entitled to the benefit of the consent under section 37 of the Electricity Act 1989, such person at the date of the consent being Scottish Hydro Electric Power Distribution Plc registered at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ (Registered company number SC213460);

“the **Planning Authority**” means Dumfries and Galloway Council within whose boundary the Development is situated.

“**electric line**” has the same meaning as in section 64 of the Electricity Act 1989.

“**Public Holiday**” means:

- New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January;
- 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January;
- Good Friday;
- Easter Monday;
- the first Monday in May;
- the first Monday in August;
- the third Monday in September
- 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
- Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December;
- Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.

Annex 3

PLANS









