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VIA EMAIL

PROPOSED KIRKAN ONSHORE WIND FARM: INTERPRETATION OF THE EIA REGULATIONS

Dear Mark,

As you will be aware, RSK is currently undertaking the Environmental Impact Assessment (EIA) for the proposed Kirkan onshore wind farm. We have a particular matter we wished to draw to your attention.

Background

The Scottish Environment Protection Agency's (SEPA's) pre-application scoping response (SEPA Ref: PCS/159309) included several site-specific comments which we are considering as part of the EIA process. The following comment from SEPA was noted in response to early discussions held in relation to our client's intention to construct a new access to track to the proposed Kirkan wind turbine array:

"Given the presence of existing tracks and infrastructure, which are already shared by two different windfarm operators, the site layout must make best of use of these minimising the disturbance of previously undisturbed ground. We already advised this during the previous pre-application meeting with the applicant, ECDU and SNH on 13 April 2017. We are disappointed the applicant has not revised their designs. For the avoidance of doubt, we will object unless site access is taken from the existing windfarm access routes or it can be demonstrated that the impact upon the environment would be less from the creation of a new access." (Scoping response letter from SEPA, 30th May 2018, their reference: PCS/159309).

You will be aware that we subsequently requested clarification from SEPA in a letter dated 9th July 2018 (RSK Ref: G/P/661694/04/06/04) on the particular reasons SEPA were concerned with the proposed

access track. We subsequently received a letter back (SEPA reference PCS/160110) stating the following (RSK's underlining):

1. Sharing infrastructure

1.1 *Planning Advice Note 1/2013 (as updated on 16 June 2017) states “The aim of EIA is to avoid, reduce and offset any significant adverse environmental effects arising from a proposed development. The most effective mitigation measures are those which avoid or prevent the creation of adverse effects at source and ideally such measures should be identified during the project design stage.*

1.2 *We concur with this and consider that the best way to minimise adverse impact upon environmental interests within our remit is avoidance. This relates to all issues within our remit and certainly all those listed in your letter.*

1.3 *Turbine 4 of the Corriemoillie Windfarm is approximately 300m from your proposed westerly turbine adjacent to Meallan na Cloiche. Previously you have proposed creating new access road from the public road to your site. The closest your turbines are to the public road is 1.1km but this does not account for topography and therefore it is likely the access road would be longer.*

1.4 *The habitat information that you have shared to date, demonstrates that much of this route would be on peat and wetlands and may also impact upon watercourses depending on the route chosen. The 300m route from Corriemoillie windfarm may also impact peat and wetlands but given the difference in length this is likely to be a much smaller impact.*

1.5 *Should you wish to pursue an alternative access route then we would require an assessment of alternatives, as required by both The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 and The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. This would need to be a quantitative comparison of the environmental effects of each route. Unless there were overriding reasons, we would be likely to only support the route which had the least environmental impact.*

RSK Response

We would like to point out that SEPA's interpretation of the EIA Regulations regarding the assessment of alternatives in the EIA process in this instance is not in accordance with how it is conventionally understood and undertaken by EIA practitioners in the United Kingdom.

On a minor point, a proposal to construct or operate a power generation scheme with a capacity in excess of 50 megawatts requires Scottish Ministers' consent under Section 36 of the Electricity Act 1989. Kirkan Wind Farm falls under this definition; therefore the regulations applicable are the *Electricity Works (Environmental Impact Assessment) (Scotland) (EIA) Regulations 2017* rather than *The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations*.

Moving to our main point of concern, under Section 5.(2) (e), the applicable EIA Regulations require “a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment”.

Schedule 4 Section 2 expands on this, requesting EIA reports include, “A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.”

Sections 4.7 of Planning Advice Note 1/2013 (as updated on 16 June 2017) echoes the EIA Regulations in relation to what EIA reports should include in relation to alternatives. Section 4.8 also states, “the nature of certain developments and their location may make the consideration of alternative sites a material consideration. In such cases, the EIA Report should record this consideration. Whilst option evaluation is traditionally undertaken in terms of economic and engineering feasibility, at this stage it is worthwhile taking the environmental implications of options into account (particularly as the mitigation measures associated with these may have differing cost and programme implications).”

To conclude, it is accepted practice for EIAs to consider the environmental effects of reasonable alternatives. The EIA report for the Kirkan Wind Farm will do so in accordance with the applicable EIA regulations, PAN 1/2013 and our commitments as a registrant under IEMA’s EIA quality mark. This consideration of alternatives will examine the environmental impact of reasonable proposed access route options to the proposed wind farm array. However, our position is that the EIA Regulations as currently worded do not support SEPA’s conclusion that they would only “be likely to support the route which had the least environmental impact” unless there were overriding reasons.

Consideration of alternatives for a proposed scheme requires a balancing of environmental, economic and engineering considerations as recognised by the Planning Advice Note. The least environmental impact for any proposed development is likely to be the “do nothing” scenario of not progressing with a proposed scheme. However, the purpose of consideration of alternatives through the EIA process is to improve the quality and reduce the environmental impact of the final proposed design, if the choice is made to progress it. This does not require that the least environmentally impacting option is chosen for the proposed scheme.

Finally, proposed schemes put forward by private developers under Section 36 of the Electricity Act do not have powers of compulsory purchase of third party land. This means that consideration of alternatives that involve the purchase of or agreement with multiple additional landowners or independent parties is less likely to be economically feasible (or indeed possible) to such developers, in comparison with proposed schemes with compulsory purchase powers such as new overhead power lines or highways. Therefore, what might be considered “reasonable alternatives” studied by the developer (as in Section 5.(2) (e) of the EIA regulations), should also consider the control the developer has over the land in question.

We recognise SEPA’s expertise in environmental matters, but we consider that, in this instance, SEPA is overreaching itself in prescribing to a private developer on what the reasonable alternatives are that must be assessed within the EIA process, and in stating that they will object if its preferred option is not selected.



I trust that this is clear.

If you have any queries, please contact me at the address given above or by email (jsomerville@rsk.co.uk).

Yours sincerely,

For RSK Environment Limited

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