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Our ref: 01.08.10.05/2146C
12.04.09.05/243C

August 2011

Dear Mr Griffith

**ELECTRICITY ACT 1989 –SECTIONS 37 AND 62(2)
LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)**

**APPLICATION BY WESTERN POWER DISTRIBUTION (SOUTH WALES)
PLC FOR COSTS RELATING TO INQUIRY IN CONNECTION WITH AN
APPLICATION TO REPLACE AND REPOSITION A STEEL LATTICE TOWER
WITHIN AN EXISTING 132kV OVERHEAD LINE AT YNYSFORGAN,
SWANSEA**

1. I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the decision of 7 June 2011 on the above mentioned application for consent under section 37 of the Electricity Act 1989.
2. This letter deals with the application made by Western Power Distribution (South Wales) plc (“WPD”) for an award of costs against the City and County of Swansea Council (“CCSC”). The application as submitted, the response of CCSC are recorded in the Inspector’s costs report (“CR”), a copy of which is enclosed and forms part of this decision letter. All paragraph references, unless otherwise stated, are to that report.

Basis for determining costs application

3. In planning inquiries, the parties are normally expected to meet their own expenses, irrespective of outcome. Costs are awarded only on the

grounds of “unreasonable” behaviour resulting in unnecessary or wasted expense.

4. The application for costs has been considered in the light of:
 - DoE and Welsh Office Circular WO 23/93 and CLG’s Circular 03/2009 (the “Costs Circulars”)
 - The Inspector’s CR; and
 - All the relevant circumstances

Inspector’s costs report

5. The Inspector’s conclusions in relation to this application are set out at paragraphs 17 to 32 of their CR. For the reasons set out in their CR, the Inspectors have recommended that the application for an award of costs against CCSC be allowed in full.

Reason for the decision

6. As a preliminary matter (see paragraph 18 of the CR), the Secretary of State notes that the statutory basis for the inquiry was section 62(2) of the Electricity Act 1989 and that his power to make an award of costs derives accordingly from section 250 of the Local Government Act 1972. However, he considers that the policy considerations which should guide his decision-making in respect of this application are those set out, in essentially similar terms, in the Costs Circulars where they refer to potential awards of costs against local planning authorities in Town and Country Planning Act 1990 proceedings.
7. The Secretary of State agrees with the reasoning and with the conclusions in the Inspector’s report and having given very careful consideration to the Inspectors’ analysis he can see no reason not to accept their recommendation in respect of WPD’s application.

Formal decision

8. Having carefully considered all the available evidence and having particular regard to the Costs Circulars, the Secretary of State agrees with the Inspectors’ recommendation that WPD’s application for an award of costs in relation to the inquiry in connection with an application to replace and reposition a steel lattice tower within an existing 132kV overhead electricity line and an associated wayleave should be allowed in full. Accordingly he has decided that a full award of costs is justified.

Costs order

9. The Secretary of State for Energy and Climate Change, in exercise of his powers under section 250(5) of the Local Government Act 1972 and section 62, and all other powers enabling him in that behalf, HEREBY ORDERS, that the City and County of Swansea Council shall pay to Western Power Distribution (South Wales) plc their full costs of the inquiry proceedings before the Secretary of State, such costs to be taxed in default of agreement as to the amount thereof.

10. You are now invited to submit to the City and Country of Swansea Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement.

11. There is no statutory provision for a challenge to a decision on an application for an award of costs. The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2L 2LL (General Enquiries 020 7947 6025/6655).

Yours sincerely,

Giles Scott
Deputy Director
Energy Development Unit