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Dear Ms Walters,

ELECTRICITY ACT 1989

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

**THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)
(ENGLAND AND WALES) REGULATIONS 2013**

LLANDINAM WIND FARM, POWYS, MID WALES

1. THE APPLICATION

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to the application dated 18 June 2019 (“the Variation Application”) on behalf of CeltPower Limited (“the Applicant”) to vary the consent granted by the Secretary of State on 7 September 2015 (“the Original Consent”) to construct and operate an onshore wind farm and a direction under section 90(2) of the Town and Country Planning Act 1990 (“Planning Conditions”) that planning permission for the development be deemed to be granted (“the Consented Development”). The variation being requested is to extend the deadline for the implementation of the Original Consent for five years, from 7 September 2020 to 7 September 2025 to enable commencement of the scheme and to find a suitable developer-led grid connection solution.

1.2. The Variation Application was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority.

2. SECRETARY OF STATE’S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

2.1. On 18 June 2019, the Applicant provided the Secretary of State with a document entitled “Information to Inform an EIA Screening Opinion”, seeking a view from the Secretary of State as to whether an environmental impact assessment (“EIA”) is required. Along with the supporting statement to the Variation Application this document updates the analysis of the environmental effects set out in the 2008 Environmental Statement submitted with the original application for the Consented Development. The Applicant concluded that the proposed change would not have significant adverse effects on the environment, and that therefore, the conclusion of the screening process should be that the Variation Application did not require an EIA.

2.2. In accordance with The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (“the 2017 EIA Regulations”), the Secretary of State consulted Powys County Council (“the relevant planning authority”), to obtain its views on whether or not an EIA should be undertaken in respect of the variations being sought by the Applicant. The relevant planning authority responded on 19 July 2019, stating it concluded that the proposed wind farm would exceed the thresholds set out in Schedule 2 of the 2017 EIA Regulations and taking into consideration the scale of the proposed development, location, characteristics of the development together with the characteristics of potential impacts, the proposed development would constitute EIA development. Following a request for further information from the Secretary of State, the relevant planning authority responded on 5 September 2019 agreeing that the impact of the proposed development remained the same as that for the consented scheme.

2.3. A screening decision was issued on behalf of the Secretary of State on 12 September 2019 which, in view of the relevant planning authority’s most recent response, concluded that an EIA is not required for the changes being sought through the Variation Application. The Secretary of State considered that:

- Other than the predicted beneficial effect of carbon saving and changes to the cumulative landscape, no substantial changes to the environmental baseline since 2013 had been identified;
- There had been a reduction in the number of cumulative windfarms and the number of wind turbines within those windfarms since 2013. Despite this change, the requested time extension would not materially alter the assessment of cumulative effects undertaken for the original Llandinam consent or for other developments;
- An updated assessment of the effects on climate change and human health to meet current 2017 EIA regulations demonstrated that there would be no significant adverse effects on the environment in respect of these receptor groups; and

- The relevant planning authority considered that the impact of the proposed section 36C Variation Application remained the same as that of the original consent.
- 2.4. On this basis the Secretary of State is satisfied that the Applicant has provided sufficient evidence to demonstrate that the varied development would not result in any new or materially different environmental impacts to those already assessed for the Consented Development, and therefore would be unlikely to have significant effects on the environment.
- 2.5. The Secretary of State has also taken into consideration the information in respect of environmental matters referred to in paragraph 2.3 above, and the comments on environmental matters made by the relevant planning authority which are referred to below. In addition, the Secretary of State has had regard to the duties under section 6 of the Environment (Wales) Act 2016. The Secretary of State is satisfied that sufficient information on environmental matters has been provided to allow him to make a determination on the Variation Application.
- 2.6. Taking into account the extent to which any environmental effects will be mitigated by measures the Applicant will be required to take under the conditions attached to the Original Consent that will be retained in the varied consent and the planning conditions, the Secretary of State considers that the significance of the environmental effects will not differ from that predicted for the Original Consent such that it would be appropriate to refuse the variation to the Consented Development.

3. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A NATURA 2000 SITE

- 3.1. The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the varied development would be likely to have a significant effect on a Natura 2000 Site as defined in the Habitats Regulations and, if so, to undertake an Appropriate Assessment ("AA") of the implications for the Natura 2000 Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may be granted only if it can be shown that the varied development will not have an adverse effect on the integrity of the Natura 2000 Site (regulations 63(5) and 64). Regulation 63(6) provides that when considering whether the varied development will adversely affect the integrity of a Natura 2000 Site, the competent authority can take into account measures proposed to mitigate such impacts. This process is commonly referred to as a Habitats Regulations Assessment ("HRA").
- 3.2. For the reasons set out in section 2 above, the Secretary of State considers that the varied development is not likely to have any significant effects on any Natura 2000 Site alone and in-combination with other plans or projects. This conclusion is supported by Natural Resources Wales who did not raise any objections to the variation being sought. He therefore considers that an AA is not necessary and finds no reason for refusing the Variation Application on the grounds of adverse effects on the integrity of a Natura 2000 Site.

4. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

- 4.1. The Secretary of State has considered the Planning Conditions carefully. He agrees that it is suitable for inclusion in any direction under section 90 of the Town and Country Planning Act 1990 which he may give.

5. SECRETARY OF STATE'S CONSIDERATION OF THE ISSUES RAISED DURING CONSULTATION

- 5.1. The Secretary of State's consideration of the points raised by the relevant planning authority in relation to the EIA are set out in Section 2 above.
- 5.2. For the reasons set out in Section 2 above, the Secretary of State considers that all matters raised in the representations received from the relevant planning authority have been addressed either in the conditions attached to the Original Consent which are not being varied, the EIA screening process, or in the information supplied by the Applicant in support of the Variation Application. No other representations were received, and the Welsh Government declined to comment on the application, considering that it was a matter for the Department for Business, Energy and Industrial Strategy and the relevant planning authority.

6. CONSIDERATION OF OTHER MATERIAL ISSUES

- 6.1. The section 36C variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.
- 6.2. The Secretary of State notes that the only change requested by the Applicant is to the deadline for implementing the Original Consent, and that there are no physical changes to the parameters of the scheme. The Secretary of State considers that the varied development would not be fundamentally different in character or scale from the Consented Development and that it is appropriate for this Variation Application to be considered under the section 36C variation procedure.
- 6.3. The Secretary of State considers the following issues material to the merits of the Variation Application:
- (a) The Applicant has provided adequate environmental information for the Secretary of State to judge the impacts of the proposed varied development;
 - (b) The matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the environmental information submitted in support of the Variation Application and the Secretary of State has judged that the likely key environmental impacts are acceptable;
 - (c) The views of the relevant planning authority, statutory consultees under the Habitats Regulations, and all other relevant matters have been carefully considered;

- (d) The legal procedures for considering an application for a variation of the generating station consent and Planning Conditions have been properly followed;
- (e) The Secretary of State has also considered the ongoing need for the development and the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) in determining this Section 36C variation application. The Secretary of State considers that the Variation Application is consistent with the policies set out in the National Policy Statement (EN-1) which state: *“Developing our infrastructure ... will help us maintain and improve our security and access to competitive suppliers, particularly for electricity generation ...”*. The Secretary of State has also taken into account regional and local planning policy in Wales that remains supportive of renewables development including onshore wind developments; and
- (f) The grid connection provider, SP Manweb, has confirmed to the Applicant that it has no current plans to upgrade its mid-Wales grid network and have advised the Applicant that a developer based solution is the only way forward. The Applicant considers there may be a solution to the grid issue therefore involving the proposed Llanbrynmair wind farm. However, this application is currently in the process of being redetermined by the Secretary of State and the grid solution can be progressed only once this is completed.

7. SECRETARY OF STATE’S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

- 7.1. Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a Variation Application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn, alongside all other material considerations.
- 7.2. The relevant planning authority was the only party to respond during the consultations undertaken. These points all related to the EIA screening, and have been dealt with in paragraphs 2.1 to 2.6 above.
- 7.3. No objections were received by the Secretary of State to the proposed variation.

Conclusion

- 7.4. The Secretary of State has carefully considered the view of the relevant planning authority and all other material considerations. He takes the view that all matters raised in the representations have been addressed either in the conditions attached to the Original Consent which will be retained in the varied consent, the information submitted by the Applicant in support of the Variation Application, and the EIA screening process. The Secretary of State is therefore of the view that there is no further information required to enable him to take a decision on the

Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Variation Application.

8. CLIMATE CHANGE ACT 2008 AND THE NET ZERO TARGET

- 8.1. On 2 May 2019, the Climate Change Committee recommended that the UK reduce its greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline. The Secretary of State considers that granting consent for the Llandinam wind farm variation application will contribute to the delivery of low-carbon and renewable energy, ensuring a secure, diverse and affordable energy supply in line with commitments to 'net zero' and the need to address climate change.

9. ENVIRONMENT (WALES) ACT 2016

- 9.1. The Secretary of State has had regard to the duty in section 6 of the Environment (Wales) Act 2016, to maintain and enhance biodiversity, and in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- 9.2. The Secretary of State is satisfied that due regard has been given to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interests, and of protecting sites, buildings and objects of architectural, historic or archaeological interest, and considers that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed.

10. EQUALITY ACT 2010

- 10.1. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:
- (a) The elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - (b) The advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
 - (c) The fostering of good relations between people who share a protected characteristic and those who do not.
- 10.2. The Secretary of State has considered the potential impacts of granting or refusing the Variation Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.
- 10.3. The Secretary of State does not, therefore, consider that either the grant or refusal of the Variation Application is likely to result in a substantial impact on

equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against an particular protected characteristics.

11. HUMAN RIGHTS ACT 1998

- 11.1. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Varied Development. The Secretary of State considers that the grant of Varied Development would not violate any human rights as given effect in UK law by the Human Rights Act 1998.

12. SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

- 12.1. The Applicant has requested that the Consented Development be varied to allow for an extension of time for the implementation of the Consented Development following ongoing uncertainty in respect of the grid connection to connect the development to the wider grid network, to which the redetermination of the section 36 Llanbrynmair wind farm application will provide further clarity, and to find a suitable developer-led grid connection solution. The Secretary of State notes that there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.
- 12.2. The Secretary of State considers that there is a continuing need for renewable energy schemes, such as the current application, which would justify granting the variation requested.
- 12.3. The Secretary of State has also had regard to the other matters specified in section 5 above. The Secretary of State considers that the varied development is appropriate and necessary and has decided to grant a variation to the Consented Development to extend the deadline for the implementation of the Original Consent for five years, from 7 September 2020 to 7 September 2025. The Varied Consent is annexed to this variation decision and is subject to the conditions set out in the varied consent. The Secretary of State also considers the Planning Conditions as proposed, form a sufficient basis on which the varied development might proceed, and has, therefore decided to issue a section 90(2) direction with the conditions to the Planning Consent as specified in the annex. The reasons for the variation to condition 5 is as explained in the Annex to this letter.
- 12.4. Accordingly, I enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and direction under section 90(2) of the Town and Country Planning Act 1990.

13. GENERAL GUIDANCE

- 13.1. 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 an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, should seek independent legal advice from a solicitor or legal adviser, or alternatively contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL.
- 13.2. This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than sections 36 and 36C of and Schedule 8 to the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely

Gareth Leigh

Gareth Leigh

Head of Energy Infrastructure Planning