

Mr Alan Mortimer
ScottishPower Renewables
Cathcart House
Spean Street
Glasgow
G44 4BE

16th March 2011

Dear Mr Mortimer

CONSENT AND DEEMED PLANNING PERMISSION FOR THE CONSTRUCTION AND OPERATION OF THE DEMONSTRATOR TIDAL ARRAY WITHIN THE SOUND OF ISLAY, SEPARATING THE ISLANDS OF ISLAY AND JURA

Application

I refer to the application made by ScottishPower Renewables ("the Company"), dated 27th July 2010 for:

- (i) consent under section 36 of the Electricity Act 1989 ("the Electricity Act") for construction and operation of the demonstrator tidal array within the Sound of Islay, separating the Islands of Islay and Jura, with a generation capacity of 10 MW
- (ii) a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 ("the Planning Act") that planning permission be deemed to be granted in respect of the demonstrator tidal array onshore substation and any ancillary onshore development.

Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply as respects that 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 is begun before that date.

Description and background

The proposed tidal array is situated within the Sound of Islay which separates the Islands of Islay and Jura. The scheme will generate up to 10 MW of power from the tidal currents and will involve the construction and operation of the following:

- 10 tidal devices
- Onshore and offshore cabling
- A substation/control building on the Island of Jura

Consultation

In accordance with statutory requirements, advertisements of the application had to be placed in the local and national press. Ministers note that these requirements have been met. Under Schedule 8 to the Electricity Act, the relevant planning authority is required to be notified in respect of a section 36 consent application and notifications were sent to Argyll and Bute Council as the relevant planning authority, as well as to Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

Argyll and Bute Council as Planning Authority support the application subject to a number of conditions derived from their own consultation.

Scottish Natural Heritage (SNH) did not object to the application subject to the inclusion in any consent of a condition requiring an Environmental Monitoring Plan (EMP) and ecology issues relating to harbour seals. SNH advised that the proposal could have a significant effect on harbour seals and therefore an Appropriate Assessment was undertaken which concluded that if appropriate mitigation measures are carried out, then the proposal shall not adversely affect the Favourable Conservation Status of the species.

European Protected Species Licence is required from the Scottish Ministers and should be applied for in a separate application.

The **Scottish Environment Protection Agency (SEPA)** had no objections to the proposed development subject to conditions relating to Environmental Site Monitoring and Environmental Management and Pollution Prevention during construction.

The Fisheries Committee raised an issue associated with eels and the impact of electromagnetic fields from cables during their migration. This issue will be assessed further within the Environmental Monitoring Plan (EMP). The EMP will be circulated for consultation and then approved by Scottish Ministers prior to installation. The Fisheries Committee are of the opinion that the Environmental Statement suggests the major positive residual outcome of the scheme will be the validation of the renewable technology being deployed. In this regard they are of the opinion that the monitoring of those marine environmental issues that could be affected by the installation of the proposed tidal array will be essential to assess any impacts on fish and fisheries at the site, consequently they recommend that a monitoring regime approved by Marine Scotland in consultation with SNH and the Fisheries Committee should be set in place to allow the monitoring of the impact of the scheme on fish and fisheries.

The Royal Society for the Protection of Birds made no objection to the proposal subject to conditions being applied to avoid potential negative impacts upon the foraging by diving of several important species.

Transport Scotland made no objection to the application.

Historic Scotland made no objection to the application confirming there will be no significant adverse impacts on the historic environment features within their statutory remit.

Marine Coastguard Agency (MCA) made no objection to the application subject to a condition being applied to ensure the Company adequately addressed all the MCA recommendations in the current Marine Guidance Note "Offshore Renewable Energy Installations -Guidance on UK Navigational Practice Safety and Emergency Response Issues" and annexes that may be appropriate.

The Northern Lighthouse Board (NLB) made no objection to the application subject to conditions being applied to maintain Navigational safety. The works should be marked, and or lighted, and remain so until the Scottish Ministers direct that the marking and/or lighting be altered or discontinued.

Scottish Fishermen's Federation (through the Clyde Fishermen's Association) did not object, however they raised concerns and requested that a Fishing Mitigation Plan (FMP) be developed to mitigate the potential impact the development may have on Sound of Islay fishing interests. Any issues not considered in the FMP, principally the collection of additional baseline information on landings and the extent of the fishery in the Sound of Islay, should be addressed to the satisfaction of Marine Scotland in discussion with the Clyde Fishermen's Association prior to construction works commencing on the site. It is recommended that the Company work closely with the fishing interests in the area in order to use the strategic nature of the Sound of Islay project to establish what effects, if any, occur, and how to maximise the benefits of the mitigation measures.

Other responses One public representation was received regarding the location of the application information during the public consultation and its lack of accessibility. The representation also raised a concern surrounding the lack of environmental baseline data within the Environmental Statement. Ministers are content the application was appropriately advertised and that the Environmental Statement contained sufficient environmental information to allow a determination to be made.

Environmental Matters

Scottish Ministers have considered the environmental information contained in the Environmental Statement provided with the application and consider that the Company has had due regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest, in accordance with paragraph 3(2)(a) of Schedule 9 to the Electricity Act. Also in accordance with paragraph 3(2)(b) of Schedule 9, the Scottish Ministers have had regard to the extent to which the Company has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

The Company's Case

Important criteria which you considered in selection of the Demonstrator Tidal Array site included economic viability, grid availability, ecological sensitivity, landowner objections and issues relating to site access. You have developed the proposed design to minimise negative environmental effects whilst maintaining engineering and financial viability.

The Scottish Ministers' Consideration

In assessing the application for the demonstrator tidal array, Scottish Ministers are obliged to protect the surrounding environment and have stipulated that an Environmental Monitoring Plan must be produced for the development. The EMP will incorporate all monitoring and mitigation measures required associated with marine mammals, birds, basking sharks, migratory fish, shellfish and seals. The EMP will be a live document that will be reviewed and updated as data from the demonstrator is analysed this will ensure that the monitoring and mitigation is robust and will not cause a detrimental impact on the environment. The EMP will be signed off by Marine Scotland following consultation with SNH, Sea Mammals Research Unit and any other ecological advisors required at the discretion of Scottish Ministers

As part of your commitment to the development of alternative renewable energy technology you have identified the Sound of Islay site, which will be the only tidal stream demonstrator array site in the world. Scottish Ministers consider the Sound of Islay offers developers, regulators and consultees the opportunity to test an array in a relatively benign area for environmental sensitivity in unrivalled tidal conditions. It is an opportunity to obtain a better understanding of the Hammerfest HS1000 turbine and how it interacts in an array configuration. The data gathered from the site will be essential for both regulators and consultees to understand the interactions of species and habitats with the devices. This information can then be used to help understand the likely significant effects if any of sensitive habitats surrounding the Pentland Firth and Orkney waters and any Saltire prize rounds. Testing will take place in a wide range of sea and weather conditions, with comprehensive round-the-clock monitoring.

Scottish Ministers are of the opinion that no works shall start on the development until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The CMS shall be complied with and implemented as part of the proposed development unless revised to secure an equivalent or higher standard of protection/restoration with the prior written consent of the Planning Authority.

Scottish Ministers have obtained advice on matters relating to protection of the environment through the Food and Environment Protection Act 1985 (as amended) (FEPA) and navigational safety under section 34 of the Coast Protection Act 1949 (CPA). Both the FEPA licence and CPA consent are ready to be issued to the Company.

Public Local Inquiry

Paragraph 3 (2) of Schedule 8 to the Act requires the Scottish Ministers to consider all the objections they have received in pursuance of the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations"), together with all other material considerations, with a view to determining whether a public inquiry should be held and, if they think it appropriate to do so, shall cause a PLI to be held.

In terms of paragraph 7A of Schedule 8 to the Act, if the Planning Authority made a valid objection and did not withdraw it, the Scottish Ministers must convene a PLI, which must be confined to so much of the application as relates to land within the area of the authority whom the objection was made (except in so far as they direct otherwise). As Argyll and Bute Council did not object to the proposal, a PLI is not a statutory requirement.

In reaching the decision not to cause a PLI to be held, Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representations could have their representation properly taken into account. The Scottish Ministers have had regard to all other material considerations, and acknowledge that it would not be appropriate for a PLI to be held.

Decision

Scottish Ministers are content that they have had access to sufficient information to assess the likely environmental impact of the project to enable them to make a determination on the application. In reaching their decision, the Scottish Ministers have considered fully and carefully the application, the accompanying Environmental Statement, the representations made by statutory bodies in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, as well as the responses received from consultees throughout the consultation process.

The 10 MW project within the Sound of Islay will provide sufficient power for approximately 5400 houses. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target to meet 80% of demand for Scotland's electricity to be met from renewable sources by 2020.

Determination

Subject to the conditions set out in Part 1 of Annex 2, Scottish Ministers grant consent under section 36 of the Electricity Act 1989 for construction and operation of the Demonstrator Tidal Array within the Sound of Islay as described in Annex 1.

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 onshore works described in Annex 1.

In accordance with the Electricity Works (Environmental Impact Assessment (Scotland) Amendment Regulations 2008, you must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land and seabed to which the application relates is situated.

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 – the relevant Chapter is Chapter 58; <http://www.scotcourts.gov.uk/session/rules/print/index/asp>. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely

A solid black rectangular box used to redact the signature of James McKie.

James McKie

Leader Licensing Operations Team
Marine Planning and Policy Division
Marine Scotland

Authorised by the Scottish Ministers to sign in that behalf

Annex 1

Description of Development

Sound of Islay Tidal Demonstrator Array

The construction and operation of a 10 MW demonstrator tidal array within the Sound of Islay separating the isles of Islay and Jura. The principal components of the generating station are as described in the Environmental Statement and will include:

- **Ten tidal turbines (Hammerfest HS1000);**
- **Onshore and offshore cabling;**
- **A onshore control building/substation;**

ANNEX 2

CONDITIONS

Part 1

Conditions applying to section 36 consent

1. The consent is for a period from the date of this consent until the date occurring 14 years after the date of the Commissioning of the Development. Written confirmation of the date of Commissioning of the Development shall be provided by the Company to the Scottish Ministers and the Planning Authority no later than one calendar month after that event.

Reason: To define the duration of the consent

2. The Commencement of Development shall be no later than 5 years from the date of this consent, or (in substitution) no later than such date as the Scottish Ministers may hereafter direct. If Commencement of Development does not occur by such date, then by no later than the date occurring 6 months after such date, the site and the ground shall be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers, following consultation with the Planning Authority.

Reason: To ensure work is undertaken within a reasonable time period

3. The Company shall not be permitted to assign, alienate or transfer this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant consent (with or without conditions) or refuse such authorisation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

Reason: To ensure obligations under the consent

4. The Development shall be undertaken in accordance with the Application and Environmental Statement, (except in so far as amended by the terms of this consent and direction or as subsequently agreed in writing by the Scottish Ministers in consultation with the Planning Authority, SNH and SEPA)

Reason: To ensure the development is carried out in accordance with the application documentation

5. The Company shall not commence construction of the Development permitted by this consent, until the Company has submitted to Scottish Ministers a decommissioning programme, in compliance with a notice served upon the Company pursuant to section 105(2) of the Energy Act 2004.

Reason: To ensure that a decommissioning plan is submitted to Scottish Ministers before any construction work commences.

6. In the event of a serious health and safety, environmental or construction incident occurring on site during the period of consent, the Company must notify Scottish Ministers within 24 hours of the incident occurring.

Reason: To ensure Scottish Ministers are informed of a serious incident occurring on site

7. At least three months prior to the Commencement the Development on site a comprehensive Environmental Monitoring Plan (EMP) shall be submitted to and approved by Scottish Ministers in consultation with SNH, the Sea Mammal Research Unit and any other ecological advisors required at the discretion of Scottish Ministers. The EMP will outline the specific monitoring and mitigation measures required associated with marine mammals, birds, basking sharks, migratory fish, shellfish and seals. The EMP will be a live document that will be reviewed and updated as data from the demonstrator is analysed. This will ensure that the monitoring and mitigation is robust and will not cause a detrimental impact on the environment. The Company shall implement the approved EMP.

Reason: To ensure appropriate and effective monitoring of the impacts of the Development

8. Prior to the Commencement of Development, the Company shall map the site to determine the presence of Maerl. All turbines, foundations and associated infrastructure shall not be installed upon any UK BAP priority habitats or any Scottish marine priority features.

Reason: To protect any UK BAP priority habitats or any Scottish marine priority features

9. Prior to the Commencement of Development the Company shall provide to Scottish Ministers and SNH details of anchoring areas and an assessment of its impacts. Development shall not be commenced following submission of said details and assessment until either—

- (a) the Scottish Ministers inform the Company that they do not require the Company to submit for their approval an anchoring mitigation strategy (being a strategy which sets out the measures to be taken to mitigate the impacts identified by the assessment); or
- (b) if the Scottish Ministers inform the Company that they do require the Company to submit for their approval an anchoring mitigation strategy, the Scottish Ministers have, in consultation with SNH, approved (in writing) such anchoring mitigation strategy.

Any anchoring shall be undertaken in accordance with the approved anchoring mitigation strategy.

Reason: To minimise the impact of anchoring

10. No work shall commence on the Development until the Scottish Ministers, in consultation with the Maritime and Coastguard Agency (MCA), has specified in writing that they are satisfied the Company has taken into account and adequately addressed all the MCA recommendations in the current Marine Guidance Note "Offshore Renewable Energy Installations - Guidance on UK Navigational Practice Safety and Emergency Response Issues" and annexes that may be appropriate to the development.

Reason: To minimise the impact of the development on navigational interests

11. Bridging solutions, or bottomless or arched culverts, designed to leave the bed and banks of the watercourse in a natural state, shall be used for any proposed watercourse crossing(s) within the application boundary.

Reason: To protect the existing water environment

12. Development shall not commence until a Construction Method Statement is submitted to, and approved in writing by, the Scottish Ministers in consultation with SNH, SEPA and the Planning Authority. Construction shall proceed in accordance with the approved Construction method Statement unless otherwise agreed by the Scottish Ministers. The Construction Method Statement shall include information on the following matters:

- Working methods
- Operating hours

Reason: To ensure proper management of the Development

13. Prior to the Commencement of the Development, a full site waste management plan shall be submitted for the written approval of the Scottish Ministers, in consultation with SEPA. All work shall be carried out in accordance with the approved plan.

Reason: In the interests of pollution prevention of water courses

14. The installation of the turbines on site shall be undertaken, where practicable, by a Dynamic Positioning capable vessel. Safety or guard vessels shall also be used to establish safety zones in the area.

Reason: To minimise the impact of the Development on navigational interests

15. In the event that any turbine installed and commissioned fails to produce electricity for a continuous period of 18 months, then, unless otherwise agreed in writing with the Scottish Ministers, after consultation with SNH, such a turbine shall be deemed to have ceased to be required. The Scottish Ministers shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Company and other such parties as the Scottish Ministers consider appropriate. If deemed to have ceased to be required, the turbine and its ancillary equipment shall be dismantled and removed.

from the site by the Company no later than the date occurring 6 months after the said continuous 18 month period.

Reason: To ensure the removal of non-functional equipment and plant

16. Prior to the Commencement of Development, the Company shall submit to Scottish Ministers a Fishing Mitigation Plan developed in conjunction with Clyde Fishermen's Association, the objective of which is to minimise the impacts the Development may have on fishing interests and agree appropriate mitigation. No part of the Development shall be commenced until the Scottish Ministers have approved the Fishing Mitigation Plan in writing. All works forming part of the Development shall be carried out in strict compliance with the Fishing Mitigation Plan.

Reason: To protect fishing interests.

Part 2

Conditions applying to deemed planning permission

17. Details of the siting, design, materials and colours to be used for the external walls, roofs, windows and doors of the control building; details of the siting and external appearance of any temporary compound buildings or fixed plant and machinery shall be submitted for approval to the Planning Authority in consultation with SNH and SEPA. The plan shall also include details relating to the methods for the collection and treatment of all surface water runoff including roof drainage using sustainable drainage principles. No part of the development to which this condition relates shall commence until the Planning authority has issued approval of the details in writing. The Development shall then be carried out in accordance with the approved details.

Reason: To minimise the impacts of onshore development

18. Within 2 months prior to the Commencement of Development on site a pre-construction otter survey shall be carried out at the expense of the Company. The survey shall be conducted by a suitably qualified and experienced ecologist. Should otters be observed or signs of breeding or resting otters be discovered during construction works, then works within 100m radius shall cease until a survey by a suitable qualified ecologist determines whether there is a holt. In the event of otter holts/resting sites being identified, disturbance should be avoided by keeping any works an appropriate distance from such sites (more than 30m where these do not involve breeding or 100m if breeding is involved). The Company should ensure that a 100m radius is marked out on the ground which is clearly visible to the workers on the site. If works are not out with the appropriate distance, Commencement of Development shall not take place until an appropriate European Protected Species licence is obtained from Scottish Ministers.

Reason: In the interest of protection of a European species of importance

19. Prior to Commencement of Development a plan of measures to be adopted to transport and store any fuels or oils, including bunding and refuelling arrangements for any machinery or equipment shall be submitted for the approval in writing of the Planning Authority in consultation with SNH and SEPA. The plan shall include the following:

- A single site compound to avoid having fuel and other chemicals stored at numerous locations around the development site;
- The location of the site compound shall be identified and accompanied by pollution prevention measures; and
- The refuelling or maintenance of vehicles and plant shall be carried out only on impermeable areas where any oil spillages can be contained.

The Company shall implement the measures as approved.

Reason: In the interest of pollution prevention.

Definitions

20. In this consent and deemed planning permission:-

"Application" means the application submitted by the Company on 26th July 2010;

"Commencement of Development" means the date on which the Development is taken to be initiated;

"Commissioning of the Development" means the date on which the new tidal demonstrator array first supplies electricity to the National Grid;

"the Company" means Scottish Power Renewables (UK) Limited (Registered Company Number NI028425) having its Registered Offices at Arnott House, 12-16 Bridge Street, Belfast, BT1 1LS

"Construction Method Statement" means a set of procedures detailing activities to be undertaken, sequencing of activities, assessment of risks, and an outline of mitigation and contingency measures;

"Decommissioning" means the dismantling and removal of the generating station and associated structures including the restoration of the site in accordance with the approved decommissioning plan as agreed with the appropriate authorities;

"Development" means the construction and operation of a 10MW tidal demonstrator array electricity generating station which will be situated in the Sound of Islay separating the islands of Islay and Jura;

"Environmental Statement" means the environmental appraisal report submitted by the Company on 26th July 2010;

"Planning Authority" means Argyll and Bute Council;

"SNH" means Scottish Natural Heritage;

"Site" means the area of land outlined in the attached plan;

"SEPA" means the Scottish Environment Protection Agency.



DAVID PALMER

Marine Scotland

Authorised by the Scottish Ministers to sign in that behalf