

Mr Simon Coote
Energy Consents and Deployment Unit
5 Atlantic Quay
150 Broomielaw
Glasgow G2 8LU

Please ask for: Graham Nelson, Ext 6620
Our Ref: PL660/4N/GN
Your Ref:
E-Mail: gnelson@scotborders.gov.uk
Date: 27 September 2013

Dear Sirs

SECTION 36 APPLICATION FOR ROWANTREE WINDFARM, NEAR OXTON

I refer to the above Section 36 application which the Scottish Borders Council objected to. The Application has been to Inquiry and has been sent to Scottish Ministers. It is my understanding that it is presently sisted for two months, to allow further discussion regarding the Eskdalemuir Seismic Array issue. I did contact your office earlier in the month regarding the reason for the cist and was informed that a formal letter providing clarification would be sent out imminently to all parties. I am disappointed to note that I still have not received this letter and look forward to receiving from you a formal letter in respect of the reasons for the cist by return.

However subsequent to the cist a judicial review judgment has been issued in another case, the terms of which I would submit means that the Section 36 application for Rowantree Windfarm is not competent, and therefore falls to be immediately refused without any further procedure of any kind.

I draw your attention to the Opinion of Lady Clark of Calton, issued on 24 September 2013, in the case of *Sustainable Shetland v Scottish Ministers*, [2013] CSOH 158. This link <http://www.scotcourts.gov.uk/opinions/2013CSOH158.html> will lead you to the Opinion of Lady Clark.

In the course of her Opinion, Lady Clark addressed the question of the competency of an application under the Electricity Act 1989, section 36, for consent for a wind powered generating station when such an application is made by a person who is not a licence holder or an exempt person, within the meaning of the Electricity Act 1989, section 6.

In particular, the judge addressed the application of the Electricity Act 1989, Schedule 9 to such applications. She held, in a passage running from paragraphs 83 to paragraph 115 of her Opinion that an application under section 36 by persons falling out with the permitted classes found in Schedule 9 is not competent.



-2-

The application for Rowantree windfarm is made by RWE Npower Renewables Ltd. It is my understanding that that company is not a licence holder, and is not an exempt person within the meaning of the 1989 Act. On this basis, it is my submission on behalf of the Scottish Borders Council, that the application for the Rowantree windfarm is not competent, and falls to be immediately refused without any further procedure of any kind.

I look forward to receiving your confirmation in early course that the application will now be formally refused without any further procedure being required.

This letter has been copied to all other parties to the Public Inquiry held in respect of the Rowantree Windfarm Section 36 Application.

Yours faithfully



Solicitor