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320 St Vincent Street
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23 April 2024

Our ref: ECU00001998

Dear Mr Hutchison

CONSENT UNDER SECTION 37 OF THE ELECTRICITY ACT 1989 AND DIRECTION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 TO INSTALL AND KEEP INSTALLED APPROXIMATELY 9.3KM OF 132KV OVERHEAD LINE LOCATED IN THE PLANNING AUTHORITY AREA OF DUMFRIES AND GALLOWAY

Application

1. I refer to an application (“Application”) made on 16th January 2023 under section 37 of the Electricity Act 1989 (“the Electricity Act”) by Scottish Power Energy Networks (SPEN), as agents for Scottish Power Transmission Plc, a company incorporated under the Companies Acts with company number SC189126, and having its registered office at 320 St Vincent Street, Glasgow, G5 5AD, (“the Company”). The application is for consent to install and keep installed approximately 9.3 kilometres (“km”) of 132kV overhead line (“OHL”) supported on new steel lattice towers (“the proposed Development”), referred to in the Application as the Glenmuckloch to Glenglass Reinforcement Project (‘GGRP’).

2. The proposed Development is located between a new Substation, proposed as part of the GGRP, at Glenmuckloch and an existing 132kV Substation at Glenglass, all located within the planning authority area of Dumfries and Galloway Council.

3. The proposed Development also includes permanent and temporary ancillary development.

4. This letter contains the Scottish Ministers’ decision to grant section 37 consent for the proposed Development as described at Annex 1.

Planning Permission

5. In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 the Scottish Ministers, may on granting consent under section 37 of the Electricity Act

direct that planning permission is deemed to be granted in respect of the overhead line and ancillary developments.

6. This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.

Background

7. The proposed Development comprises of a new double circuit 132kV steel lattice tower overhead line (OHL), approximately 9.3km in length on L7 steel towers having a maximum height of 39m. The proposed Development includes a new Substation compound and control building at the north end of the line located 500m east of the former Glenmuckloch open cast coal working site Glenmuckloch, enclosed by palisade fencing and to include drainage works and compound security lighting. The OHL would be installed in a southerly direction, terminating at the existing 132kV Substation at Glenglass.

8. The Company, in seeking to fulfil its statutory duty to develop and maintain an economic, co-ordinated and efficient network of electricity transmission, proposes to extend the transmission network to accommodate several connection requirements as a result of renewable energy development in the Sanquhar area. This is a major electricity transmission system reinforcement project which will facilitate increased power flows across Scotland's network boundaries.

9. In addition to installation of the OHL, the proposed Development consists of other permanent and temporary development.

10. The permanent ancillary development includes:

- Substation - electrical switchgear and plant;
- A new 3m steel palisade security fence and 1.2m of power fencing (max height 4.2m altogether);
- Internal fencing, CCTV, and lighting including perimeter lighting;
- A control building located within the Substation compound;
- Drainage works;
- Removal of trees; and
- Permanent access tracks.

11. Temporary ancillary works shall also be required for the construction phase of the proposed Development which shall be reinstated upon completion including:

- Creation of an 80m wayleave through woodland;
- Temporary access tracks;
- Temporary topsoil storage;
- Watercourse crossings;
- Temporary lighting;
- Temporary Sustainable Drainage Systems ("SuDS"), including settlement ponds and ditches; and
- Working areas (around steel towers and the new Glenmuckloch Substation).

Legislation

12. Under paragraph 2(1) of Schedule 8 to the Electricity Act, the relevant Planning Authority, in this case Dumfries and Galloway Council, is required to be notified in respect of a section 37 consent application and Scottish Ministers notified Dumfries and Galloway Council on 21 February 2023.

13. In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”), the Company submitted an EIA report in support of the Application describing the proposed Development and giving an analysis of its environmental effects.

14. In addition, to comply with the EIA Regulations, Scottish Ministers consulted Scottish Natural Heritage, acting under its operating name NatureScot, the Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”) as well as other public bodies that Scottish Ministers considered likely to be concerned by the proposed Development by reason of their specific environmental responsibilities or local or regional competencies.

15. In accordance with requirements of both the Electricity (Applications for Consent) Regulations 1990 (the “Consents Regulations”) and the EIA Regulations, a notice of the proposed Development was published on the Company’s website and advertised in local and national press. The Application was made available in the public domain, and the opportunity given for those wishing to make representations to do so.

16. The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representations on the proposed Development.

17. The Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

18. The Scottish Ministers are satisfied that the EIA report has been produced in accordance with the EIA Regulations. The Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the environmental information, being the Application, EIA report, consultation responses including those from NatureScot, SEPA, HES and the Planning Authority into consideration in reaching their decision.

19. The Scottish Ministers consider that there is sufficient information to be satisfied that the Company has had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

20. The Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect, which the proposals would have on the natural beauty of the countryside, or any such flora, fauna, features, sites, buildings or objects.

21. The Scottish Ministers are satisfied that the Company has avoided so far as possible, causing injury to fisheries or to stock of fish in any waters.

Conservation of Habitats and Species Regulations

22. The Conservation of Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (“the Habitats Regulations”) require Scottish Ministers to consider whether the proposed Development would be likely to have a significant effect on a European site, (either alone or in combination with other plans or projects), as defined in the Habitats Regulations.

23. The proposed Development is located in close proximity to the Muirkirk and North Lowther Uplands Special Protection Area (“SPA”). Consequently, the Scottish Ministers are required to consider the effect of the proposed Development on the SPA by carrying out a Habitats Regulations Appraisal (“HRA”). NatureScot advised that the conservation objectives for the SPA qualifying interests will not be undermined and that in their view no likely significant effects would arise from this proposal upon any European sites. The Scottish Ministers agree with the view of NatureScot and therefore an appropriate assessment is not required.

Consultation Responses

24. A summary of the consultation responses is provided below, and the full responses are available on the Energy Consents Unit website www.energyconsents.scot.

25. **The Planning Authority**, Dumfries and Galloway Council, **objected** to the proposed Development, considering that the proposal is contrary to NPF 4 Policy 11 e (ii) in that it does not satisfactorily demonstrate through project design and mitigation how the Company will address significant landscape and visual impacts. They consider the proposal will also have more than a localised impact over those generally expected from energy transmission developments.

26. The Planning Applications Committee Report concluded that the Application provided adequate information to enable the potential main effects of the proposed Development to be understood, and that the scheme is environmentally acceptable. The Report also concluded that mitigation would enable the project to accord with the objectives of the development plan. A range of recommended conditions are included in the Report.

27. **HES** raised no objection. The proposed Development will have an adverse impact on the setting of the scheduled monument Connel’s Church and graveyard (SM13747) as it will have impact upon the wider character of the landscape. HES conclude the development does not raise any issues of national significance for their interests.

28. **SEPA** raised no objection. They are content with the proximity of infrastructure to the watercourses and the peat monitoring and mitigation measures proposed.

29. SEPA advised that the septic tank, the 2 new culverts at Glenmuckloch Substation and the new 21 watercourse crossings will need registrations under the Water Environment Regulations and to liaise with SEPA's Water Permitting Team if required. They also advised to store any disposal rock at a licensed site.

30. **NatureScot** raised no objection. NatureScot were content with the mitigation measures proposed in the EIA report, and considered appropriate survey methods were utilised in regards of species, habitats and landscape. They requested the conditions from the RSPB's consultation response be adopted in respect of black grouse.

31. Scottish Ministers have given consideration to the recommendations made by NatureScot and have attached conditions within Annex 2, which give effect to their recommendations.

32. **Ministry of Defence ("MOD")** raised no objection. MOD has no statutory safeguarding objection to the proposed Development on the basis that it is located outside MOD safeguarding areas. However, they requested the structure be fitted with aviation warning lighting and amendment to aeronautical charts and mapping records due to the height of the development. They raised no concerns with the proposed Development subject to a planning condition requiring consultation with MOD on the development details prior to commencement.

33. The Scottish Ministers have attached a condition within Annex 2, which gives effect to the MOD's recommendations.

34. **Nith District Salmon Fishery Board (NDSFB)** raised no objection. NDSFB confirm the OHL will not have an adverse effect, however the construction of the towers will have potential adverse impact on the water environment. The nature of the land along the route of OHL is sensitive and connected with areas of significant rainfall, indicating potential for runoff. Any runoff from the Glenmuckloch to Glenglass Substation could enter the Nith, the Euchar Water or some minor tributaries feeding these watercourses which contain salmon and sea trout, eels, minnows, stone loach and lamprey. NDSFB has requested environmental information for aquatic invertebrate surveys and fish surveys.

35. Scottish Ministers have attached a condition within Annex 2, which ensures protection of surrounding environmental interests including the water environment.

36. **Network Rail** raised no objection in principle; due to the proposed works being located close to the operational railway they requested that any works over the railway (including construction) should be subject to further discussion and agreement with Network Rail.

37. Scottish Ministers have attached a condition within Annex 2, which gives effect to the Network Rail's recommendation.

38. **Royal Society of the Protection of Birds (“RSPB”)** raised no objection.

39. RSPB noted that Dumfries and Galloway holds significant population of Black Grouse (4.5% of the regional population (44 lekking males) or 1.4% of the population of southern Scotland). RSPB’s records indicate the site is highly likely to hold a breeding population and recognised recent decline and cumulative pressures on Black Grouse from development and other land use changes. RSPB are concerned there could be significant effect on the regional population as the OHL passes over a lek site, there is a high risk of disturbance to the birds during construction at the lek site and during the nesting/chick rearing period. RSPB also consider there to be a high collision risk during the operational phase. This could have significant effect on the regional population, in isolation and in combination with other developments in the area. RSPB recommend that the OHL is marked with appropriate deflectors between towers 10 and 16 to reduce the risk of collision to Black Grouse.

40. The Scottish Ministers have given consideration to RSPB’s recommendation and have attached conditions within Annex 2 which take account of RSPB’s consultation response.

41. **The Coal Authority** raised no objection, advising that part of the proposed Development lies within a coal mining area (between the south of the River Nith and the north of Hunter’s Hill), and if coal mining features and hazards are encountered during the proposed Development, these should be appropriately assessed by an engineer and the Coal Authority notified.

42. The information provided indicates Towers 20 to 40 require further assessment of ground conditions and foundation designs, to appropriately assess risk and inform mitigation measures.

43. The Coal Authority advised that the planning authority should seek technical advice on mine gas risks and implementation of appropriate measures from a competent personnel.

44. The Coal Authority advised the Company that they should seek advice from a technically competent person to ensure that a proper assessment has been made of the potential interaction between hydrology, the proposed drainage system and ground stability, including the implications this may have for any mine workings which may be present beneath the site.

45. The Scottish Ministers have attached a condition within Annex 2, to give effect to The Coal Authority’s recommendations.

Internal consultee responses

46. **Marine Scotland Science (“MSS”)** raised no objection.

47. They noted in the EIA report that aquatic surveys will be incorporated into the CEMP and delivered prior to, during, and after construction. MSS recommended the monitoring programme on potential impacts on the water quality and fish populations in the Euchar Water, Kello Water and River Nith should follow MSS guidelines

(<https://www.gov.scot/publications/onshore-renewables-interactions/>) and the mitigation measures proposed in the EIA can be secured through applicable planning conditions.

48. The Scottish Ministers have attached a condition to secure a CEMP, which will incorporate the required surveys, within Annex 2.

49. **Scottish Forestry** – raised no objection and recommended an appropriately worded compensatory planting condition. The Scottish Ministers have attached a condition within Annex 2, which gives effect to Scottish Forestry’s recommendation.

50. **Ironside Farrar**, advisors to Scottish Ministers on Peat Landslide Hazard Risk Assessment (“PLHRA”), provided advice relative to potential PLHRA for the proposed Development.

51. Ironside Farrar considered that the majority of the site records peat at depths less than 0.5m; peat slide risk is assessed as negligible and Tower 28, identified as low risk. They recommended that drainage from the upslope field drains is captured and diverted away from the working area throughout the construction period.

52. Ironside Farrar advised the proposed mitigation measures appear to be appropriate and credible at construction phase and that the PLHRA information submitted by the company was sufficient.

53. Other consultees that provided no objection are as follows: BT, Crown Estate Scotland, Glasgow Airport, Glasgow Prestwick Airport, Joint Radio Company, Met Office and NATS Safeguarding.

54. Consultees did not respond to the consultation are as follows: British Horse Society, Civil Aviation Authority – Airspace, Fisheries Management Scotland, Fisheries Trust Scotland, Health and Safety Executive, John Muir Trust, Mountaineering Scotland, Maritime and Coastguard Agency, Nuclear Safety Directorate (HSE), Scottish Rights of Way and Access Society (“ScotWays”), Scottish Water, Scottish Wild Land Group, Scottish Wildlife Trust, Transport Scotland, Visit Scotland, Kirkconnel and Kelloholm Community Council, Royal Burgh of Sanquhar Community Council and Penpont Community Council.

Representations

55. Representations made to Scottish Ministers in respect of the proposed Development are available to view in full on the Energy Consents Unit website at: www.energyconsents.scot.

56. 249 representations were received objecting to the proposed Development. Key issues raised in the objections included the following:

- An alternative route should be considered;
- Failure to engage in any meaningful way with the local community to communicate reasons for the re-routing; and

- Potentially significant environmental impacts on biodiversity, archaeology, landscape and visual amenity, loss of ancient woodland, ecology and ornithology, cultural heritage and traffic and transport.

57. The Scottish Ministers are satisfied that the matters raised in the objections have been appropriately assessed and taken into account in the determination of the proposed Development.

Public Inquiry

58. In accordance with paragraph 2(2) of Schedule 8 of the Electricity Act, if a planning authority objects to an application and the objection is not withdrawn, the Scottish Ministers shall cause a public inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the planning authority.

59. Regulation 8 of the Consents Regulations also provides for a planning authority's objection to be accepted and for a public inquiry to be held if a period of longer than 2 months (in the case of an application under section 37) for submitting said objection has been agreed in writing by the planning authority with both the Scottish Ministers and the applicant. No such period was agreed in respect of the Application. The planning authority was consulted regarding this Application on 21 February 2023, and submitted its objection to the Scottish Ministers on 14 December 2023.

60. Paragraph 3 of Schedule 8 provides that where the Scottish Ministers are not, by virtue of paragraph 2(2), required to cause a public inquiry to be held, but objections or copies of objections have been sent to the Scottish Ministers, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a public inquiry should be held with respect to the application and, if they think it appropriate to do so, they must cause a public inquiry to be held.

61. The Scottish Ministers have considered the objections raised by the Planning Authority and in public representations and, having taken all material considerations into account, have decided that a public inquiry is not required. The Scottish Ministers are content there is sufficient information to be able to make an informed decision on the Application and that they can weigh all the conflicting issues without recourse to a public inquiry.

62. The Scottish Ministers are satisfied that both the public and the consultative bodies have been afforded ample opportunity for their objections to be made and that little would be added to the Scottish Ministers' understanding of parties' positions by discussion in a public inquiry forum.

The Scottish Ministers Considerations

Main determining Issues

63. Having considered the Application, the EIA report, responses from consultees, and Scottish Government policies, Ministers consider that the main determining issues are:

- the environmental impacts of the proposed Development.
- the extent to which the proposed Development accords with and is supported by Scottish Government policies.
- the contribution the proposed Development will make to realising the wider benefits of renewable electricity generation connection to the national grid.

64. These issues are considered in turn below.

Assessment of the Determining Issues

Environmental Matters

65. In consideration of the proposed Development, the Scottish Ministers have reviewed the EIA report, the consultation responses, and public representations.

66. The EIA report assessed the impact of the proposed Development on landscape and visual amenity, geology, hydrology and ground conditions, hydrology and flood risk, ecology and ornithology, archaeology and cultural heritage, noise and vibration, access, traffic and transport, land use and agriculture, recreation, tourism and socioeconomics. The EIA report also included a detailed schedule of proposed mitigation measures to be implemented during construction, operation and decommissioning of the proposed Development. With the exception of landscape and visual effects, the EIA report concluded that no significant environmental effects were considered likely subject to proposed mitigation measures.

67. The Scottish Ministers have reviewed the Landscape and Visual Impact Assessment (“LVIA”) presented within the EIA report and comments made by consultees. The LVIA sets out that there are no national landscape designations within the study area; it concludes that there will be moderate, significant effects on the Upper Nith Valley LLCT and moderate significant effects at 5 of the 10 viewpoints assessed. No significant cumulative landscape and visual effects have been identified.

68. The Planning Authority objected to the Application on the basis that the proposal is contrary to NPF 4 Policy 11 e (ii), in that it does not satisfactorily demonstrate through project design and mitigation how the Company will address significant landscape and visual impacts. They consider the proposal will also have more than a localised impact over those generally expected from energy transmission developments. NatureScot, the Scottish Ministers’ advisors on natural heritage matters, considered the landscape and visual impact assessment provided by the Company, and considered it to be carried out using appropriate survey methodology. NatureScot do not object and have no comment to make on landscape and visual effects.

69. The planning officer’s report, addressing landscape and visual impacts, states that the Application would not be in conflict with relevant LDP policies or NPF4 policies 4 and 11.

70. The Scottish Ministers have considered the design process adopted by the Company, as set out in Chapter 2 of the EIA report. A detailed overview of the Company's approach to routing of the proposed Development is provided, with the Company acknowledging its duties under schedule 9 throughout. Seven technically feasible route options were identified and appraised; in each option, landscape and visual amenity was a key consideration alongside other environmental considerations. Members of the public and stakeholders have been invited to comment throughout such considerations, and a final preferred route which is the subject of this application was selected which minimised landscape and visual impacts so far as was possible, taking into account other technical and environmental constraints.

71. The Scottish Ministers agree with the findings of the EIA report and find that the Company have through project design reduced landscape and visual effects so far as is reasonably possible in consideration of other design requirements. While significant landscape and visual impacts will result, Scottish Ministers do not consider that these will have more than a localised impact over those generally expected from electricity transmission developments.

72. The Scottish Ministers acknowledge that there will be significant adverse landscape and visual effects arising from the proposed Development and that these cannot be further mitigated. These effects are considered to be acceptable in the context of the need for and benefits of the Development.

73. Objections from members of the public raised concerns over biodiversity, archaeology, loss of ancient woodland, ecology and ornithology, cultural heritage and traffic and transport. The EIA report assesses no significant effects are likely in terms of archaeology or cultural heritage; there are no concerns raised by HES. The EIAR acknowledges that Deil's Dyke cannot be avoided, and although the likelihood of important archaeological remains being discovered is low, the Company have committed to mitigation measures to protect Deil's Dyke during construction, and to employment of an Archaeological Clerk of Works to monitor and supervise protection measures and works in areas of elevated potential.

74. No likely significant effects have been identified in relation to Forestry, although a strategy for the replanting of commercial forestry is attached, in cognisance of the Scottish Government's Control of Woodland Removal policy. There are no significant Ecological, Biodiversity or Ornithological effects likely to arise; conditions are imposed to secure a construction environmental management plan to prevent pollution, a peat management plan to minimise peat disturbance and manage reuse of peat, and a habitat management plan which will also incorporate protection measures for Black Grouse (to address the wishes of RSPB and NatureScot.) A Freshwater Ecology Monitoring Plan is conditioned to avoid or minimise impacts on fish populations. A detailed Construction Traffic Management Plan will require to be submitted to the Planning Authority prior to any works taking place. Scottish Ministers are satisfied that embedded mitigation, alongside measures which are to be secured via conditions, are sufficient to address other, non-significant impacts of the proposed Development.

75. The proposed Development will make a significant contribution to realising the wider benefits of renewable electricity generation connection to the national grid.

There are several renewable energy developments in the Sanquhar area requiring to connect, comprising several hundred MWs of renewable energy. In the absence of this development being installed, the renewable energy benefits of other developments will not be realised.

Local Development Plan (“LDP”)

76. The Planning Authority objected to the proposed Development on the basis that the proposal is contrary to NPF4 policy 11 e (ii). Scottish Ministers disagree and consider that the proposal is in accordance with 11 e (ii). Project design has had to balance a range of environmental and technical considerations, and the Company have sought to avoid, where possible, impacts on the landscape and on visual receptors. Policy 11 e (ii) recognises that impacts are to be expected for some forms of development, and Ministers consider that the Company have minimised effects so far as is reasonably possible. Further, impacts are assessed as on local receptors.

77. Ministers note the assessment in the Planning Applications Committee Report that the proposal accords with the Dumfries and Galloway Council Local Development Plan (LDP2). No part of the proposed Development is found to be contrary to any of its policies. Scottish Ministers consider that the proposed Development is in accordance with LDP2.

The Scottish Government Policy Context

Scottish Energy Strategy: The future of energy in Scotland (“the Energy Strategy”)

Draft Scottish Energy Strategy and Just Transition Plan 2023

78. The Energy Strategy states that “Scotland should have the capacity, the connections, the flexibility and resilience necessary to maintain secure and reliable supplies of energy to all of our homes and businesses as our energy transition takes place”. It adds that “Scotland needs a balanced and secure electricity supply. That means a system and a range of technologies which provide sufficient generation and interconnection to meet demand. It means an electricity network which is resilient and sufficiently secure against any fluctuations or interruptions to supply”.

79. The proposed Development will provide the resilience necessary to maintain secure and reliable supplies of energy to homes and businesses as our energy transition takes place. It will also support the connection of a significant amount of renewable energy generation to the national electricity system, making an important contribution to reducing our reliance on fossil fuels. Scottish Ministers conclude that the proposed Development is supported by the Energy Strategy. The Draft Scottish Energy Strategy and Just Transition Plan 2023 signals that strong support from the Scottish Government for upgraded transmission infrastructure remains.

National Planning Framework 4

80. National Planning Framework 4 (NPF4) sets out Scottish Ministers’ policies and proposals for the development and use of land. It plays a key role in supporting the delivery of Scotland’s national outcomes and the United Nations Sustainable

Development Goals. Part 1 of NPF4 sets out a Spatial Strategy for Scotland to 2045 and identifies developments of national importance to help deliver that strategy. The need for Strategic Electricity Transmission Infrastructure, of which this development is an example, is established therein.

81. Part 2 sets out National Planning Policy. NPF4 should be read as a whole, and the weight given to the policies therein decided on a case-by-case basis. The greatest weight in consideration of the proposed Development on the context of NPF4 is afforded to Energy policy. The policy establishes an intent to encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This description includes new and replacement transmission and distribution infrastructure. The desired outcome is the expansion of renewable, low carbon and zero emissions technologies. The proposed Development constitutes essential enabling works in this regard, and it will facilitate the transmission of electricity across Scotland and improve security of supply. The overhead line will also reduce greenhouse gas emissions through providing the means to connect significant amounts of renewable electricity to the national electricity system, thereby reducing the public's reliance on fossil fuels. The proposed Development has sought to mitigate impacts on the environment as far as is reasonably possible.

82. The Scottish Ministers conclude that the proposed Development is supported by NPF4 when read as a whole.

The Scottish Ministers' Conclusions

Reasoned Conclusions on the Environment

83. The Scottish Ministers conclude that there will be some significant localised landscape and visual effects arising from the proposed Development. There are no other likely significant residual environmental effects. Mitigation measures are proposed, and Scottish Ministers have secured these by conditions attached to this consent. Scottish Ministers are satisfied having regard to current knowledge and methods of assessment that this reasoned conclusion is up to date.

Acceptability of the proposed Development

84. Scotland faces a real challenge in building an electricity grid which will allow Scotland to harvest and export its vast resources of clean energy. The Scottish Ministers recognise that to achieve the dual aims of maintaining a resilient electricity network for businesses and consumers and enabling renewable ambitions to be realised, the need for new connections, and for grid reinforcement, is greater than ever. The installation, and the keeping installed, of the proposed overhead line and ancillary development would allow the Company to comply with its statutory duty to develop and maintain an efficient, coordinated, and economical system of electricity distribution and deliver a major electricity transmission system reinforcement. Significantly, the Development would allow a considerable volume of renewable electricity to connect to the national grid.

85. Scotland's energy policies and planning policies are all material considerations when weighing up the proposed Development. NPF4 makes it clear that low carbon

energy deployment, maintaining security of electricity supply, and electricity system resilience remain a priority of the Scottish Government. These are matters which should be afforded significant weight in favour of the proposed Development. The Scottish Ministers conclude, for the reasons set out above, that the proposed Development is supported by Scottish Government policies.

86. The Scottish Ministers have taken into account the Application, the EIA Report as well as consultee responses and representations and consider that the effects of the proposed Development are acceptable subject to the implementation of mitigation measures which are secured as conditions at Annex 2.

The Scottish Ministers' Determination

87. Subject to the conditions set out in **Annex 2 - Part 1**, the Scottish Ministers **grant consent** under section 37 of the Electricity Act 1989 to install and keep installed above ground the overhead electric line (as described in **Annex 1**).

88. Subject to the conditions set out in **Annex 2 - Part 2**, the Scottish Ministers direct that **planning permission is deemed to be granted** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the Development described in **Annex 1**.

89. The consent may, at any time after the expiry of a period of three months from the date of the consent, be varied or revoked by the Scottish Ministers under section 37 (3)(b) of the Act.

Section 37 consent and expiry of Planning Permission

90. The consent hereby granted will last for a period of 40 years from the earlier of:

- i) The date of final energisation of electric lines consented forming part of the Development; or
- ii) The date falling four years from the date of Commencement of the Development.

91. Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years.

92. Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years. Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments, a 5-year time scale for the commencement of development is appropriate.

93. The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to

which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the 1997 Act.

94. In accordance with the EIA Regulations, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the application relates is situated.

95. Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA and Historic Environment Scotland. This letter has also been published on the Scottish Government Energy Consents website at www.energyconsents.scot.

96. 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:

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>

97. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully

Alan Brogan

Alan Brogan

A member of the staff of the Scottish Ministers

Annex 1 – Description of Development

Annex 2 – Section 37 and Deemed Planning Conditions

Annex 3 – Site Plan

ANNEX 1

Description of the Development

The proposed Development comprises of a new double circuit 132kV steel lattice tower overhead line (OHL), approximately 9.3km in length and maximum height of 39m. The proposed Development includes a new Substation compound and control building, enclosed by palisade fencing and to include drainage works and compound security lighting. The OHL would terminate at the existing 132kV Substation at Glenglass.

In addition to installation of the OHL, the proposed Development consists of other permanent and temporary development.

The permanent ancillary development includes:

- Substation - electrical switchgear and plant;
- A new 3m steel palisade security fence and 1.2m of power fencing (max height 4.2m altogether);
- Internal fencing, CCTV, and lighting including perimeter lighting;
- A control building located within the Substation compound;
- Drainage works;
- Removal of trees; and
- Permanent access tracks

Temporary ancillary works shall also be required for the construction phase of the proposed Development which shall be reinstated upon completion including:

- Creation of an 80m wayleave through woodland;
- Temporary access tracks;
- Temporary topsoil storage;
- Watercourse crossings;
- Temporary lighting;
- Temporary Sustainable Drainage Systems (“SuDS”), including settlement ponds and ditches; and
- Working areas (around steel towers and the new Glenmuckloch Substation).

As more particularly described in the Application made to the Scottish Ministers by the Company on 16 January 2023 and the accompanying EIA report dated January 2023, and as shown on the Approved Plans comprising Annex 3 of the decision letter.

ANNEX 2

Part 1

Conditions Attached to Section 37 Consent

1. Commencement of development

- (1) Commencement of the Development shall be no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

***Reason:** To avoid uncertainty and ensure that the consent is implemented within a reasonable period and to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

2. Notification of Date of Final Energisation

- (1) Written confirmation of the Date of Final Energisation shall be provided to the Planning Authorities and Scottish Ministers no later than one calendar month after that date.

***Reason:** To allow the Planning Authorities and the Scottish Ministers to record when energisation of the line has taken place and comply with other conditions*

3. Non-assignment

- (1) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment, with or without conditions.
- (2) The Company shall notify the Planning Authorities and Scottish Ministers in writing of the name of the assignee, principal named contact and contact details within fourteen days of the consent being assigned.

***Reason:** To safeguard the obligations of the consent if transferred to another company.*

4. Serious Incident Reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

Reason: *To keep the Scottish Ministers informed of any such incidents which may be in the public interest.*

5. Woodland Planting Strategy

- (1) No development shall commence unless and until a Woodland Planting Strategy has been submitted to and approved in writing by the Scottish Ministers, in consultation with the Planning Authority.
- (2) The Woodland Planting Strategy shall set out an approach for the replanting of trees felled by the Company as a result of the Development, covering an area of no less than 27.88 hectares, to be carried out within the Dumfries and Galloway planning authority area.
- (3) The approved Woodland Planting Strategy (or as the case may be, an approved amended Woodland Planting Strategy) shall thereafter be implemented as approved and maintained as such for the lifetime of this consent, unless otherwise approved in writing by the Scottish Ministers in consultation with the Planning Authority.

Reason: *To address the impacts of woodland felling associated with the Development.*

Part 2

Conditions attached to Deemed Planning Permission

6. Commencement of Development

- (1) The Development must be begun not later than the expiration of 5 years beginning with the date of this permission.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

Reason: To comply with section 58 of the Town and Country Planning (Scotland) Act 1997.

7. Implementation in accordance with approved plans and requirements of the section 37 consent

- (1) Except as otherwise required by the terms of the section 37 consent and deemed planning permission, the Development hereby approved shall be undertaken in accordance with the Application and the accompanying Environmental Impact Assessment (“EIA”) Report including all Appendices, dated January 2023, and including all mitigation and monitoring measures stated in it, and other documentation lodged by the Company in support of the Application.

Reason: To ensure that the Development is carried out in accordance with the approved details.

8. Limits of deviation and micro-siting

- (1) All towers, areas of hardstanding and tracks shall be constructed in the locations as set out in Figure 1.1 the EIA report dated January 2023, and each shall be limited to an individual height that shall first have been submitted to and agreed in writing by the Planning Authority. The location and the height of the tower may be adjusted within the following Limits of Deviation:
 - (a) No steel tower shall be more than a height of 10% of its agreed individual height above existing ground level.
 - (b) No towers or area of hardstanding shall be moved more than 50m from the position shown on the approved plans;
 - (c) No track shall be positioned more than 50m either side of the position shown on the approved plans;
 - (d) Micro-siting shall be carried out in accordance with specific procedures and details approved as part of the relevant CEMP required in accordance with condition 10 of this consent or as otherwise approved under the condition.
 - (e) All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW) appointed under the terms required by condition 11.

- (2) No later than one month after the Date of Final Energisation, the Company must submit a finalised site plan to the Planning Authority, copied to Scottish Ministers, showing the final position of the overhead line, all towers, access tracks, and associated infrastructure forming part of the Development. The plan must also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the approval from the ECoW or the Planning Authority, as applicable.

Reason: *Ensure that the development is built in accordance with the description in the EIA report to allow tolerance for re-siting infrastructure within the limits of deviation so as to take account of local ground conditions.*

9. Construction Hours

- (1) All construction work associated with the Development must be carried out and all audible construction activities shall be limited to the hours of 07:00 to 19:00 on Monday to Sunday (April to September) and 08:00 to 17:00 Monday to Sunday (October to March), with no audible activity taking place on public and national bank holidays, unless otherwise approved in advance in writing by the Planning Authority.
- (2) Outwith these periods, works at the site shall be limited to emergency works and dust suppression, unless otherwise approved in writing by the Planning Authority. The local planning authority shall be informed in writing of emergency works within three working days of occurrence.
- (3) HGV movements to and from the site (excluding abnormal loads) during construction of the Development shall be limited to 07.00 to 19.00 Monday to Friday, and 08.00 to 13.00 on Saturdays, with no HGV movements to for from site taking place on a Sunday or on public holidays.

Reason: *In the interests of local amenity.*

10. Construction Environmental Management Plan (“CEMP”)

- (1) No development shall be commenced unless and until a site-specific Construction Environmental Management Plan (‘the CEMP’) has been submitted to and has been approved in writing by the Planning Authority.
- (2) The CEMP shall address requirements arising from the construction and reinstatement phases of the Development, shall inform the production of construction method statements, and shall specify the siting of working areas, soil management practices, measures to prevent pollution of watercourses, environmental site monitoring and noise mitigation measures where identified to be required.

- (3) The Development shall be implemented in accordance with the requirements of any approved Construction Procedures Handbook, copies of which shall be maintained available on site for the duration of construction works.
- (4) The Development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority.

Reason: *In the interests of pollution and noise control.*

11. Environmental Clerk of Works (“ECOW”)

- (1) No development shall commence unless and until the Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant to assist the Planning Authority in monitoring compliance with the terms and conditions of the deemed planning permission and the conditions attached to this consent. The terms of appointment shall:
 - (a) Impose a duty to monitor compliance with the terms and conditions of the deemed planning permission and conditions attached to this consent;
 - (b) Require the environmental consultant to submit a monthly report to the planning authority summarising the works undertaken on site; and
 - (c) Require the environmental consultant to report to the Planning Authority any incidences of non-compliance with the terms or conditions of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.
- (2) The environmental consultant shall be appointed on the approved terms throughout the period of commencement of development to completion of post construction restoration works.

Reason: *To enable the development to be suitably monitored to ensure compliance with the consent issued.*

12. Peat Management Plan (“PMP”)

- (1) No development shall commence until a finalised PMP has been submitted to and agreed in writing by the Planning Authority, in consultation with SEPA (as necessary);
- (2) The finalised version shall outline the further measures proposed to reduce peat disturbance, recalculate the volumes of peat to be disturbed and indicate the finalised measures for peatland restoration; and
- (3) Thereafter the Development shall progress in accordance with the approved PMP

Reason: *In order to minimise disturbance of peat and ensure the appropriate reuse and management of peat.*

13. Habitat and Biodiversity Management

- (1) No development shall commence unless and until a Habitat and Biodiversity Management Strategy (including specific items relating to Black Grouse as set out in advice from RSPB Scotland and NatureScot) has been submitted to and agreed in writing by the Planning Authority, in consultation with NatureScot (as necessary). The development shall be undertaken in strict accordance with the strategy approved in response to this condition.

Reason: *To ensure that habitat management/restoration and biodiversity management are carried out.*

14. Traffic Management Plan

- (1) No development shall commence unless and until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Planning Authority (in consultation with the roads authority). The CTMP shall include (but shall not necessarily be limited to) the following:

- (a) Public road closures and restrictions;
- (b) Proposed vehicle routeing plans (to include excluded routes);
- (c) Breakdown of deliveries by type and month;
- (d) Any abnormal indivisible loads that may be delivered by road, or confirmation that no abnormal indivisible loads will be required for construction of the authorised development;
- (e) Proposed signage for public and commercial road users including construction /delivery drivers;
- (f) Condition surveys;
- (g) Any highway (accommodation) works proposed (for example, carriageway widening, verge strengthening, passing places, alterations to road furniture and associated works), all supported by swept path analysis;
- (h) Scheme of test runs in advance of any abnormal load transportation taking place;
- (i) All mitigation measures (for example, in the event of broken down or stuck vehicles blocking public roads);
- (j) Vehicle tagging system/driver code of conduct details and contact list);
- (k) Wheel washing measures to ensure water and debris are prevented from discharging from the site onto the public road;
- (l) The extent and detail of 'post construction' carriageway, verge and public road boundary restoration works within the public road boundary;
- (m) Construction personnel travel; and
- (n) An implementation schedule.

- (2) Furthermore, development must not commence unless and until the developer has entered into an agreement with the roads authority, in order to ensure that there is sufficient provision to cover any extraordinary damage caused to the public road infrastructure during construction works.

- (3) Thereafter, the construction of the Development shall be carried out in complete accordance with the approved CTMP, unless otherwise agreed in writing with the Planning Authority.

Reason: *In the interests of road safety and to ensure that abnormal loads access the site in a safe manner.*

15. Freshwater Ecology Monitoring Plan

- (1) No development shall commence until a Freshwater Ecology Monitoring Plan (“FEMP”) has been submitted to, and approved in writing by, the Planning Authorities in consultation with Marine Scotland Science (MSS). The FEMP shall outline proposed monitoring following MSS guidelines on monitoring programmes to monitor effects on freshwater ecology to include (but is not limited to) matters set out in MSS’s consultation response dated 20 July 2023.
- (2) The FEMP shall set out proposed mitigation measures to include (but not limited to) matters set out in MSS’s consultation response dated 20 July 2023.
- (3) The development shall not commence unless the terms of appointment by the Company of suitably qualified (or equivalent) Ecological Clerk of Works (ECoW), has been submitted to the Planning Authorities for their written approval. The terms of appointment shall be to:
 - (a) oversee the FEMP and to carry out regular visual inspections of all watercourses in line with MSS consultation response dated 20 July 2023;
 - (b) monitor compliance with all proposed site-specific mitigation measures and in agreement with the Planning Authorities and MSS; and
 - (c) submit monthly reports to the Planning Authorities and report to the Company’s nominated construction project manager and consenting body any incidences of non-compliance with the ECoW works at the earliest practical opportunity.
- (4) The Development shall be carried out in accordance with the approved FEMP, which shall be implemented in full and in accordance with the timescales specified within it, unless and until otherwise agreed with the Planning Authorities in consultation with MSS.

Reason: *In the interests of good environmental management and to avoid and/or minimise impacts on water quality and fish populations associated with the development.*

16. Decommissioning Scheme

- (1) In the event that the line, after the Date of Final Energisation, fails to transmit electricity for a continuous period of 1 year, no later than 2 months and 1 year after electricity was last transmitted a Decommissioning Scheme (‘the Scheme’) shall be submitted to for approval in writing by the Planning Authority. The Scheme shall include details about the removal of all elements of the

Development, relevant access tracks and all cabling, including where necessary details of:

- (a) justification for retention of any relevant elements of the Development;
- (b) the treatment of disturbed ground surfaces;
- (c) management and timing of the works;
- (d) environmental management provisions, including species protection plans;
- (e) the removal of all components of the line from the site for recycling or disposal;
- (f) a traffic management plan to address any traffic impact issues during the decommissioning period; and
- (g) all in accordance with the relevant legislative requirements and published best practice at time of decommissioning, unless a subsequently amended scheme is submitted to and agreed in writing by the relevant Planning Authority.

(2) Thereafter the Scheme shall be implemented in accordance with the approved details and timetable.

Reason: *To ensure that should the line no longer be required that an appropriate mechanism is in place for decommissioning of the Development.*

17. Coal Mining

(1) No development shall commence in relation to Towers 20 – 40 until;

- (a) A further assessment (Section 3 of the Coal Mining Risk Assessment: Appendix 3.2 of the EIA Report) has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
- (b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.
- (c) The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

(2) Prior to the date of Final Energisation, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to and approved in writing by the Planning Authority. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: *In the interests of safety.*

18. Railways

(1) No development shall commence unless and until details of all works adjacent to and above the rail line have been submitted to and approved by Network Rail's

Asset Protection Engineer. Where any works cannot be carried out in a “fail-safe” manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. by a “possession” which must be booked via Network Rail’s Asset Protection Engineer and are subject to a minimum prior notice period for booking of 20 weeks.

Reason: *To ensure that construction works affecting railways are undertaken in a safe manner which does not disturb the operation of the railway.*

19. Aviation Safety

- (1) No development shall commence unless and until the Company has provided the Planning Authority, Ministry of Defence and Defence Geographic Centre with the following information in writing:
 - (a) The precise location of the Development;
 - (b) The date of Commencement of Development;
 - (c) The date of completion of the Development;
 - (d) The height above ground level of the tallest structure and its location;
 - (e) The maximum extension height of any construction equipment; and
 - (f) Details of aviation warning lighting fitted to the towers.
- (2) No visible spectrum lighting is permitted. The Company shall submit details of aviation warning lighting for approval by the Planning Authority in consultation with the MOD, which shall include infra-red lighting only.
- (3) Any aviation warning lighting shall thereafter be installed and operated in accordance with the approved scheme. No visible spectrum lighting shall be installed or operated on the towers.

Reason: *In the interests of aviation safety.*

Definitions

In this consent and deemed planning permission:-

“Approved Plans” means the plans included in the Environmental Impact Assessment Report submitted with the application and Figure 1.1 Location Plan.

“the Application” means the application submitted by the Company on 16th January 2023, the EIA report, and any other environmental information submitted by the Company in support of the Application.

“Commencement of Development” means the date on which Development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997 (as amended).

“the Company” means SP Transmission PLC, a company incorporated under the Companies Act (Registered company number SC 189126) having its registered office at 320 St Vincent Street, Glasgow, G5 5AD, or such other person who from time to time may lawfully have the benefit of this consent.

“Date of Final Energisation” means the earlier of (i) the date on which all electric lines consented forming part of the Development transfer energy via the grid network; or (ii) the date falling four years from the date of Commencement of Development.

“the Development” means the development as described in Annex 1 authorised by this section 37 consent and deemed planning permission.

“public and national bank holidays” means all public holidays, be they set out in statute. Public or local holidays are determined by local Councils and can differ between areas.

“HES” means Historic Environment Scotland.

“Planning Authority Area” means the boundary of Dumfries and Galloway Area.

“SEPA” means Scottish Environmental Protection Agency.

“NatureScot” means Scottish Natural Heritage now operating as NatureScot.

“the Planning Authority” means Dumfries and Galloway within whose boundary the Development is situated.

“the proposed Development” means the development described in Annex 1 authorised by this section 37 consent and deemed planning permission.