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Dear Sirs

ELECTRICITY ACT 1989
TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND
TURBINE GENERATING STATION AT FULLABROOK DOWN, NORTH
DEVON**

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Business, Enterprise and Regulatory Reform ("the Secretary of State") to refer to the application dated 21 September 2004 by Devon Wind Power Limited ("DWP") for the consent under section 36 of the Electricity Act 1989 ("section 36 consent") to construct and operate a wind turbine generating station of about 66 MW at Fullabrook Down, North Devon ("the Development"), and for a direction under section 90(2) of the Town and Country Planning Act 1990 ("section 90 direction") that planning permission for the Development be deemed to be granted.

II. PUBLIC INQUIRY

2.1 Following objections from the relevant planning authorities, North Devon District Council and Devon County Council, to the Application, the Secretary of State was obliged to cause a public inquiry to be held under Schedule 8 to the Electricity Act 1989 into the Application. On 1 September 2006 the Secretary of State appointed Dr Chris Gossop BSc MA PhD MRTPI ("the Inspector"), to

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preside over the public inquiry. The public inquiry was governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990, as amended ("the Inquiries Procedure Rules").

2.2 The public inquiry was held at the Guildhall, Barnstaple on 16 days between 28 November 2006 and 12 January 2007. The Inspector submitted his Report of the public inquiry to the Secretary of State on 16 May 2007.

2.3 The Inspector concluded, amongst other things, the following:

- “8.234. On balance, I consider that the very substantial benefits of this proposed development outweigh the adverse impacts and that this development is acceptable with conditions.
- 8.235. There is the subsidiary question and that is whether any planning permission should include or exclude the two turbines that fall within the AGLV boundary. [8.102, 8.104] In terms of the development plan, they would be contrary to two policies. On the other hand, PPS22 states at paragraph 15 that local landscape designations should not be used in themselves to refuse planning permission for renewable energy developments. In terms of the physical impact of Turbines 21 and 22, seen from the downland that impact would be no greater than for the other turbines. Moreover, seen from the valley, the view would be confined to one turbine and the blades of another. [8.102] Overall, I consider that the adverse effects of the two turbines, although real ones, would be limited.
- 8.236. It was established at the Inquiry that it would be possible to delete the two turbines from the scheme by condition. However, given the broader case for this development and the considerations in paragraph 8.235 above, I see no convincing reason to take such a step and thereby to limit capacity of this windfarm in any approval.”

2.4 The Inspector recommended that:

“8.242.

- Consent be given, pursuant to Section of the Electricity Act 1989, to construct and operate a 66MW wind turbine generating station at Fullabrook Down in North Devon; and
- A direction be made that planning permission for such works shall be deemed to be granted under section 90(2) of the Town and Country Planning Act 1990, as provided for in Paragraph 7(1) of Schedule 8 to the Electricity Act 1989, subject to the conditions set out in the following Schedule.”

III. PLANNING CONDITIONS

3.1 The Secretary of State has considered the Planning Conditions recommended by the Inspector carefully. Subject to the overall merits of the section 36 consent application and the possibility of a re-opening of the public inquiry – both dealt with below – the Secretary of State approves the draft planning conditions annexed to the Inspector's Report subject to certain variations and minor drafting changes.

3.2 The Secretary of State's views as to appropriate variations to the recommended wording of conditions are as follows:

a) Decommissioning of Wind Turbines and Ancillary Equipment

The Secretary of State agrees that, because the proposed windfarm will only operate for a period of 25 years, there should be conditions relating to decommissioning, substantially in the form of those recommended by the Inspector at Conditions 3 and 4. The Secretary of State would however wish to ensure that the applicable scope of Conditions 3 and 4 should not be capable of interpretation so as to require works going beyond the usual expected scope of a condition controlling decommissioning. That usual scope would require removal of a turbine and its base to a depth of 1.2 metres, and to allow for the local planning authority to decide whether other aspects, such as tracks and cabling, can remain. The reason for such an approach is the possibility that a mandatory requirement to remove items, such as cabling, in every case could prove more damaging to the local environment than leaving them in situ.

Accordingly the Secretary of State proposes the following variation to conditions 3 and 4:

"3. If any wind turbine hereby permitted fails to produce electricity for supply to the electricity grid for a continuous period of 12 months, that wind turbine and ancillary equipment shall be removed, subject to prior approval of a decommissioning scheme, submitted pursuant to Condition 4.

4. The operator of the Development shall submit to the local planning authority, for approval in writing, a scheme for the demolition and removal of the surface elements of the Development to a depth of not less than 1.2 metres, which shall be carried out at the operator's expense. The approved scheme shall be in accordance with Schedule 1 of the Section 106 of the Town and Country Planning Act 1990 Agreement dated 10 January 2007 and shall also include management and timing of the works and a traffic management plan"

b) Cleaning of site tracks

The Secretary of State considers that the proposed obligation for the operator to have to clean site tracks, included at paragraph (c) of Condition 7, is unworkable. The Secretary of State notes that the site tracks in question will mainly be haul roads, created by putting down aggregate and which are not tarmaced or concreted over. His belief is that cleaning would be difficult if not impossible and to require this would be unduly onerous. He proposes to remove the following text: "site tracks" from this condition.

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c) Concrete Batching Plant

The Secretary of State notes the Inspector's comments in his report at paragraph 8.5, recommendation 1.16 and Condition 18, relating to the concrete batching plant located outside the application site. The Secretary of State agrees with the approach taken by the Inspector, whereby it is considered appropriate to consider the batching plant as works required by a condition. The fact that the land can reasonably be deemed to be under the control of the operator is noted and this finding agreed. Thus the Secretary of State is content with the form of Condition 18 as drafted.

d) Possible Aerodynamic Modulation

The Secretary of State notes from consideration of paragraphs 8.171 to 8.181 relating to wind shear and aerodynamic modulation (and related noise control conditions) that the Inspector considered four different options in relation to the selection of appropriate noise conditions. The Inspector's preference was for an application of current Government guidance under ETSU-R-1997. However, at paragraph 8.181 of the Report, the Inspector indicates that the Secretary of State may wish to consider Option 2 for noise limits when considering aerodynamic modulation.

The Secretary of State, subject to considering the question of aerodynamic modulation (see paragraph 4.12 below), agrees that Condition 20, as recommended by the Inspector, is suitable for inclusion in any section 90 direction he may give.

e) Lighting of turbines

The Secretary of State notes that the Inspector has made suggested provision for this aspect of the project in the form of draft Condition 17 annexed to his report. The issue of lighting is considered further in paragraphs 4.2 to 4.11 below in the context of a possible re-opening of the Public Inquiry.

Defence Estates ("DE"), a branch of the Ministry of Defence responsible for air safety, has suggested a different, more detailed form of words for this condition to cover the requirements for the lighting of the 22 turbines, should the Secretary of State decide to deem planning permission for the proposed development. The Secretary of State agrees that this is appropriate and therefore, subject to consideration of the overall merits of this application, now adopts such wording as a replacement for Condition 17:

"A scheme of illumination of the turbines and anemometry mast, which shall be in accordance with the requirements of Joint Service Publication 554 Aerodrome Standards and Criteria Section 210 shall be submitted to and approved in writing by the local planning authority prior to the installation of such lighting. The illumination shall only be carried out in accordance with the approved scheme".

IV. DEVELOPMENTS SINCE THE CLOSE OF THE PUBLIC INQUIRY

4.1 The Inspector closed the public inquiry on 12 January 2007 and has reported on the basis of the evidence on or before that date. The Secretary of State has to consider whether anything has occurred since that date which is material to any decision he may make on the granting of the section 36 consent. The Secretary of State is aware of three matters which he feels are relevant to his decision and considers them as follows:

Lighting of Turbines

Background

4.2 On 21 February 2007, DWP, via their solicitors Burges Salmon informed the Secretary of State and the main parties to the public inquiry that DE, required the turbines to be lit. DWP explained that this requirement was contained in an email from DE dated 22 December 2006. This was after 20 December when the public inquiry adjourned and the Inspector indicated that he would only hear closing statements when the public inquiry reconvened on 11 January 2007. The Public Inquiry had proceeded on the basis that such lighting was not mandatory.

With hindsight, it would have been helpful if DE's change of position had been notified to the Inspector before the close of the Public Inquiry. However the Secretary of State understands that DWP wished to make further inquiries to clarify the position, in light of their prior understanding, deriving from DE's e-mail of 15 December 2006, that the lighting of turbines was not mandatory. The Secretary of State notes that DWP obtained further confirmation that such lighting was mandatory on 5 February 2007, after the Public Inquiry had closed.

4.3 The letter of 21 February from Burges Salmon attached details of this correspondence and set out DWP's arguments as to why a re-opened Public Inquiry would not be necessary;

- a) a note dated 19 December 2006 was produced by Burges Salmon on behalf of DWP summarising the evidence then before the Public Inquiry concerning the potential effect of illumination of the proposed turbines. The possibility of the need for illumination was included in the Environmental Statement prepared by DWP in support of the section 36 application. The subsequent discussion between the parties proceeded on the basis of an apparent lack of need for mandatory illumination. It was agreed by all parties to the Public Inquiry that illumination of the turbines could be controlled by a condition (as reflected in draft Condition 17 set out in the Inspector's report);
- b) since notification by DE of the need for illumination, neither the Civil Aviation Authority or NATS has changed its view as to the lack of need for lighting for the turbines;
- c) the change of situation does not have a material effect upon the approach taken as to illumination of the turbines during the inquiry or require any amendment to the agreed condition. Whilst the parties gave evidence and closed their cases on the basis that no lighting was required,

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the evidence that had been presented to the Public Inquiry was all based upon the understanding that illumination might be present;

d) DWP stated that it could comply with both DE's requirements and those imposed by the proposed planning condition relating to lighting; and

e) DWP argued that no party was prejudiced by the Secretary of State making a decision upon the outcome of the Inspector's report in light of this new situation but that to ensure all parties had the opportunity to comment, DWP was copying this correspondence to all parties with an interest with a view to inviting comments to the Secretary of State within 28 days.

Consultation with interested parties and their further submissions

4.4 The notification of 21 February 2007 to the Secretary of State was copied by DWP to the following interested parties seeking any comments within 28 days:

- a) North Devon District Council;
- b) Devon County Council;
- c) The Campaign Against Wind Turbines (CAWT);
- d) Campaign to Protect Rural England (CPRE);
- e) The Friends of Fullabrook;
- f) The North Devon Green Party; and
- g) The Green Business Forum.

4.5 As a result of informing the other main parties at the public inquiry the Secretary of State received comments from the following; North Devon District Council, Devon County Council, CAWT and CPRE (Devon Branch), who all requested that lighting should be taken into account before any decision on the section 36 application was taken and, by some parties that section 36 consent should be refused. Specifically the responding parties' positions in relation to the proposed lighting can be summarised as follows:

- a) **North Devon District Council**, in its letter dated 14 March 2007 stated that:
 - i) in its view the requirement for lights would apply to all 22 turbines (because of the irregular pattern of the wind farm) rather than "only to turbines at the extremities/boundaries";
 - ii) the proposed addition of lighting would increase the potential impact of the substantial visual impact already caused to a wide area of North Devon, and, having regard to the impact of turning blades, the intrusion would be increased by the lights appearing to flash;
 - iii) the enjoyment of occupiers of 2800 residential properties within 3 kilometres of a turbine and a significant number within 1 kilometre will be significantly reduced by the intrusion of nearby flashing lights; and

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- iv) the Inspector and the Secretary of State were requested to have regard to these views in reaching a decision on this application.
- b) **Devon County Council**, in its letter dated 27 March 2007 stated that:
- i) whilst it was accepted that the lighting could be accommodated procedurally in a possible planning permission for the development by Condition 12 (now Condition 17), as agreed by the main parties at the Public Inquiry, the County Council considered that the addition of lighting to some or all of the turbines would inevitably compound the concerns expressed in relation to the adverse impact of a development of this scale upon the nearby area of outstanding natural beauty; and
 - ii) the Secretary of State was therefore requested to take this additional impact into account as a material consideration in the determination of this planning application.
- c) **CAWT** in its Supplementary Note of 26 February 2007 stated that:
- i) CAWT had raised the question of night lighting during the Public Inquiry, and though receiving eventual clarification that illumination would not be necessary, commented adversely that if it had been the case it would have compounded the adverse day-time visual impacts of the proposal and that it was unhelpful that no attempt had been made to illustrate the potential night-time effects on a "dark-skies" area;
 - ii) now that the situation was resolved, CAWT wished to emphasise its objection to the lighting of turbines which it believed to be without precedent;
 - iii) the lighting proposed would add to the visual impacts taking the impression of urbanisation from Barnstaple and Braunton onto higher ground and into the dark sky interior of North Devon;
 - iv) due to the passage of blades the lights would inevitably appear to flash on and off thus exacerbating the visual impacts which must be considered adverse to the nocturnal qualities of the host environment; and
 - v) CAWT requested that its evidential concerns be incorporated by the Inspector in his findings or for these to be used by a nominee of the Secretary of State to augment the Inspector's conclusions.
- d) **CPRE** in its response to DWP dated 1 March 2007 stated that;
- i) on safety grounds the lighting should be added to all 22 turbines to address risks from low flying and occasions when the towers are hidden in low-level mist and cloud;

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- ii) there would be 44 flashing lights on the 22 turbines (or 110 if the blades were illuminated) ;
- iii) this would add another significant element to the intrusive quality of the wind farm not least to the amenity (quality of life) of the 8000 people who live within 3 kilometres of the site and thousands of visitors to the area, adding to the "industrialisation" of this unspoilt, rural area and its outstanding natural beauty; and
- iv) CPRE considered this to be another justification form the refusal of this application and recommends accordingly.

4.6 Following the expiry of the 28 day period for comments set by DWP, and before considering this matter further, and in light of the previous lack of clarity as to DE's position, the Department sought and received the following clarification from DE on 15 June 2007:

"Following discussions with our Technical Advisor, we can confirm that as the turbines are inside the Statutory Safeguarded Area for RM Chivenor, and therefore the requirements of Part 13, Section 133(2) of the Air Navigation Order 2005 are applicable in this instance, the turbines will need to be lit."

Identification of procedural and substantive issues

4.7 The Secretary of State at this stage considers he has to reach decisions in relation to:

- a) whether to remit the lighting issue (alongside any other issue arising since the close of the Public Inquiry – see the two further issues dealt with at paragraphs 4.12 and 4.13 below) for further consideration via representations and/or a re-opened Public Inquiry; and, if not;
- b) the substantive merits of the lighting issue (and the other issues dealt with at paragraphs 4.9 and 4.10 below) in the context of a possible decision by the Secretary of State at this stage upon whether to grant section 36 approval or not.

4.8 As to procedural matters, the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990 govern the procedure to be adopted by the Inspector and by the Secretary of State after the close of a Public Inquiry. Pursuant to Rule 16(4) and (5) of this legislation, there are two ways in which the Secretary of State can re-open a public inquiry:

Firstly, under rule 16(4), if, after the close of an inquiry, the Secretary of State;

- a) differs from the inspector on a question of fact mentioned in, or appearing to him to be material to a conclusion reached by that inspector; or
- b) takes into consideration any new evidence or new matter of fact (not being government policy)

and, by reason of this the Secretary of State is minded to disagree with a recommendation by the inspector, he is not permitted to come to a decision at variance with the Inspector's recommendation without first

- a) notifying the parties entitled to appear at the inquiry, who appeared at it, of his disagreement and the reasons for it; and
- b) affording them an opportunity to make written representations to him within 21 days of notification or, if the Secretary of State has taken into consideration any new evidence or new matter of fact (not being government policy), an opportunity of asking within that 21 day period for a re-opening of the Public Inquiry.

Rule 16(5) provides that the Public Inquiry must be re-opened where the circumstances described in paragraph 16(4) apply, if such a request is made by the applicant or the relevant planning authority.

Secondly, rule 16(5) provides a separate, discretionary, power for the Secretary of State, as he sees fit to, cause an inquiry to be re-opened to afford an opportunity for persons to be heard on such matters relating to an application as he may specify.

In this particular case, for the reasons which are set out in more detail at section VI below, the Secretary of State is not minded to disagree with the Inspector's recommendation to approve the section 36 application and is not therefore required to re-open the public inquiry pursuant to rule 16(4).

The Secretary of State has therefore considered the merits of a possible remission of lighting for further consideration at a re-opened public Inquiry pursuant to his discretionary powers in rule 16(5).

4.9 Arguments in favour of re-opening the Public Inquiry

The Secretary of State considers that the submissions made by the interested parties, and summarised at paragraph 4.5 above, identify the following specific arguments that could be applied to justify re-opening the Public Inquiry;

- a) the fact that DE has now confirmed that lighting will be required for the wind turbines;
- b) the irregular pattern for siting the turbines means that all 22 have to be lit, since there will not be a recognisable outer perimeter which could be separately lit;
- c) the addition of lighting would increase the potential impacts upon the landscape and the dark skies at night in this part of Devon, as well as upon visual amenity of some 2800 residences (about 8000 people) within 3 kilometres of the proposed development site; and
- d) due to the movement of turbine blades past the lights in question, these would appear to flash, exacerbating visual impacts.

4.10 Arguments against re-opening the Public Inquiry

The Secretary of State considers that the following counter arguments can be made to the need to re-open the Public Inquiry;

- a) he notes from the Inspector's Report (paragraph 1.11) that the Environmental Statement and the Statement of Common Ground, signed by all the main parties, both envisaged that the perimeter turbines would be lit;
- b) he notes that while the Inspector does not cover lighting in great detail in his Report, he did indicate that a Planning Condition was discussed and agreed at the public inquiry which, in the opinion of the Secretary of State, clearly indicates that lighting was envisaged irrespective of the content of DE email of 22 December 2006 (paragraphs 2.240(vii) and 7.7 and condition 17);
- c) the parties to the Public Inquiry did not at the Inquiry, in the context of the matters referred to in a) and b), indicate a specific or contingent objection to the possible lighting of the turbines in whole or part;
- d) the consultation launched by DWP on 21 February 2007, in light of DE's clarification that lighting is required on air safety grounds, has now elicited submissions from the objectors identified at paragraph 4.3 above, who have made their views clear on this topic;
- e) the Secretary of State notes that DWP has stated that it could comply with both DE's requirements and those imposed by the proposed planning condition relating to lighting;
- f) one objector (DCC) makes the point that it recognised that the lighting requirements could be accommodated procedurally in a possible planning permission by the wording of condition 12 (Condition 17 in the Inspector's report, as now to be revised by the Secretary of State) as agreed between the parties at the Public Inquiry. The Secretary of State concurs with this view;
- g) another objector (CPRE) makes the point that if the proposed windfarm goes ahead, there will undoubtedly be times when the towers are hidden in low-level mist and cloud and it will then be vital that all 22 turbines are illuminated for air safety reasons. There are also risks associated with low flying.

4.11 The Secretary of State's conclusion and finding on whether to re-open the Public Inquiry in relation to the lighting issue

The Secretary of State has considered carefully the competing factors set out above in approaching a decision as to whether to exercise his discretion to call a re-opened Public Inquiry.

He takes notice of the sincere and carefully set out submissions by the four objecting parties. He notes the arguments put forward by the developer in their solicitors' letter of 21 February 2007.

He agrees that the mandatory illumination of all the turbines will add to the adverse visual, landscape and amenity impacts of the project. However, the inquiry proceeded on the basis that illumination was a possibility, and the parties were able to address this at the time. Since the inquiry the parties have also had an opportunity to make their views known as to the potential additional impacts of mandatory illumination of all the turbines. Having regard to these representations, the Secretary of State does not feel that re-opening the public inquiry would add significantly to the sum of knowledge as to the likely impacts of such lighting.

In those circumstances, having balanced matters carefully, he comes to the view that the Public Inquiry in this case does not need to be re-opened for further consideration of the lighting issue

Aerodynamic Modulation

4.12 On 1 August 2007, the Department announced the outcome of the study by Salford University into a phenomenon known as Aerodynamic Modulation ("AM"). AM is the audible modulation of aerodynamic noise, i.e. aerodynamic noise which displays a greater degree of fluctuation than usual. In some isolated circumstances AM was occurring in ways not anticipated by the 1997 report by ETSU to assess and rate noise from wind energy developments ("ETSU-R-97"). The Salford study concluded that although AM cannot be fully predicted, the incidence of AM resulting from wind farms in the UK is low. Out of the 133 wind farms in operation at the time of the study, there were four cases where AM appeared to be a factor. Complaints have subsided for three out of these four sites, in one case as a result of remedial treatment in the form of a wind turbine control system. In the remaining case, which is a recent installation, investigations are ongoing. Based on these findings the Government does not consider there to be a compelling case for further work into AM and will not carry out any further research at this time: however it will continue to keep the issue under review. The Government therefore continues to support the use of ETSU-R-97 as the means to assess and rate noise from wind energy developments. On that basis the Secretary of state does not consider that a re-opened Public Inquiry should be asked to consider this issue.

Targets for Renewable Energy in Devon

4.13 North Devon District Council informed the Secretary of State on 14 March 2007 that the decision, on appeal, to grant planning permission for a 9 turbine 18MW wind farm at Den Brook near Okehampton was announced on 12 February 2007. North Devon District Council is of the view that this decision impacts on the consideration of the targets for renewable energy in Devon, and the reasonable prospect of them being met, notwithstanding a refusal of the Fullabrook wind farm.

The Secretary of State is quite clear on this issue and can only restate the clear advice contained in Planning Policy Statement 22: Renewable Energy ("PPS22"), viz:

"The fact that a target has been reached should not be used in itself as a reason for refusing planning permission for further renewable projects."

In his view, so long as the area has the capacity in spatial, planning and environmental terms then the question of achieving a target is not a relevant matter for his consideration. However in order to further reaffirm his stance, he would draw attention to the Inspector's conclusions on this particular issue (paragraph 8.34) which he fully endorses.

On that basis the Secretary of State does not consider that a re-opened Public Inquiry should be asked to consider this issue.

Overall Conclusion

4.14 The Secretary of State is of the view that, on balance, the arguments relating to the lighting, aerodynamic modulation and renewables targets do not justify a decision to exercise his discretion to re-open the Public Inquiry under regulation 16(5) of the Inquiries Rules. He does not therefore propose to re-open the Public Inquiry.

V SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

5.1 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination of the section 36 application.

5.2 The Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2000 ("the 2000 Regulations") prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

5.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement (ES), he has considered the comments made by the local planning authority, those designated as statutory consultees under regulation 2 of the 2000 Regulations and other consultees and objectors.

5.4 Taking account of the extent to which any adverse environmental effects will be modified and mitigated by measures the Applicant has agreed to or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or for the deemed planning permission for the onshore elements.

VI. SECRETARY OF STATE'S DECISION ON THE APPLICATION

6.1 The Secretary of State, having carefully considered:

- a) the Inspector's Report and conclusions:
- b) the views of the relevant planning authorities:
- c) the objections received:
- d) other representations made to him by various bodies:
- e) the presentations relating to a possible re-opening of the Public Inquiry

f) the environmental information and all other relevant matters

and having had regard to the matters specified in paragraph 1(2) of Schedule 9 to the 1989 Act;

i) accepts the Inspector's findings of fact and recommendation to approve in relation to the section 36 application, and agrees with his conclusion that the visual impact of turbines 21 and 22 is not such that they need be removed for the reasons he has given;

ii) is of the view that whilst there can be no dispute that there will be adverse visual impacts and loss of amenity, and that lighting will add to the visual impact of the proposed windfarm, particularly during periods of darkness, there is a substantial counter argument, which he prefers, that a wind farm of the size envisaged will provide a very significant benefit via savings in emissions of CO₂ and therefore contribute to the UK's international obligations to reduce emission of gases which contribute to Climate Change. The Secretary of State adopts his reasoning at paragraphs 4.10 and 4.11 above in relation to lighting of turbines, in particular his finding that there has been adequate consideration of and opportunity to comment upon the use of such lighting;

iii) is of the view that the project should be approved, with lighting for all 22 turbines (because of the fact there is not a regular-shaped identifiable perimeter that can be lit) subject to complying with the requirements contained in the Joint Service Publication 554 Aerodrome Standards and Criteria Section 210, in order to safeguard the users of RM Chivenor, and therefore agrees a condition in the form set out at paragraph 3.2(e) as an amendment to Planning Condition 17 in the annex to the Inspector's Report;

iv) is of the view that the project can be approved, via the provision in the preceding paragraph, in a way providing safety for all low flying air traffic in night time, foggy or misty conditions, where visibility may be impaired, and

v) believes that the project is consistent with Government policy set out in the May 2007 White Paper "Meeting the Energy Challenge", as well as with the other criteria summarised in the Inspector's Report including his findings upon Topic 1 of his conclusions, with which the Secretary of State agrees;

and, has decided to grant section 36 consent subject to a condition that the Development shall be in accordance with the particulars submitted unless otherwise agreed, and to a condition concerning the time limit for the start of the construction of the Development.

6.2 The Secretary of State believes that the Planning Conditions referred to in section III above, subject to the variations dealt with at Section III, form a sufficient basis on which the Development might proceed. He has therefore decided to give a section 90 direction that planning permission for the Development be deemed to be granted subject to those planning conditions

6.3 I accordingly enclose the Secretary of State's consent under section 36 of

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the Electricity Act 1989 and a direction under section 90 of the Town and Country Planning Act 1990.

VII. GENERAL GUIDANCE

7.1 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 application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 7220).

7.2 This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

7.3 Attention is drawn to the requirements of section 76 of the Town and Country Planning Act 1990 concerning provisions for the benefit of the disabled.

VIII. DISTRIBUTION

8.1 Copies of this letter together with a copy of the Inspector's Report have been sent to the main parties and individuals listed in Annex A to the Inspector's Report.

Yours faithfully



Richard Mellish
Director, Electricity Consents