

UNECE HEARING - 12 DECEMBER 2012

OPENING STATEMENT BY THE COMMUNICANT

COMMUNICANT; AVICH AND KILCHRENAN COMMUNITY COUNCIL,
Taynuilt, Argyll, Scotland, UK

represented by Mrs V.C.K. Metcalfe, Community Councillor, and Mr
John D Campbell, QC, of the Scottish Bar and of Lincoln's Inn,
Barrister at Law.

RESPONDENTS: The Commission of the European Union and the
United Kingdom of Great Britain and Northern Ireland

to be represented.....

- 1 This statement opens the case for the Communicant.
Reference is made to the Communication, and attachments
(7), and the responses by the EU and UK.
- 2 I should like to begin by thanking the Committee on behalf of
my Community Council for the acceptance of my
Communication. Despite being statutory bodies at the 'grass
roots' heart of the democratic system within the UK,
Community/Parish Councils are predominantly small and
almost always under resourced. It is indeed a significant
moment in Scottish constitutional practice that one of them
finds itself here in these surroundings.
- 3 Although my Communication is predicated on local issues, the
Communication raises a topic of great importance across the
EU.
- 4 I am a Community Councillor in a rural area in the west of
Scotland. I am accompanied today by counsel, Mr John
Campbell QC of the Scottish Bar, and Mr Pat Swords, a

chemical engineer and chartered environmentalist from Ireland, who has been one of my advisers.

- 5 We will invite you, at the end of the day, to find that there has been a breach of the Convention by both the EU and the UK, and that the renewables programmes in the UK and across Europe have been promulgated in a way which has effectively, but completely, denied the public the right to be informed about, or to ascertain, their alleged benefits.
- 6 Let's note as we begin that both the EU and the UK are fully signed up to the Convention. This means, we submit, that the citizens of the UK and Europe expect to see the letter and the spirit of the Convention reflected in its municipal laws and decision making processes. It is the failure to achieve that objective which has brought us here today.
- 7 Except where I have to, I will not be taking time up explaining to you what I think the Convention means; you are the experts, and I leave the legal submission to counsel.
- 8 The Renewables Directives of the EC, nos 2001/77 and 2009/28 set out the renewable energy strategy for the EU. Loch Awe, in Argyll where I live is 1800 km from here. At Loch Awe, the Carraig Gheal windfarm and the West Loch Awe Timber Haulage Route are proposed as part of the Scottish Government's Renewable Energy programme, promoted in ostensible compliance with the EU's programme and, let it be added, the very vigorous and highly politicised pro-renewables programme of the Scottish Government.

- 9 As part of the UK's compliance with the requirements of the Directives, Scotland in particular within the UK is proceeding with a very aggressive expansion of renewables power generation. It calls this a Strategy, and has published its 'Routemap 2020' without consultation. It has prepared an SEA, but not until after publication, and it is still in the consultation phase. The 'Routemap' document is now in its second edition.
- 10 Such a programme, even one organised in the manner of the Scottish one, is subject to the Åarhus Convention because it is related to the environment, and because it is subject to the public participation requirements of Article 6. These include, as you know, Article 6(6) which *inter alia* requires the public to be given an estimate of the expected residues and emissions.
- 11 The principal stated justification for the relentless march of wind power generating stations - there are more than 3500 turbines in Scotland now - is to save or reduce harmful carbon dioxide emissions and reduce other pollutants which come with electricity generation - nitrate and sulphur based gases, hydrocarbons, and other poisonous materials, mainly gases.
- 12 In any decision about the location, size and extent of a wind power generating station, there must always be a balance to be struck between benefit and disbenefit. The benefits are said to arise from the generation of electricity by clean means. That is undeniable, but it is by no means clear that that is a straightforward benefit, because there are other consequences, both intended and unintended. The disadvantages are self-evident; the presence of wind turbines

in significant numbers in the Scottish landscape has marked disadvantages, particularly for those who live there. Small amounts of electricity are generated, but vast areas of the country are wholly changed in character by the presence of industrial plant. I can provide many examples, but this is not the time or the place.

- 13 Such changes might be both merited and acceptable if the receiving public could see, understand and quantify benefit for themselves or for society. But no attempt is ever made to assess the benefits and to make the information available which allows clear and informed judgment to be made. All we are told is "green power is good, and overcomes any disadvantage".
- 14 In the absence of any data about the fuel savings and emission reductions to be expected from wind power generation generally, or in relation to specific projects (such as Carraig Gheal and the WLATHR), and the savings made so far, it is impossible for the public to participate in or make informed judgments. It is submitted that it is therefore also impossible for decision makers to come to a balanced judgment, because the information the public needs is simply not available. The advancement of wind energy is said to be "government policy" and therefore not susceptible to argument or discussion at, for example, public local inquiries into any particular project.
- 15 Wind energy is a highly variable and intermittent source of power, which requires to be backed up by other electric power, generated in conventional ways, when the wind is not blowing. As more and more wind energy is permitted to take

access to the Grid, the consequence is greater and greater inefficiency at existing thermal plants, since they have to be run in their least effective "standby" or "backup" mode, when of course their polluting potential greatly increases.

- 16 The EU's official position is that "*Greenhouse gas emissions, including CO₂ emissions from renewable energy sources are either low or zero. Increasing the share of renewables in the EU fuel mix will therefore result in significantly lower greenhouse gas emissions*". In other words, direct displacement of thermally generated power by renewables generated power is official policy.
- 17 But does it happen that way? With respect, NO, it does not. The technical analysis of wind power's performance across the EU, and including the UK, shows not only no reduction in CO₂ and other harmful emissions, but the very reverse, accompanied by manifestly greater inefficiencies across the Grid system caused by the intermittency of wind and the fragility of the available backup.
- 18 Importantly, the *onus* lies on the promoters of renewables policy of this kind to prove the positive; to prove the justification which they claim, and to do that before Europe is covered in huge wind turbine installations achieving little or nothing; not supplying dependable power, not creating jobs, not achieving the displacement of thermal power generation, not demonstrating pollution savings, and above all not showing CO₂ reduction, but rather the reverse.
- 19 As my Communication outlines, the GP Wind project, in which the Scottish Government was a leader, completely fails to

account for the significant inefficiencies as between renewables and thermal generation, and across the Grid. It ludicrously postulates that "*the annual emission savings are estimated by multiplying the total annual (renewable) energy output by the emission output for the counterfactual case (sic) (i.e. coal fired generation, fossil fuel generation and average grid mix generation)*", whatever that means.

- 20 In Scotland, there has been no opportunity for the public to participate in the development of the Routemap 2020 (second edition), published in November 2012. We are in the dark, but in any event, the die is cast, for the 'Routemap' has suddenly been announced as "Government Policy". It has neither been subject to public, nor Parliamentary consultation, despite the Scottish Parliament having an Energy Committee, well equipped to conduct that examination. It is, we submit, an altogether disingenuous document.
- 21 I have detailed the UK's failures in respect of compliance with the Directive (2001/42/EEC) on Strategic Environmental Assessment in my Communication. So far as the UK has completed SEAs a search for analysis of actual pollution and CO₂ yields a blank. The Communication discloses the detail in such SEA as has been done in 2006 and 2009, and in response to questions asked in the Scottish Parliament.
- 22 The UK's Department of Energy and Climate Change civil servants simply refuse to take part in this discussion.
- 23 The Competent Authority has never completed its own Environmental Assessment in response to these questions,

whether at strategic or project level. The observations made about Carraig Gheal apply across the range of projects which are currently at Examination. Latest inquiry shows that since 2007 Scottish Ministers have determined >60 applications for windfarms of greater than 50MW installed capacity, with an additional 136 projects decided in one way or another by Local Planning Authorities. Each and every one of these is "justified" on the footing that it makes some, undefined contribution to "climate change targets" which, incidentally, do not exist, or the Scottish Ministers' *political* target of 100% of renewable electricity generated by 2020, which has no scientific basis whatsoever. The statistical information is updated periodically at

<http://www.scotland.gov.uk/Topics/BuiltEnvironment/Planning/appeals/ourperformance/windturbinestats>

24 In no case of a windfarm, however large, have we seen any analysis whatsoever of the contribution which it will make, or has made, towards reducing harmful emissions, or contributing to the replacement of fossil fuel base emissions by generation of a benign character. No Scottish Government document or windpower generator's analysis has shown (beyond strenuous assertion) the reasons and considerations on which the decision is made in so far as that decision was in any way based on alleged pollution saving.

25 This is not an adversarial process, and so in respect of the responses by the EU and the UK, I wish to say only this. Reliance on an SEA, even if properly carried out, is not a public consultation on the quantum of the benefits to be gained from a particular project or projects. Reliance on the

EU's statements in ACCC/C/2010/54 does not deal with the UK or the EU's response to this matter under Åarhus, nor does it make the slightest difference that the EU has good intentions. I do not agree (with respect) with the EU's conclusions in respect of infringement. I find the EU's response to be shallow and demonstrative of a lack of understanding of the way in which Åarhus is designed to work.

26. The UK's response to my Communication is a brochure for the UK's Renewables programme - for example, the NREAP and the Scottish Renewables Routemap 2020 tell the reader what the objectives of the renewables programme are, but they do not allow for public participation other than at project level, nor do they contain a properly quantified explanation of the benefits for emission savings, carbon reduction, or reduction of fossil fuel emissions. In short, the responses do not answer the questions asked.
27. In relation to the WLATHR, the EIA work was done by an arm of the developer body and landowner, thus raising legitimate questions about its impartiality and objectivity. The detail is shown in my Communication, which raises a similar, if not precisely cognate question about the failure to supply the "reasons and considerations" for the decision.
28. The renewables programme in the UK, and particularly in Scotland is being implemented at ever increasing speed, with scant regard for the views of the concerned public. As sites for renewables installations become less available and more difficult to exploit, the need for a systematic explanation of the reasons for and benefits flowing from the individual

projects and the entire scheme becomes ever more acute.
That is why we are here.

29. Finally, although legal submission by counsel will further clarify breaches of the Convention outlined, the practical effect of these are equally important. The loss of the precautionary principle via current policy and political will has meant that any negative impacts upon people and the environment are being viewed as necessary 'collateral damage.' It is very much hoped that the unacceptability of this will be considered during the decision making process. I have spoken for long enough, and I thank you once again for your attention.

[END]