



An  
Bord  
Pleanála

## Inspector's Report

RL 04.RL3531

### Question

Whether underground electricity grid connections to connect wind farms to sub-stations, is or is not development and is or is not exempted development.

### Location

Newmarket, Kanturk, Co. Cork.

### Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/266/16

Applicant for Declaration

Patrick Cremins

Planning Authority Decision

None

### Referral

Referred by

Cork County Council

Owner/ Occupier

Brookfield Renewable & Others

Observer(s)

James, Patrick & Mary Hendrick

Kerry County Council

ESB International

Date of Site Inspection

12<sup>th</sup> & 13<sup>th</sup> April 2017

Inspector

Michael Dillon

## 1.0 Site Location and Description

- 1.1. The underground cable routes are linear, and have been roughly defined by the original referrer to Cork County Council; and these are the lines which have been entered on the registry map at An Bord Pleanála. It is not an accurate representation of the line of the underground cables referred to – the lines appear to be located entirely within public roads and forest/agricultural tracks. The lines indicated do not connect with either the sub-station at Glenlara, Co. Cork or the one at Ballynahulla, Co. Kerry. RPS, agent on behalf of Brookfield Renewable, has submitted a map to the Board, by way of response, which indicates an underground grid connection route between Glenlara sub-station and Ballynahulla sub-station, located entirely within public roads (or tracks at either end in the vicinity of the sub-stations). The route runs principally along the R578 Regional road linking Newmarket with Ballydesmond, Co. Cork. A portion of the R577 Regional Road linking Ballydesmond in County Cork with Castleisland, Co. Kerry is also used. Approximately 3.5km of county road (L5039) is used at the Glenlara (eastern end) of the route. Approximately 0.85km of country road (L11128) and forestry track is used within Co. Kerry – at the Ballynahulla (western end) of the route.
- 1.2. The underground 20kV connection between Glentanemacelligot wind farm and Knockacummer wind farm runs primarily within country roads – along portions of which it is not possible to pass two cars. The cable has been in place for some time and it is not possible to identify it within the road network. This section of underground cabling can be inferred from documentation on file and history files.
- 1.3. The underground 110kV grid connection between Knockacummer wind farm and the Glenlara sub-station has been in place for some time. It runs principally within county roads – crossing and within the R578 for a short stretch (0.1km). It is possible to identify the line of the cable trench in places along the road. A number of above-ground concrete marker posts indicate that an underground cable exists within the road/margin. This section of underground cabling can be inferred from documentation on file and history files.
- 1.4. The underground 110kV connection between Glenlara and Ballynahulla has recently been laid. It is largely within public roads or the road margin – principally along the R578 in Co. Cork and R577 in Co. Kerry. Road works are not entirely completed,

and re-surfacing of the L11128 within Co. Kerry was under way on 13<sup>th</sup> April 2017. A number of manhole covers for the cable are evident within the public road.

- 1.5. There are a number of one-off houses and farmhouses along the R578 and R577. Population density is lower to the north, in the direction of the wind farms (which these cables serve) – as the ground elevation increases. The principal land uses are agriculture and commercial forestry – higher ground exhibiting a higher percentage of coniferous plantation. Ballydesmond is a lightly-populated village with a wide main street. Traffic volumes were not heavy on the dates of site inspection – not even on the R578. Access to the wind farms is controlled by security gates. Roadside signage in a number of places along the cable routes indicates the presence of Japanese knotweed, and warns against cutting it.

## 2.0 The Question

Whether, (a) an underground electricity cable connection between Glentanemacelligot wind farm and Knockacummer wind farm; (b) an underground electricity cable connection between Knockacummer wind farm and Glenlara 110kV sub-station; and (c) an underground electricity cable connection between Glenlara 110kV sub-station at Curraduff, Co. Cork and the new Ballynahulla 220kV sub-station, Co. Kerry; is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

Cork County Council considered that the complexity, in relation to the question put by the Planning Partnership, agent on behalf of Patrick Cremins, on 15<sup>th</sup> November 2016, did not allow it to make a Section 5 Declaration. Given that the Board had issued the grants of planning permission for development at Glentanemacelligot wind farm and Knockacummer wind farm, it was deemed appropriate to seek a declaration from the Board under section 5(4) of the Planning and Development Act 2000. This was received by the Board on 23<sup>rd</sup> December 2016.

## 4.0 Planning History

There is an extensive planning history relating to the two wind farms at Glentanemacelligot and Knockacummer.

**Ref. D/247/16:** Refers to a Section 5 Declaration of 27<sup>th</sup> September 2016, by Cork County Council, in respect of an underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm – to the effect that it was development and that it was exempted development. This declaration was not referred to the Board.

**Ref. D/238/15:** Refers to a Section 5 Declaration by Cork County Council, in respect of a permanent underground 110kV grid connection for Knockacummer wind farm and others between Glenlara and Ballynahulla – the length within Co. Cork being 17.4km, whilst the length within Co. Kerry would be an additional 2.1km. The Declaration of 21<sup>st</sup> July 2015, decided that the underground cable was development and was exempted development. This declaration was not referred to the Board. [A separate Section 5 Declaration was simultaneously sought from Kerry County Council].

**Ref. EX408:** Refers to a Section 5 Declaration by Kerry County Council, in respect of a permanent underground 110kV grid connection for Knockacummer wind farm and others between Glenlara and Ballynahulla – the length within Co. Kerry being 2.1km whilst the length within Co. Cork would be an additional 17.4km. The Declaration of 22<sup>nd</sup> July 2016, decided that the underground cable was exempted development. This declaration was not referred to the Board. [A separate Section 5 Declaration was simultaneously sought from Cork County Council].

**Ref. D/257/10:** Refers to a Section 5 Declaration, issued by Cork County Council on 13<sup>th</sup> September 2010, in respect of an 110kV underground grid connection (11.4km), from Knockacummer wind farm to an existing ESB sub-station at Clonfert in Co. Cork. [This is the same sub-station elsewhere referred to as Glenlara, Curraduff]. The declaration had been sought by the wind farm developer – SWS Energy, and the decision of Cork County Council was that the development was not exempted development. The Declaration of Cork County Council was referred to the Board by SWS Energy (**RL 04.RL2789**). By Order dated 23<sup>rd</sup> February 2011, the Board decided that the development was exempted development. This grid connection has been put in place.

**Ref. 02/4283:** Permission granted for seven wind turbines at Glentanemacelligot, to SWS Co-op Ltd. and Newmarket Co-op. Condition 14 stated- "Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the proper grant of planning permission of the Planning Authority. *Reason:* In the interests of orderly development".

**Ref. 04/8354:** Permission granted to SWS Natural Resources Ltd. to construct 29 no. wind turbines and associated works at Knockacummer, Co. Cork. On appeal to the Board by third parties (**PL 04.210685**), permission was granted subject to conditions on 23<sup>rd</sup> December 2005. Condition 19 stated- "This permission shall not in any way be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid. *Reason:* In the interest of clarity and the proper planning and sustainable development of the area".

**Ref. 06/4077:** Permission granted in April 2006, for modification to permission ref. 02/4283, for six wind turbines, to Newmarket Co-Op Society and SWS natural Resources Ltd. Condition 42 stated- "Commissioning of the wind farm shall be subject to an approved connection to the national electricity transmission grid and shall be subject to the prior grant of permission of the Planning Authority. *Reason:* In the interests of orderly development".

**Ref. 06/7114:** Permission granted to ESB, for 110kV overhead grid connection from Knockacummer wind farm site to Glenlara sub-station. On appeal by a third party to the Board (**PL 04.218815**), permission was granted on 5<sup>th</sup> December 2006. [This permission was never implemented].

**Ref. 08/10248:** Permission granted to SWS Energy Ltd. to construct an additional eight wind turbines at Glentanemacelligot wind farm site – not yet developed. On appeal to the Board by third parties (**PL 04.235930**), permission was granted on 19<sup>th</sup> August 2010, for five additional turbines (8, 9, 10, 14 & 15). Condition 7 stated- "This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. *Reason:* In the interest of clarity". This wind farm is now operational.

**Ref. 10/5211:** Permission granted to SWS for extension of duration of permission ref. 04/8354 on 29<sup>th</sup> June 2010.

**Ref. 11/4736:** Permission granted to SWS on 1<sup>st</sup> March 2012, for modifications to internal road network and additional site access at Glentanemacelligot wind farm.

**Ref. 11/5246:** Permission granted to SWS on 6<sup>th</sup> February 2012, for modifications to internal road network, sub-station and wastewater facilities at Knockacummer site.

**Ref. 13/04325:** Permission granted to SWS for road-widening at Cronin's Bridge (1.5km southeast of Rockchapel on the R576 – to improve access to Knockacummer wind farm). On appeal by a third party to the Board (**PL 04.241997**) permission was granted on 20<sup>th</sup> September 2013.

**Ref. 14/4688:** Permission granted on 26<sup>th</sup> August 2014, to SWS for erection of 3 no. meteorological masts at Knockacummer wind farm.

**Ref. 14/5023:** Permission granted on 24<sup>th</sup> October 2014, for erection of a meteorological mast at Glentanemacelligot wind farm.

**Ref. 14/6578:** Permission granted for turbulence felling and replanting at Glentanemacelligot wind farm. On appeal by a third party to the Board (**PL 04.245644**), permission was granted on 9<sup>th</sup> March 2016.

**Ref.15/6631:** Permission granted on 8<sup>th</sup> March 2017, for technician facilities at Glentanemacelligot wind farm.

**Ref. VA 08.VA0012:** Permission granted by the Board on 23<sup>rd</sup> November 2011, for construction of a new 110/220kV sub-station and alterations to Clashavoon to Tarbert overhead high tension electricity cables at Ballynahulla, Co. Kerry. This sub-station has been constructed.

## 5.0 Policy Context

### 5.1. Wind Energy Development – Planning Guidelines (2006)

At section 6.11.3 it is indicated that- “The cost of underground connection from the compound to the national grid is generally prohibitive. This connection can thus be above ground in all but the most sensitive landscapes”.

## 5.2. **Cork County Development Plan 2014-2020**

There is a Wind Strategy contained within the Development Plan. It is policy to encourage the generation of electricity from renewable resources. There are no specific policies in relation to underground grid connections.

## 5.3. **Kanturk Electoral Area Local Area Plan 2011-2017**

This area of Co. Cork is located within the Kanturk electoral area. This LAP deals principally with settlement issues.

## 5.4. **Natural Heritage Designations**

There are a number of European sites within a 15km radius of the linear underground cable routes, of which the following three are either traversed by the cable routes or drain to watercourses which in turn drain to the European sites-

- Blackwater River (Cork/Waterford) Special Area of Conservation (Site code 002170).
- Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site code 004161).
- Lower River Shannon Special Area of Conservation (Site code 002165).

## 6.0 **The Referral**

### 6.1. **Referrer's Case**

The Planner's Report from the Council (dated 12<sup>th</sup> May 2016) can be summarised in bullet point format as follows-

- It is noted that the question put to Cork County Council entails three separate elements.
- The applicants for a determination consider that underground grid connections would constitute development and would not be exempted development. This is based on conditions attached to existing grants of planning permission, requirement for environmental impact assessment or



appropriate assessment, requirements under Strategic Infrastructure Development, and case law.

- In relation to the 20kV underground grid connection between Glentanemacelligot and Knockacummer, it is noted that this grid connection is already in place, and was undertaken by way of compliance submission in relation to permission ref. 06/4077 – on 14<sup>th</sup> July 2011.
- In relation to the 110kV underground grid connection between Knockacummer and Glenlara, condition 19 of the wind farm permission (04/8354 – An Bord Pleanála ref. 04.210685) required prior planning consent for the grid connection. This grid connection is in place. The Council has had regard to precedent referral cases to the Board – RL2789 in particular.
- The Council has had regard to precedent referral cases to the Board – RL2789, RL3408/09/10/11 and RL3234.
- The planning authority has had regard to environmental impact assessment and appropriate assessment regulations.
- Relevant conditions attached to the Glentanemacelligot permission indicate that a grid connection at this location, without prior planning consent, would contravene conditions of the wind farm permissions.
- The planning authority considers that the 110kV underground grid connection from Glenlara to Ballynahulla sub-station would be development and would be exempted development – based on precedent determinations of the Board.
- It is the contention of the Planning Partnership that this latter grid connection comes within the scope of section 182A of the Act. The O’Grianna case is of relevance also.
- The planning authority considers that this grid connection, when viewed separately, could be considered exempted development, but that in view of the number of grid connections being proposed in the area, would welcome the determination of the Board in this instance.
- In the cases of the Glentanemacelligot to Knockacummer underground grid connection and the Knockacummer to Glenlara connection, these works were carried out prior to the O’Grianna judgement.



## 6.2. Original Referrer's Response

The Board referred the case to The Planning Partnership, agent on behalf of Patrick Cremins, requesting comment. The response, received by the Board on 16<sup>th</sup> January 2017, can be summarised in bullet point format as follows-

- Works associated with the underground grid connections are located within the Stacks to Mullagharierk Mountains SPA and the Blackwater River (Cork/Waterford) SAC, as well as proximate to the Lower River Shannon SAC.
- Construction of grid connections contravened condition 19 of permission ref. PL 04.210685; condition 14 of permission ref. 02/4283; condition 42 of permission ref. 06/4077; and condition 7 of permission ref. PL 04.235930.
- Recent determinations of the Board in relation to wind farm grid connections, particularly in Co. Wexford, have ruled that contravention of a condition attached to a grant of permission removes the exemption status – Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) refers.
- The exempted development provisions of the Regulations do not facilitate exempted development where development would interfere with the character of the landscape or views/prospects to be preserved – Article 9(1)(a)(vi).
- The exempted development provisions of the Regulations do not facilitate exempted development where development would interfere with sites of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan – Article 9(1)(a)(vii). There are objectives within the Plan to protect sites of nature conservation, species and biodiversity – including European sites, proposed Natural Heritage Areas and Natural Heritage Areas.
- The exempted development provisions of the Regulations do not facilitate exempted development where development would require appropriate assessment – Article 9(1)(a)(viiB). Individual appropriate assessments of the

three separate elements of the underground grid connections would have been required.

- Cumulative impacts of wind farms and grid connections have not been assessed.

### 6.3. Owner/Occupier's Responses

6.3.1. The Board referred the case to the following for comment (being landowners affected by the referral, as identified by Cork County Council) – by letters dated 7<sup>th</sup> February 2017-

- Coillte.
- Glentanemacelligot Wind Farm.
- Knockacummer Wind Farm.
- Brookfield Renewable.
- Kerry County Council.
- ESB International.
- James, Mary & Patrick Hendrick.
- John O'Keeffe.
- Dan & Marie Murphy.

6.3.2. ESB International responded by letter, received on 24<sup>th</sup> February 2017, indicating that detailed consideration of the Board's correspondence would be required, and requesting an additional four weeks to respond.

6.3.3. Kerry County Council responded, by letter received on 10<sup>th</sup> February 2017, indicating that it had not received nor issued a decision on either a referral or planning application in relation to a grid connection at the location referred to by the Board. [The locations referenced were, of course, within County Cork – but did involve a 2.1km connection to the Ballynahulla sub-station within Co. Kerry].

6.3.4. James, Mary & Patrick Hendrick responded, by letter received on 17<sup>th</sup> February 2017, indicating that they had disposed of their property interests in Ballyduane, Newmarket, Co. Cork.

#### 6.4. Board Circulates Response of Patrick Cremins

- 6.4.1. The submission of the Planning Partnership, agent on behalf of Patrick Cremins, received by the Board on 16<sup>th</sup> January 2017, was circulated to the above parties, and to Cork County Council for comment.
- 6.4.2. Cork County Council responded by letter, received on 8<sup>th</sup> March 2017, indicating that it had no further comment to make in relation to the submission.
- 6.4.3. RPS, agent on behalf of Brookfield Renewable, responded on 23<sup>rd</sup> February 2017, indicating that a detailed response would be submitted on or before 6<sup>th</sup> March 2017.
- 6.4.4. The response of ESB International, received by the Board on 27<sup>th</sup> March 2017, can be summarised in bullet point format as follows-

- ESB was directly involved with the connection of Knockacummer wind farm to the sub-station at Glenlara. These connection works have already been subject of a referral to Cork County Council – subsequently dealt with by the Board ref. RL 04.RL2789. The works were declared to be exempted development. The connection works do not contravene condition no. 19 of permission ref PL 04.210685, as grid connection works generally fall within the scope of Class 26 or 27 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- It is highly improbable that condition 19 was intended to cut across exemptions specifically provided for in the Regulations, as this would seriously encroach on the statutory powers of the Minister. It is acknowledged that at the time of making the planning application for the wind farm, the planning authority had no information in relation to the grid connection, and would not have been in a position to state whether it would fall within the exemptions provided for in Classes 26 or 27.
- Where planning authorities wish to ensure that the exempted development provisions of the 2001 Regulations do not apply to a particular development that is the subject of a planning application, the relevant condition will generally provide for this in express terms. Where such conditions have been imposed in the past (rightly or wrongly) they have been prefaced by wording such as- “Notwithstanding the provisions for exempted development under the

Planning and Development Regulations, 2001...”. No such wording was included in the instanced permission.

- The planning authority did not have any power to impose any condition on the lands outside the application site (as outlined in red/blue). For that reason, condition 19 must be interpreted in a manner that is consistent with the lawful exercise by the planning authority to impose conditions on the grant of planning permission. Condition 19 cannot be interpreted as removing the statutory entitlement to rely on the exemption under Class 26.

## 6.5. Response of Brookfield Renewable

6.5.1. The response of RPS, agent on behalf of Brookfield Renewable (the owner/operator of the Glentanemacelligot and Knockacummer wind farms), received by the Board on 6<sup>th</sup> March 2017, can be summarised in bullet point format as follows-

- The Glentanemacelligot to Knockacummer underground grid cable is 20kV over a length of approximately 8.0km.
- The Knockacummer to Glenlara underground grid connection is 110kV over a length of approximately 11.4km. This grid connection serves only the two wind farms referred to above.
- The Glenlara to Ballynahulla underground grid connection is 110kV over a length of approximately 19.5km. This grid connection serves other wind farms in the area.
- The Knockacummer to Glenlara grid connection was completed before the Glentanemacelligot to Knockacummer grid cable.
- Both wind farms use the sub-station at Knockacummer – there being none at Glentanemacelligot.
- Laying of cables is considered to be development.
- Neither an Environmental Impact Statement nor a Natura Impact Statement is required for any of the grid connection works carried out.

- Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), is of relevance in relation to exempted development of underground grid connections.
- Other works are ancillary to the laying of the cables (of a temporary nature), and fall within Class 16 of Part 1.
- Article 9 of the Regulations places restrictions on exempted development classes.
- The grid connections did not impact on landscape character or scenic routes – identified within the Cork County Development Plan 2009, the Kanturk Local Area Plan 2011, the Cork County Development Plan 2014 or the Kerry County Development Plan 2015.
- The grid connections did not impact on recorded monuments or Protected Structures – being almost entirely laid within public roads.
- The Environmental Impact Assessment Directive does not apply, as there is no class of development in Schedule 5 which approximates to this type of development. Notwithstanding this, Appendices C, G & K of the submission include reports/appraisals which address the potential that each of the underground cable developments had or have potential for likely significant impacts on various aspects of the environment, when considered cumulatively, and alongside other developments in the area.
- Appendices D, H, & J of the submission include reports/appraisals which address the potential that each of the underground cable developments had or have potential for in-combination effects on European sites, taken together with other developments in the area.
- A developer is not obliged to obtain declarations for exempted development status. However, in the case of all three aspects of underground cabling referred to in this reference case, the applicant has declarations under section 5 – both from Cork County Council and from An Bord Pleanála.
- Section 182A considers strategic infrastructure development – a high voltage line where the voltage would be 110 kilovolts or more... As the development is considered to be exempted development, the provisions of Section 182A do

not apply. The Board has stated- “At a meeting held on 12<sup>th</sup> October, 2007, the Strategic Infrastructure Division of the Board decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to Section 182A of the Planning and Development Act 2000”. It is noted that there is no voltage limitation on this decision of the Board. In this regard precedent cases VC0016, VC0023 & VC0024 are of relevance.

- Reference is made to cases RL3408, RL3409, RL3410 & RL3411 in Co. Wexford – recently decided by the Board. Grid connections were declared to be development which was not exempted development because of conditions attached to the parent wind farm permissions which required prior grant of planning permission for the grid connections. This situation does not obtain at Knockacummer, as permission had been obtained for an overhead grid connection – ref. 06/7114 (PL 04.218815).
- Planning permission was granted for the wind farms prior to the O’Grianna judgement on 12<sup>th</sup> December 2014. Therefore, the permissions are valid and beyond challenge. Section 50 of the Planning and Development Act 2000 (as amended) precludes any questioning of the validity of those permissions – having regard to the eight-week time limit for such challenges.
- In the case of referral RL3234, it was concluded that, from a reading of condition 4 of permission ref. PL 03.131382, that it did not expressly prohibit the developer of the wind farm from availing of the exempted development provisions under the Planning and Development Act. The condition reads- “Work on the proposed wind farm shall not proceed until full permission has been granted for the electricity connection to the national grid”. In the case of the Glentanemacelligot and Knockacummer wind farms, no condition expressly prohibits the developer from availing of exempted development provisions.
- The grid connections do not represent extensions to wind farms. The issue of cumulative impact for environmental impact assessment purposes does not arise. Class 13 of Part 2 of Schedule 5 is not relevant in this instance.

- Project-splitting is not an issue – as environmental impact assessment was undertaken for the wind farms which these underground cables serve.
- The Board decided that a 10.2km 38kV underground grid connection for a wind farm in Co. Clare was exempted development – ref. RL2778.
- A number of county councils have made decisions in relation to exempted development for grid connections for wind farms.

#### 6.5.2. Glentanemacelligot to Knockacummer

- The Glentanemacelligot to Knockacummer works were carried out between June 2013 and July 2014. No in-stream works were required and no directional drilling was required either.
- Planning permission was granted ref. 06/7114 for an overhead connection from Knockacummer to Glenlara. The Glentanemacelligot wind farm connects to the national grid via Knockacummer wind farm. Condition 42 of permission ref. 06/4077 (Glentanemacelligot) stated- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the prior grant of permission of the Planning Authority”. The wind farm did, therefore, have a prior grant of planning permission to connect to the grid. Condition 42 was fully complied with and discharged. The 20kV underground cable linking Glentanemacelligot with Knockacummer did not conflict with or contravene condition 42.
- Condition 7 of permission ref. PL 04.235930 for phase 2 of the Glentanemacelligot wind farm merely required that- “The permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection”. This condition has no impact on the 20kV underground connection to Knockacummer.
- The wording of condition 42 required that the commissioning must be subject to an approved connection – to avoid a stranded asset with no connection to the national grid – “In the interests of orderly development”. The condition does not specifically state that the grid connection shall be subject to prior grant of planning permission.



- The plans and particulars lodged with application ref. 06/4077 identified two possible overhead grid connections for this wind farm. The voltage would have exceeded the exemption granted in class 27 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Hence, the planning authority attached condition 42.
- Cork County Council was not in a position to assess the impacts of any grid connection, as full details had not been submitted with the planning application. The Council could not have determined whether the grid connection route would or would not fall within the exempted class 26.
- This condition can only reasonably be interpreted as requiring permission to be obtained where an obligation to obtain permission exists.
- The cable route runs through part of the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, and crosses watercourses which drain into the Blackwater River (Cork/Waterford) SAC and lower River Shannon SAC. Whilst a Natura Impact Statement was submitted with the Glentanemacelligot wind farm, it would be more appropriately termed a Natura Impact Statement Screening Report. Mitigation measures were to be put in place during construction to ensure that there would be no detrimental impact on European sites. Mitigation measures can be taken into consideration in relation to appropriate assessment screening.
- Cable works would not have required environmental impact assessment.

#### 6.5.3. Knockacummer to Glenlara

- The works were undertaken between November 2012 and October 2013. No in-stream works were required and no directional drilling was required either.
- Approximately 90% is within public roads – the remainder being within forest tracks and forestry/wet grassland and scrub.
- The grid connection for the Knockacummer wind farm also serves the Glentanemacelligot wind farm.
- Condition 19 of permission ref. PL 04.210685 (Cork County Council permission ref. 04/8354) stated- "This permission shall not in any way be constructed as any form of consent or agreement to a connection to the

national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid”.

- Planning permission was granted ref. 06/7114, for an overhead connection from Knockacummer wind farm sub-station to the national grid at Glenlara. This permission was in place prior to commencement of construction works on the wind farm in Knockacummer in March 2013. The requirements of condition no. 19 were fully discharged by reason of permission ref. 06/7114. Whilst the grid connection was not ultimately implemented, condition 19 did not preclude some alternative grid connection being pursued at a later time.
- The grid connection was later constructed as exempted development – Cork County Council ref. D/257/10 (An Bord Pleanála ref. RL 04.RL2789). The Board has previously determined that the grid connection from Knockacummer to Glenlara was exempted development by way of a determination under section 5 of the Planning and Development Act 2000 (as amended).
- The cable route runs through part of the Stack’s to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, and crosses watercourses which drain into the Blackwater River (Cork/Waterford) SAC. An Appropriate Assessment Screening Report accompanied the original Section 5 referral (dated August 2010). Mitigation measures were to be put in place during construction to ensure that there would be no detrimental impact on European sites. Mitigation measures can be taken into consideration in relation to appropriate assessment screening.
- Cable works would not have required environmental impact assessment.

#### 6.5.4. Glenlara to Ballynahulla

- This 110kV underground connection serves a number of wind farms in the area. Approximately 17.4km is located within Co. Cork – the remaining 2.1km being located within Co. Kerry.
- The works commenced in 2016, and are due to be completed in 2017.

- This development does not contravene any conditions attached to planning permissions.
- An Appropriate Assessment Screening Report was prepared for this grid connection route as part of the Section 5 referral to Cork County Council, ref. D/238/15.
- Cable works would not have required environmental impact assessment.

#### 6.5.5. Associated Documentation

The response submission is accompanied by the following Appendices-

##### Appendix A

Letter from A & L Goodbody, Solicitors (dated 2<sup>nd</sup> March 2017).

- Mr. Cremins is attempting to re-open already decided referral cases by grouping all three elements of the underground cabling together. It is noted that he did not seek to refer the Council's declarations on the three separate elements of the underground cabling to the Board, and did not bring judicial review proceedings. If this referral is allowed, it would be possible for individuals to continue to refer cases by reference to Article 9(1)(a) – each addressing a different potential restriction under Article 9 and/or a different combination of developments. This practice should not be encouraged by the Board. The Board should not revisit its previous decisions in relation to referrals already decided.
- In relation to the Knockacummer to Glenlara grid connection (RL2789), it is acknowledged that the Inspector's Report did not specifically refer to the Blackwater River (Cork/Waterford) SAC. However, the Board should be able to conclude that the laying of the cable would not have had a significant effect on the SAC.
- The Glenlara to Ballynahulla underground cable referral to Cork County Council and Kerry County Council included an Environmental Impact Assessment Screening Report and an Appropriate Assessment Screening Report – both of which concluded that the cable would not have any significant impacts on the environment or significantly affect any European sites.

- Where planning authorities wish to ensure that the exempted development provisions of the 2001 Regulations do not apply to a particular development that is the subject of a planning application, the relevant planning condition will generally provide for this in express terms. Express wording would be necessary if the intention had been to remove a statutory entitlement. Furthermore, the planning authority would have no power to impose conditions on lands which might not be in the control of the applicant. Condition 42 cannot be interpreted as removing the statutory entitlement to rely on the exemption under Class 26 of Part 1 of Schedule 2.
- None of the conditions of the permission require the grid connection for the wind farm to be the same as the grid connection for which a prior grant of permission was obtained.
- The Glenlara to Ballynahulla cable works are not a grid connection for the Knockacummer wind farm – these works will facilitate other wind farms in the area.
- The works the subject of this referral do not require environmental impact assessment in their own right. Permission has already been granted for the wind farms prior to the O’Grianna judgement.
- Cumulative impact for environmental impact assessment purposes can only apply in relation to developments in place or permitted at the time the works were carried out for the relevant underground cabling sections.
- In-combination impacts for appropriate assessment purposes can only apply in relation to developments in place or permitted at the time the works were carried out for the relevant underground cabling sections.

#### Appendix B

Comprises an Environmental Impact Assessment Screening Report (undated) for 20kV underground cable linking Glentanemacelligot wind farm to Knockacummer wind farm.

#### Appendix C

Comprises a Natura Impact Statement for Proposed Underground Cable at Glentanemacelligot wind farm (dated June 2011). This Natura Impact Statement

indicates two options for the cable route exiting the wind farm onto the public road. It is not clear just which route was ultimately selected.

#### Appendix D

Assessment of environmental impact assessment classes of development and the application to the subject underground cables.

#### Appendix E

Environmental Impact Assessment Screening Report for 110kV Knockacummer to Glenlara underground cable works (undated).

#### Appendix F

Appropriate Assessment Screening Report for 110kV Knockacummer to Glenlara underground cable works (dated August 2010). This Report contains a large number of appendices which include Site synopses of European sites; Ecological importance and impact significance assessment; List of plant species; List of protected mammal species; Screening matrix for route and Blackwater River SAC; Screening matrix for route and Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA; Correspondence from Cork County Council, National Parks & Wildlife Service and Southern Regional Fisheries Board; Cumulative impact assessment; Historical avifauna surveys at Knockacummer wind farm (including bank vole reports); Underground cable trench detailed drawing; Register of mitigation measures; Habitat mitigation map.

#### Appendix G

Appropriate Assessment Screening Report for Knockacummer wind farm grid connection (June 2015). This grid connection is from Glenlara to Ballynahulla. [It should be noted that this report was produced prior to the installation of this underground connection. The connection has recently been laid]. Seven watercourse crossings are identified – forming part of, or draining to, the Blackwater River SAC. No instream works were proposed. The 19.5km route is located entirely within public roads and short stretches of track at either end. A method statement is outlined, with measures to protect the environment during construction works – particularly in relation to siltation of watercourses and dealing with Japanese knotweed and Himalayan balsam (invasive species). Arising from proximity to and

works within the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, pre-construction breeding season surveys for Hen harrier were to be conducted, with works halted if a breeding site is encountered within 500m of works, and National Parks & Wildlife Service consulted. Approximately 4.8km of the route traverses or is immediately adjacent to the SPA.

#### Appendix H

Environmental Impact Assessment Screening Report for Knockacummer wind farm grid connection (June 2015). The 19.5km route will have approximately 24 no. joint bays. The trench will be 1.5m deep and will be located entirely within the road or the roadside margin. Crews will work approximately 2-3km apart, so as to lessen impact on traffic flows. Estimated completion time is 45 weeks. At bridges (five identified), cables will be laid within the structures. No instream works are required and there will be no directional drilling. Road Opening Licences under Section 254 of the Planning and Development Act 2000 (as amended), will be required from Cork County Council and Kerry County Council. A Construction Method Report and a Construction Traffic Management Plan will be prepared. Waste materials are to be removed off-site and disposed of at a licensed waste facility. Pre-construction surveys for breeding Hen harrier, Otter, Badger and bat species will be undertaken. Schedule 5 of the Planning & Development Act 2000 (as amended) does not include any class of development within which the laying of underground cables of 110kV would fall. Discretionary EIA for sub-threshold developments is set down at Schedule 7 of the Act. Based on the characteristics of the proposed development, location of the proposed development and the characteristics of the potential impacts, it is concluded that sub-threshold environmental impact assessment is not applicable to the laying of these cables.

#### Appendix I

This Appendix considers potential cumulative impacts with other developments in the area – including wind farms and grid connections. The Appendix lists all of the permissions and section 5 determinations associated with both the Glentanemacelligot and the Knockacummer wind farms.

## 6.6. Further Responses to Brookfield Renewable Response & ESB International Response

The responses of Brookfield Renewable, received by the Board on 6<sup>th</sup> March 2017; and from ESB International, received by the Board on 27<sup>th</sup> March 2017; were referred for comment to the other parties – with responses required on or before 19<sup>th</sup> April 2017.

### 6.6.1. Response of Cork County Council

The response, received by the Board on 12<sup>th</sup> April 2017, indicated that Cork County Council had no further comment to make.

### 6.6.2. Response of Patrick Cremins

The response of the Planning Partnership, agent on behalf of Patrick Cremins, received by the Board on 19<sup>th</sup> April 2017, can be summarised in bullet point format as follows-

- The referral question posed by Cork County Council is clear and unambiguous.
- The works are located within and proximate to three European sites.
- The laying of the cables was in direct contravention of conditions attached to grants of planning permission for the parent wind farms.
- Recent precedent decisions of An Bord Pleanála indicate that permission should have been obtained for the underground grid connection cables.
- Article 9(1)(a)(i) is clear that exempted development provisions cannot override a condition attached to a planning permission.
- Article 9(1)(a)(vi) is clear that exempted development provisions are set aside if the development would interfere with the character of a landscape or a view or prospect.
- Article 9(1)(a)(vii) is clear that exempted development provisions are set aside if development would have an impact on sites of scientific/ecological interest.
- Article 9(1)(a)(viiB) is clear that exempted development provisions are set aside if the development would have an impact on European sites.



- Section 5 of the Planning and Development Act 2000 (as amended), does not facilitate third party involvement in the exempted development declaration and referral process, unless specifically requested. There cannot, therefore, be the same level of public scrutiny there would be if public notice was given by way of site notices and newspaper notices. It is left to the discretion of planning authorities to consult third parties. Mr. Cremins was not informed, nor offered the opportunity, to partake in any of the Section 5 declarations to which Brookfield Renewables now referred in their submission.
- “Decisions on exempted development does not involve a professional planning appraisal of the merits of the development and its acceptability in the context of the proper planning and sustainable development of the area. They are the result of the application of legal definitions and principles to the facts of the case in question. They do not give any indication that planning permission would be granted if an application were to be made”. [Grist B.].
- From a review of An Bord Pleanála’s decision of RL2789, it is clear that the assessment focussed on the impact on European sites.
- The laying of these cables is development and is not exempted development.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 (as amended)

#### *Section 2(1)*

“works” – includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and,

#### *Section 3(1)*

“development” – means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

“statutory undertaker” – means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

*Section 4(4)*

Notwithstanding paragraphs (a), (i), (ia) and (l) of *subsection* (1) and any regulations under *subsection* (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

*Section 172(1)*

An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for proposed development where either—

- (a) the proposed development would be a class specified in-
  - (i) Part 1 of Schedule 5 of the Planning and Development Regulations 2001, and either-
    - (I) such development would exceed any relevant quantity, area or other limit specified in that Part, or
    - (II) no quantity, area or other limit is specified in that Part in respect of the development concerned,
  - or
  - (ii) Part 2 of Schedule 5 of the Planning and Development Regulations 2001, and either-
    - (I) such development would exceed any relevant quantity, area or other limit specified in that Part, or
    - (II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

- (b) (i) the proposed development would be of a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 but does not exceed the relevant quantity, area or other limit specified in that Part, and
- (ii) the planning authority or the Board, as the case may be, determines that the proposed development would be likely to have significant effects on the environment.

*Section 177U(9)*

In deciding upon a declaration or a referral under section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

*Section 182A*

This section of the Act relates to Strategic Infrastructure Development and electricity transmission lines. Sub-section (9) states-

In this section 'transmission', in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of-

- (a) a high voltage line where the voltage would be 110 kilovolts or more, or
- (b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.

**7.2. Planning and Development Regulations, 2001 (as amended)**

*Article 3(3)*

"electricity undertaking" – means an undertaker authorised to provide an electricity service.

*Article 6(1)*

Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided

that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1.

*Article 9(1)*

Development to which Article 6 relates shall not be exempted development for the purposes of the Act—

- (a) if the carrying out of such development would—
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
  - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies,
  - (vi) interfere with the character of a landscape, or a view or a prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
  - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
  - (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places,

pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.

## **Part 1, Schedule 2**

### *Temporary structures and uses*

#### Class 16

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out. Column 2 restricts this exemption as follows- "Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act".

### *Development by statutory undertakers*

#### Class 26

The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.

## 8.0 Assessment

I am of the opinion that Cork County Council and An Bord Pleanála have already made determinations in relation to the three sections of underground cable the subject of this referral to the Board, and that it should, therefore, be dismissed. I would agree with the contention of the agent for the wind farm operators that there is no need to revisit these section 5 declarations. There is no sense in the claim that the three elements of the underground cabling when added together would somehow result in a greater impact on the environment or on European sites. The works for each section of cable were carried out at different times. Once completed, there are no on-going or continuing impacts – the likely impacts would have been during the construction phases. The cumulative or in-combination impacts could only be considered for what was already in place and could not have anticipated what might have happened in the future – to the extent that the final section of cable laid from Glenlara to Ballydesmond would have had to have regard to possible cumulative or in-combination impacts with regard to earlier laid sections of this cable, and I have already argued that there were none such. To allow this referral to proceed would set an undesirable precedent, and could lead to a continuous stream of similar-type referral cases – particularly those arguing different aspects of Article 9 of the Regulations – which places restrictions on exemptions. However, if the Board is minded to accept the referral, then the following comments (under bullet point heading) may be of some assistance to it, in coming to its determination.

- General comments on the nature of this referral.
- Status of existing underground connections- (a) Glentanemacelligot to Knockacummer; (b) Knockacummer to Glenlara; (c) Glenlara to Ballynahulla (that portion within Co. Cork).
- Comment in relation to the nature of the underground cables and the likely principal impacts on the environment.
- The need for Environmental Impact Assessment.
- Appropriate assessment.
- Implications of the O’Grianna judgement.
- Legislative Impacts.

- Precedent cases.

## 8.1. General Comments on Referral

### 8.1.1. Area to which this Referral relates

The 110kV cable which links Glenlara with Ballynahulla is obviously partially located within Co. Kerry (some 2.4km of the 19.5km length). This referral from Cork County Council obviously relates only to lands within the Co. Cork administrative area. The map submitted by the original referrer to Cork County Council shows a line stopping short of the county boundary. My comments, therefore, relate only to the underground cables within Co. Cork. European sites cross county boundaries, and it is possible for development within one county to have an impact on a European site within another – particularly where there is a surface water connection. Regard has been had to this possibility when commenting on the impact of development on European sites, both within and without Co. Cork.

### 8.1.2. Section 182A

This section of the Act relates to electricity transmission which may be considered to be Strategic Infrastructure Development. Section 182A(9) refers to the transmission of electricity at 110 kilovolts or more. It is not specified if this is over-ground or underground transmission. Those sections of underground cable from Knockacummer to Glenlara and from Glenlara to the county boundary in Ballydesmond, are stated to be 110kV. At a meeting held on 12<sup>th</sup> October 2007, the Strategic Infrastructure Division of An Bord Pleanála decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to Section 182A. There was no voltage limitation indicated in the Board's decision. The agent for the operator of the wind farms argues that, as there is no voltage limitation, section 182A does not apply in this instance. I would be satisfied that the underground cables do not constitute Strategic Infrastructure Development.

### 8.1.3. What Exactly Constitutes a Grid Connection

The agent for the wind farms operator argues that the underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm is not a grid connection



– rather an underground cable linking one wind farm with another.

Glentanemacelligot is stated not to have a sub-station – the connection to the national grid being the one at Knockacummer. I would consider that whilst the 20kV underground cable linking Glentanemacelligot and Knockacummer is not an entire grid connection, it does form part of grid connection – connecting the wind farm at Glentanemacelligot to Glenlara sub-station, via Knockacummer wind farm.

## 8.2. Status of Existing Underground Cables

### 8.2.1. Glentanemacelligot Wind Farm to Knockacummer Wind Farm

It is stated that this 20kV cable was laid between June 2013 and July 2014. It runs entirely within public roads between the two wind farms and within forest tracks/fire breaks within the wind farm sites at either end. The length of the cable is stated to be approximately 8.0km – some 1.9km of which within the Knockacummer wind farm is along the same route as the Knockacummer to Glenlara route. Cork County Council issued a Section 5 Declaration on 27<sup>th</sup> December 2016, to the effect that this underground cable was development and was exempted development (Ref. D/247/16). This Declaration of Cork County Council was not judicially reviewed. Condition 14 of permission ref. 02/4283 stated- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the proper grant of planning permission of the Planning Authority”. The wording of this condition would appear unambiguous. It was likely attached, as the planning application for the wind farm would not have contained any details of the proposed grid connection – as was the practice prior to the O’Grianna judgement. It would not have been possible for the planning authority to attach conditions to a permission which might affect lands outside the boundary of the site – not necessarily in the control of the applicant. Attaching such a condition would have allowed the planning authority to assess the impact of the grid connection – particularly in relation to likely impacts on the environment and on European sites, notwithstanding the exempted development provisions contained in the Planning and Development Regulations 2001. The provisions of Class 26 of Part 1 of Schedule 2 of the Regulations were in place at the time of the grant of planning permission, but the Planning Authority saw fit to attach this condition. Permission ref. 06/4077 related to modifications to permission ref. 02/4283, and re-stated condition 14 of the

original permission at new condition no. 42, albeit with slightly different wording- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity transmission grid and shall be subject to the prior grant of permission of the Planning Authority”. Again, this restated condition would appear unambiguous. Permission ref. 08/10248 related to an additional eight turbines at this site. The decision was appealed to the Board by third parties (Ref. PL 04.235930), and permission was granted on 19<sup>th</sup> August 2010, for five additional turbines. Condition 7 of this permission stated- “This permission shall not be construed as any form or consent or agreement to a connection to the national grid or to the routing or nature of any such connection”. This condition made no reference to necessary prior grant of planning permission for a grid connection and, I would contend, is a more reasonable wording for such a condition where the route of the grid connection was unknown. The laying of an underground grid connection to Knockacummer would not contravene this condition 7. Notwithstanding the existence of condition 14, and subsequent condition 42, on 27<sup>th</sup> September 2016, Cork County Council issued a Section 5 declaration that the underground cable linking Glentanemacelligot to Knockacummer was development and was exempted development.

The crux of the issue is whether a condition attached to a planning permission can remove or cancel the provisions made for exempted development in the Regulations. It is generally the case, where a planning authority, or the Board, intend that a development will not be able to benefit from the exempted development provisions of the Regulations, that a condition will be attached specifically removing such exemption, using wording such as- “Notwithstanding the exempted development provisions of class...of Part ... of Schedule 2”. Where the Minister has specifically provided for classes of development to be exempted development, it would not seem reasonable to remove such exemptions without specific reference/justification, and to give reasons for the removal of such exemption within the reasons and considerations which form part of the decision of a planning authority or the Board. The reasons given for attaching conditions 14 & 42 baldly state- “In the interest of orderly development”. I have already contended, that the reason for attaching such conditions as no.s 14 & 42, was that the impacts of possible grid connections on the environment and European sites were unknown at the time of the making of the decisions, as the line of the possible grid connection(s) was not indicated, and the

planning authority would not have been able to assess the impacts on the environment for the purposes of environmental impact assessment or the impact on European sites for the purposes of appropriate assessment. This underground grid connection was the subject of a referral under Section 5 to Cork County Council. This referral to Cork County Council included an Environmental Impact Assessment Screening Report and a Natura Impact Screening Report. The Natura Impact Screening Report identified European sites which could be affected by the cable-laying – particularly the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, the Blackwater River (Cork/Waterford) SAC and the Lower River Shannon SAC – either through disturbance of Hen harrier and its habitat, or by way of possible siltation/contamination of streams which flow into the Blackwater River (Cork Waterford) SAC or the Lower River Shannon SAC. Such a referral afforded the planning authority the opportunity to screen the development for both environmental impact assessment and appropriate assessment – regard being had to the status of permissions in the area and likely future developments, in order to assess the cumulative impact of such developments/proposals and the in-combination impacts on European sites. I would contend that this opportunity afforded to the planning authority to examine the impact of the cable on the environment and on European sites by way of Section 5 referral, distinguishes this particular case from other similar-type cases which might be regarded as establishing a precedent, and would satisfy the spirit of conditions 14 & 42 of the relevant wind farm permissions.

#### 8.2.2. Knockacummer Wind Farm to Glenlara Sub-station

It is stated that this 110kV cable was laid between November 2012 and October 2013. This grid connection also serves Glentanemacelligot wind farm. It runs entirely within public roads or within agricultural/forest tracks and fire breaks within the wind farm and through a farm holding to the north of the L5039 county road. The length of the cable is stated to be approximately 11.4km – some 2.0km of which is within the same road as the Glenlara to Ballynahulla route. Cork County Council issued a Section 5 Declaration on 13<sup>th</sup> September 2010, to the effect that this cable was development and was not exempted development (Ref. D/257/10). The reason for this declaration centred around possible impact on European sites and did not make any reference to a condition attached to a parent wind farm development

permission. This Declaration of Cork County Council was referred to the Board by the wind farm operator (RL 04.RL2789). By order dated 23<sup>rd</sup> February 2011, the Board decided that the laying of the cables was exempted development. This declaration was not subject to judicial review. The referral case was entirely based on the possible impact on European sites, and in particular the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle proposed SPA, where approximately 3.7km of the route was through the SPA (albeit within public roads or forestry tracks/fire breaks). No reference was made to condition 19 of permission ref. PL 04.210685 (the parent wind farm development permission), within the documentation submitted. Cork County Council had granted planning permission to construct a wind farm at Knockacummer – ref. 04/8354. This decision was the subject of third party appeals to the Board (ref. PL 04.210685) with permission granted subject to conditions on 23<sup>rd</sup> December 2005 – no. 19 of which stated- "This permission shall not in any way be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid".

ESB was subsequently granted planning permission for a 110kV overhead line which could have linked this wind farm to the national grid at Glenlara sub-station – ref. 06/7114 (PL 04.218815). However, this permission was never implemented. Notwithstanding this, the agent for the wind farm operator argues that this grant of planning permission satisfies condition 19. On the face of it, the grant of permission would seem to satisfy the condition. The condition does not stipulate that this must be the grid connection or the only grid connection for the wind farm. However, I would consider it unreasonable to rely on such an interpretation of the intention behind condition 19.

The wording of condition 19 would appear unambiguous. It was likely attached as the planning application for the wind farm would not have contained any details of the proposed grid connection – as was the practice prior to the O'Granna judgement. It would not have been possible for the planning authority to attach conditions to a permission which might affect lands outside the boundary of the site – not necessarily in the control of the applicant. Attaching such a condition would have allowed the planning authority to assess the impact of the grid connection –

particularly in relation to likely impacts on the environment and on European sites, notwithstanding the exempted development provisions contained in the Planning and Development Regulations 2001. The provisions of Class 26 of Part 1 of Schedule 2 of the Regulations were in place at the time of the grant of planning permission, but the Board saw fit to attach this condition. Notwithstanding the existence of condition 19, on 13<sup>th</sup> September 2010, the Board issued a Section 5 declaration that the underground cable linking Knockacummer wind farm with Glenlara sub-station was development and was exempted development.

As argued in the previous section of this report, the crux of the issue is whether a condition attached to a planning permission can remove or cancel the provisions made for exempted development in the Regulations, and it is not proposed to re-state those arguments. The reason given for attaching condition 19 baldly states- “In the interest of clarity and the proper planning and sustainable development of the area”. I have already contended, that the reason for attaching such a condition as no. 19, was that the impacts of a possible grid connection on the environment and European sites was unknown at the time of the making of the decision, as the line of the possible grid connection was not indicated, and the Board would not have been able to assess the impacts on the environment for the purposes of environmental impact assessment or the impact on European sites for the purposes of appropriate assessment. This underground grid connection was the subject of a referral under Section 5 to Cork County Council, and subsequently to the Board. This referral included a detailed Appropriate Assessment Screening Report and an Ecological assessment. The Appropriate Assessment Screening Report identified the European sites which could be impacted by the cable route – particularly the Stack’s to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA and the Blackwater River (Cork/Waterford) SAC – either through disturbance of Hen harrier and its habitat, or by way of possible siltation/contamination of streams which flow into the Blackwater River (Cork Waterford) SAC. The referral afforded the planning authority, and the Board, the opportunity to screen the development for both environmental impact assessment and appropriate assessment – regard being had to the status of permissions in the area and likely future developments, in order to assess the cumulative impact of such developments/proposals and the in-combination impacts on European sites. The Board’s decision of 23<sup>rd</sup> February

2011, clearly indicated that it did have regard to the location of the site partially within an SPA, and adjacent to an SAC, and had regard to the ecological report submitted by the wind farm operator. I would contend that this opportunity afforded to the planning authority, and to the Board, to examine the impact of the cable on the environment and on European sites by way of Section 5 referral, distinguishes this particular case from other similar-type cases which might be regarded as establishing a precedent, and would satisfy the spirit of condition 19 of the relevant wind farm permission.

### 8.2.3. Glenlara Sub-station to Ballynahulla Sub-Station

The status of this section of underground cable (19.5km), of which 17.4km is located within Co. Cork, is slightly different to the two preceding cable lengths, in that it straddles a county boundary and is only recently completed – carried out over the period 2016 to April 2017. I have elsewhere argued that the substance of this referral relates only to that section within Co. Cork. The underground 110kV cable is also distinguished by the fact that it does not exclusively serve the wind farms at Glentanemacelligot and Knockacummer, but is stated to serve other wind farms and a consumer 38kV distribution network. It connects two sub-stations, and as such, could be regarded as part of the national grid. It would appear that the cable was laid by the wind farms operator, and was necessitated by the fact that the sub-station at Glenlara could not deal with the load imposed by Glentanemacelligot and Knockacummer wind farms (amongst others). The Section 5 declaration report of Cork County Council in relation to this underground cable (D/238/15) refers to the connection offer from Eirgrid to the wind farm operator at Glenlara, but following the completion of the Ballynahulla sub-station, the preferred connection route is to that sub-station, to allow for a secure level of supply, where the Glenlara sub-station could not handle the full output of the operational wind farm at Knockacummer.

It is contended that this cable does not contravene any condition attached to a planning permission, as the connection for the wind farms to the national grid is at Glenlara sub-station. This would appear to be reasonable if ESB Networks was undertaking the connection works between Glenlara and Ballynahulla, but in this instance it appears to be a wind farm operator – so it could be argued that the 110kV underground cable is principally to facilitate the wind farms (and others). If the grid



connection to Glenlara was satisfactory, what need for a further connection on to Ballynahulla.

This cable was the subject of a referral to Cork County Council ref. D/238/15 (and separately to Kerry County Council). The declaration of 21<sup>st</sup> July 2015, that the cable was development and was exempted development, was not subject of referral onwards to the Board or of judicial review. The referral was accompanied by screening reports for Environmental Impact Assessment and Appropriate Assessment. A Construction Environmental Management Plan is referred to in the Cork County Council Planner's Report, and reference is made to comments of the Heritage Officer of Cork County Council in relation to appropriate assessment. Regard was had to the fact that the line of the route traversed the Blackwater River SAC and the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA. The route is entirely within public roads/margins. If it is accepted that this cable forms part of the grid connection for Glentanemacelligot and Knockacummer wind farms to the national grid, then the following comments are of relevance – particularly in relation to Article 9(1)(a)(i) of the Regulations.

The arguments made, in relation to de-exemption, as applied to the two other sections of underground cable the subject of this referral, would apply in this instance also. Conditions 14 & 42 of the Glentanemacelligot wind farm permissions and condition 19 of the Knockacummer wind farm permission did not specifically de-exempt grid connections. It is not proposed to repeat the arguments here – other than to state that the same arguments apply in this instance.

### 8.3. **General Comments in Relation to Construction of Underground Cables**

The three underground cables to which this referral relates have all been laid within the past four-and-a-half years. Works consisted of excavating a trench approximately 1.25m deep and 0.6m wide for cables. A number of junction bays (approximately every 750m) were excavated to allow for cables to be pulled through the ducts. A number of inspection chambers/manholes are provided within the public road surface on the 110kV sections. It is stated that no in-stream works were required to lay the cables, and neither was directional drilling used. All bridges and culverts within public roads were suitable to accommodate the cables, with appropriate modifications, depending on the particular bridge/culvert structure.



Details of the cable-laying are outlined at Appendix 10 of Appendix F of the submission of RPS on the 6<sup>th</sup> of March 2017. Appendix 11 outlines the principal mitigation measures observed which include, amongst others, the following-

- Appointment of Ecological Clerk of Works to supervise all elements of work.
- Management of surface water monitoring and measures to control sediment and accidental spillages of hydrocarbons, using silt traps, check dams, settlement ponds, and bunds.
- Construction outside of periods of heavy rainfall.
- Measures to ensure that invasive species are not spread by machinery.
- Construction works outside Hen harrier breeding season.
- Measures to deal with a badger sett within 30m of the route.
- Waste materials removed from site for disposal to a licensed waste facility.

#### 8.4. Environmental Impact Assessment

- 8.4.1. Section 4(4) of the Planning and Development Act, 2000 (as amended) effectively de-exempts development which would require environmental impact assessment or appropriate assessment.
- 8.4.2. Schedule 5, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out specified development for which EIA is mandatory. Class 20 refers to overhead electrical power lines of 220kV or more with an overall length of more than 15km. The grid connections are of 20kV and 110kV, and are underground. Class 22 refers to changes or extension of projects listed in Part 1, subject to certain thresholds. An underground cable does not comprise a development specified in Part 1. Part 2 specifies sub-threshold development which may require environmental impact assessment. There is no class of development referenced within the relevant Part of Schedule 5 which approximates to underground power cables.
- 8.4.3. Schedule 7 of the Planning and Development Regulations 2001 (as amended), refers to criteria for determining whether a development would or would not be likely to have significant effects on the environment. The headings under which

development is considered, relate to the characteristics of the proposed development, location of the proposed development and the characteristics of the potential impacts. Having regard to the limited extent of excavation works required; the location of the grid connection routes within public roads/verges, coniferous forestry plantation or agricultural tracks; the avoidance of any in-stream works; limited construction time; survey work carried out in relation to archaeology and cultural heritage impact, ecological surveys and assessment for impact on European sites; existing land uses in the area; the limited use of natural resources required; and measures imposed to control pollution and nuisances, I would be satisfied that the grid connections would not have had any significant effects on the environment.

8.4.4. In light of the O’Grianna judgement, the environmental impact of the grid connections in association with the wind farms which they serve must be considered. However, the Glentanemacelligot to Knockacummer underground cable and the Knockacummer to Glenlara underground cable were laid before the O’Grianna judgement. An Environmental Impact Statement was prepared for the wind farm development at Glentanemacelligot and at Knockacummer, and EIA was carried out by Cork County Council and the Board in granting planning permissions for them. The Glenlara to Ballynahulla cable was laid after the O’Grianna judgement, and as such, should be considered for cumulative impact in association with the wind farms which it serves. Consideration of potential cumulative impacts was addressed at Appendix I of the wind farm operator’s submission to the Board of 6<sup>th</sup> March 2017. I note that the three sections of underground cable were carried out over a period of four-and-a-half years. Having regard to-

- Limited duration of the construction period of any one of the three cable routes.
- Underground nature of the cables.
- Location of all cable routes within public roads, forestry/agricultural tracks or fire-breaks.
- Absence of in-stream works.
- Measures outlined to control and deal with pollution and accidental spillages – particularly in relation to watercourses.

- Route selection to avoid sensitive ecological areas.
- Consideration of other large projects within the area – listed at Appendix I.
- The limited use of natural resources.
- The fact that the access to the Knockacummer wind farm site is located on a different road network to the grid connection route.

I would consider that the potential cumulative impacts are deemed to be insignificant, and no significant adverse cumulative impacts on the environment relating to the grid connection routes and wind farms (or any other plans or projects in the area) could be envisaged.

## 8.5. Appropriate Assessment

8.5.1. The three separate elements of this grid connection referral were all subject to referrals to Cork County Council, and in one of the three cases, to the Board. These referrals were subject to appropriate assessment screening by Cork County Council and An Bord Pleanála. The cable-laying was carried out over a period of four-and-a-half years. There is no sense in which the connection of these three cable routes could be considered to have in-combination impacts on European sites, regard being had to- the limited extent of works involved in excavation of a single trench; the time over which trenches were constructed; the separation distance between them; the variety of watercourses to which the cable routes drain; and the conservation interests of the SACs and SPA.

8.5.2. European sites in the vicinity are identified as follows-

### Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA

The conservation interests of this SPA are as follows-

- *Circus cyaneus* (Hen harrier).

### Blackwater River (Cork/Waterford) SAC

The conservation interests of this SAC are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.

- Perennial vegetation of stony banks.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).
- *Margaritifera margaritifera* (Freshwater Pearl Mussel).
- *Austropotamobius pallipes* (White-clawed Crayfish).
- *Petromyzon marinus* (Sea Lamprey).
- *Lampetra planeri* (Brook Lamprey).
- *Lampetra fluviatilis* (River Lamprey).
- *Alosa fallax fallax* (Twaité Shad).
- *Salmo salar* (Salmon).
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney Fern).

#### Lower River Shannon SAC

The conservation interests of this SAC are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Perennial vegetation of stony banks.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).

- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).
- *Margaritifera margaritifera* (Freshwater Pearl Mussel).
- *Austropotamobius pallipes* (White-clawed Crayfish).
- *Petromyzon marinus* (Sea Lamprey).
- *Lampetra planeri* (Brook Lamprey).
- *Lampetra fluviatilis* (River Lamprey).
- *Alosa fallax fallax* (Twaité Shad).
- *Salmo salar* (Salmon).
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney Fern).

8.5.3. Only a small portion of the Glentanemacelligot to Knockacummer cable route drains to the Lower Shannon River SAC – this located in the vicinity of Glentanemacelligot wind farm itself. The closest part of the SAC is located approximately 6.0km downstream of the cable route. The remainder of the cable routes drain to the Blackwater River (Cork/Waterford) SAC. The only cable route to intrude on an SAC, is the Glenlara to Ballynahulla section – where two watercourses are crossed – the Airglinn River and the Blackwater River. The principal likely impact would be on water quality and water-dependent species. Some 1.25km length of the 17.4km Glenlara to Ballynahulla grid link in Co. Cork is either within or immediately adjacent to the Blackwater River (Cork/Waterford) SAC; with a further 0.65km flanking the route within adjoining Co. Kerry. Because of the location of trenches, almost entirely within public roads/margins, there will have been no significant impact on any of the habitats listed as conservation interests of this SAC. Mitigation measures to control release of silt and accidental spillages of hydrocarbons would have protected such species during construction. In relation to protection of Hen harrier, significant lengths of the grid connection route are either within or immediately adjacent to the

SPA – Glentanemacelligot to Knockacummer (approximately 3.5km); Knockacummer to Glenlara (approximately 4.0km); Glenlara to Ballynahulla (approximately 4.0km within Co. Cork with a further 1.25km within Co. Kerry). These lengths are within public roads/forest tracks which are already subject to noise and disturbance from passing traffic. Reports submitted indicate that the works would not be carried out within the relevant areas within the Hen harrier breeding season, and surveys for nests within 500m of any sections of the routes. If observed prior to and during construction, these mitigation measures would have been appropriate to protect Hen harrier.

- 8.5.4. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the laying of cables, individually or in combination with other plans or projects would not have been likely to have had a significant effect on European site no.s 002170, 004161 and 002165, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment would not, therefore, have been required.

## 8.6. O'Grianna Judgement

- 8.6.1. The O'Grianna case refers to a High Court judgement on Judicial Review of a permission granted on appeal by the Board for a development comprising six wind turbines and associated buildings/infrastructure in County Cork. The Board's decision on the appeal (Ref. PL 04.242223) was made on 15<sup>th</sup> November, 2013 and the High Court judgement (Ref. 2014 No. 19 JR 2014 No. 10 COM) was delivered on 12<sup>th</sup> December, 2014.
- 8.6.2. That application for permission attracted a mandatory requirement for EIA, as the development exceeded the five wind turbine threshold, provided for in Class 3 (i) of Part 2, Schedule 5, of the Planning and Development Regulations, 2001 (as amended). As was the case with most wind farm development applications at that time, and in line with advice contained in the Wind Energy Planning Guidelines 2006, no details were included in relation to the connection to the national grid. This would be a matter for later determination, as design (including line, form, overhead/underground) would be undertaken by ESB Networks.

- 8.6.3. In essence the High Court judgement, quashing the Board's decision, was based on the conclusion that the wind farm and the grid connection constituted a single project, and that both elements together would have to be subject to EIA, in order to comply fully with the terms of the Directive. As a consequence of the judgement, new applications for permissions for wind farm developments, which require EIA, now include relevant information on proposed grid connections.
- 8.6.4. The key consideration here is that the wind farms at Glentanemacelligot and Knockacummer, which the underground cables facilitate, have the benefit of planning permissions granted prior to the O'Grianna judgement. The decisions were in accordance with the law as it stood at that time and are, therefore, valid and beyond challenge. The wind farm applications were subject to environmental impact assessment or appropriate assessment, and it is not now proper or possible to revisit this.

## 8.7. **Legislative Context**

### Is or is not Development

- 8.7.1. Having regard to the nature of the underground cables, namely the construction of c.8.0km of underground 20kV cable, c.11.4km of underground 110kV cable and c.19.5km of 110kV cable (only 17.4km of which is within Co. Cork), it is clear, by reference to Section 2(1) and 3(1) of the Act, that such construction does constitute development for planning purposes. The focus, therefore, is on whether or not the development constitutes exempted development.
- 8.7.2. Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is, as indicated, Class 26, Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended. I am satisfied that the proposal is "a development consisting of the laying underground of...cables...for the purposes of the undertaking". The other requirement of this class is that the development be carried out by an "undertaker authorised to provide an electricity service".
- 8.7.3. As indicated, Article 3(3) of the Regulations states that an electricity undertaking means "*an undertaker authorised to provide an electricity service*". However, there



is no statutory definition to clarify what exactly is meant by this. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

*“electricity undertaking” means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act”.*

8.7.4. I note that while this definition refers to holders of licences/authorisations/permits, the use of the conjunction *“including”*, prior to the reference to these instruments, indicates that they are not essential and that the term *“electricity undertaking”* can apply to *“any person”* engaged in generation, transmission, distribution or supply of electricity. As indicated, Class 26 falls under the heading *“Development by statutory undertakers”*. It is one of several classes (Classes 23-32) in this part of the Schedule. It would seem, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers. The definition of *“Statutory Undertaker”*, as provided in the Act, appears to encompass a very broad spectrum of categories of persons or bodies. It includes *“...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity”*. I would be satisfied that SWS would appear to fall within this category on foot of its authorisation under the Planning Act to construct/operate wind farms at Glentanemacelligot and Knockacummer, that can be considered to be – projects/works for the provision of electricity. I note that the current definition of *“Statutory Undertaker”*, clearly contemplates undertakings that are not solely public undertakings. This compares to the definition in the original 1963 Act [Section 2(1)] that appears to have contemplated public undertakings only. The change presumably reflects the liberalisation of markets in services and infrastructural provision that has occurred since that time. I am satisfied, therefore, that the development falls within the scope of the said Class 26.

8.7.5. Class 16 of Part 1 of Schedule 2 is also of relevance in this referral. This class refers to ‘temporary structures and uses’ – which the underground cables themselves could not be considered to come under. The reference to this class can

be related to the temporary nature of the construction works which were necessary to facilitate the laying of the underground cables.

Is or is not exempted development

- 8.7.6. The final step is to consider the relevant provisions of Article 9(1) of the Planning and Development Regulations, 2001, in order to establish if any of the 'de-exemptions' apply in this instance.

In relation to Article 9(1)(a)(i), I have already argued why it is considered that conditions attached to parent wind farm developments can be discounted. In relation to Article 9(1)(a)(v), I have already concluded that the proposed development falls within the scope of Class 26 of Part 1 of Schedule 2, so that this article does not apply. Article 9(1)(a)(vi) refers to impact on the landscape and views and prospects. Underground cables, or the works necessary to lay them will not have had any lasting impact on the landscape or views and prospects. Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. None have been identified along the three underground cable routes. A Cultural Heritage Assessment Report is stated to have been submitted for the Glenlara to Ballynahulla cable works. All works were carried out within public roads or agricultural/forestry tracks or fire breaks. On this basis I am satisfied that the proposed development does not fall within the scope of Article 9(1)(a)(vii) or (viiA). Article 9(1)(a)(viiB) refers to the issue of appropriate assessment and, as such, the conclusion reached elsewhere in this Inspector's Report applies. Similarly, Article 9(1)(c) refers to the issue of environmental impact assessment and, as such, the conclusion reached elsewhere in this Inspector's Report applies.

8.8. **Precedent Cases**

I have elsewhere in this report referred to the specific details of RL2789. Reference is made in documentation on this file, to a number of precedent Board decisions. Whilst there have been a number of referral cases in relation to wind farm grid connections; because of the distances involved, differing voltages, connection with other wind farms, the option for over-ground and/or underground cables and the potential impact on the environment and on European sites, the circumstances of

each case can, and do, vary widely. This is particularly so in relation to visual amenity, impact on sensitive ecology, and the potential impact on European sites. For these reasons, I would adopt a cautious approach in quoting precedent decisions of the Board in relation to the elements of the grid connection the subject of this referral. There is also the added consideration of the implication of the O'Grianna judgement when examining grid connections for wind farm developments.

#### **RL3234**

By order dated 22<sup>nd</sup> January 2015, the Board determined that the provision of 10kV overhead cable (length unstated) to connect a small wind farm in Co. Clare to the national grid, was development and was exempted development. Permission had been granted on appeal to the Board for two wind turbines – ref. PL 03.131382. Condition 4 stated- “Work on the proposed windfarm shall not proceed until full permission has been granted for the electricity connection to the national grid. *Reason:* In the interest of orderly development”. The Board’s Planning Inspector in his Report stated- “It is reasonable to conclude from the reading of this condition that it does not expressly prohibit the developer of the wind farm from availing of the exempted development provisions under the Planning and Development Act. In other words, such associated works, when seeking to avail of the exempted development provisions under the Act, have not been expressly de-exempted by this condition”. The Board, in coming to its decision that the overhead cable was development and was exempted development, did not specifically refer to the Inspector’s conclusion in relation to condition 4, but it did, nonetheless form part of the Inspector’s assessment of the issues before the Board in relation to the referral.

#### **RL3377 & RL3401**

By order dated 3<sup>rd</sup> May 2016, the Board determined that the provision of a 2.6km long, 20kV overhead electricity line between a consented wind farm at Cnoc, Co. Tipperary to a consented 38kV sub-station at Ballybeagh, Tullaroan, Co. Kilkenny, was development and was exempted development.

#### **RL3408, RL3409, RL3410 & RL3411**

These four associated cases relate to an existing, partially shared grid connection for four extant wind farms in County Wexford. The grid connections are almost entirely

underground. By orders dated 28<sup>th</sup> July 2016, the Board determined that all four grid connections were development and were not exempted development – largely on the basis that the original wind farm permissions (which had not included details of grid connections) contained conditions requiring that grid connections be subject to separate planning permissions. In the event, the grid connections were provided by way of a claim of exempted development status. These determinations of the Board are subject to Judicial Review by the wind farm operators – two separate Judicial Reviews. I note that considerable reliance is placed on these precedent determinations in relation to the original referral question to Cork County Council by Patrick Cremins.

### **RL3436**

By Order dated 23<sup>rd</sup> June 2016, the Board determined that 3.5km of underground 20kV grid connection linking two wind farms in Co. Tipperary, was development and was exempted development.

## **8.9. Conclusion**

Having regard to the preceding comments, I would consider that the underground grid connection between the permitted wind farm at Glentanemacelligot and the permitted wind farm at Knockacummer; between the permitted wind farm at Knockacummer and the national grid at the sub-station at Glenlara; between the sub-station at Glenlara and the sub-station at Ballynahulla (as far as the boundary with Co. Kerry at Kingwilliamstown Bridge in Ballydesmond village), is development and is exempted development. The laying of the grid connections would not attract the need for environmental impact assessment and would not require a Stage 2 appropriate assessment.

## **9.0 Recommendation**

I recommend that the Board should dismiss this referral from Cork County Council on grounds that the three separate elements of the grid connection from Glentanemacelligot and Knockacummer wind farms to the national grid at Glenlara and onwards to Ballynahulla, have already been the subject of section 5

determinations from Cork County Council and, in one instance, from An Bord Pleanála.

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**Michael Dillon,**

**Planning Inspector.**

**28<sup>th</sup> April 2017.**

**Decision Quashed**