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## **Giant's Burn Wind Farm – ECU00005007**

Dear Colin,

### **1. Introduction**

1. This written submission relates to the position of GB Wind Farm Limited (the Applicant), in respect of the recent judgment: Raeshaw Farms Limited v Scottish Ministers and Energiekontor UK Ltd [2026] CSIH 10, addressing the questions posed from the Scottish Ministers' request of 13 April 2026.
2. This written submission adopts the terminology utilised throughout the Applicant's previously submitted written material (e.g. July 2025 Environmental Impact Assessment Report (EIA Report[CS1.1])).

### **2. Case Background**

3. The Raeshaw Farms Limited v Scottish Ministers and Energiekontor UK Ltd [2026] CSIH 10 case relates to a proposed onshore wind farm project known as Wull Muir Wind Farm. Hereafter, for ease, we refer to the case as the 'Wull Muir judgment'.
4. Energiekontor UK Ltd submitted a planning application to Scottish Borders Council on 15 December 2022, seeking planning permission for the erection and operation of a wind farm comprising of up to 8 wind turbines and associated infrastructure. Scottish Borders Council refused the application on 8 July 2024.
5. Energiekontor UK Ltd submitted a planning appeal against the Scottish Borders Council's decision to refuse the application. Raeshaw Farms Limited was an interested party to the planning appeal and lodged written material objecting to the proposal.
6. The appeal was allocated to Reporter David Buylla, who determined the appeal on 14 January 2025, following review of all written submissions and a site visit (i.e. no oral proceedings were held). Reporter Buylla allowed the appeal and granted planning permission, on behalf of the Scottish Ministers.
7. Following the grant of planning permission, Raeshaw Farms Limited launched challenge proceedings with the Inner House of the Court of Session. The crux of the case related to whether Wull Muir Wind Farm was lawfully granted planning permission in a circumstance where the connection of the wind farm to the grid was

not included as part of the application, or the subject of environmental assessment. The key question to be answered by the Court was whether the construction of the wind farm and its grid connection constituted a single project for the purpose of assessing its environmental impact, followed by a secondary question as to whether the decision maker's evaluation of that issue was sufficiently reasoned and fact specific.

### **3. Grid Connection Status for Giant's Burn Wind Farm**

8. Appendix 1 provides an overview of the grid reform process and status of Giant's Burn Wind Farm's grid connection. In summary, Giant's Burn Wind Farm has been allocated Gate 2 status. Therefore, if section 36 consent is granted, it will have a grid connection date of 2030 or sooner.

9. Previous discussions between the Applicant and the transmission operator (TO), Scottish Southern Energy Networks (SSEN) who will design, consent, construct, own and operate the grid indicated that Giant's Burn Wind Farm would connect to Dunoon Grid Supply Point (Dunoon GSP). However, the introduction of the grid reform process in 2025 reset connection discussions until Gate 2 agreements have been signed. It is expected that the Gate 2 offer for Giant's Burn Wind Farm will be submitted to the applicant for consideration in Q3 2026 therefore no detailed information has yet been provided as to the exact route the grid connection will follow.

### **4. Implications of the Wull Muir Judgment for Giant's Burn Wind Farm**

10. In advance of responding to the questions from the Scottish Ministers, we briefly summarise the findings of the Wull Muir judgment. This is of course not an exhaustive list of the issues, and we refer the Scottish Ministers to the judgment itself for details of its terms<sup>1</sup>.

11. At paragraphs 3 to 10 the Wull Muir judgment sets out the statutory context in respect of environmental impact assessment ("EIA"). Whilst this refers to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (which was relevant to Wull Muir Wind Farm as a town and country planning application), the principles set out in this section of the Wull Muir judgment equally apply to Giant's Burn Wind Farm in the context of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EW EIA Regulations) (the Proposed Development being an application submitted pursuant to Section 36 of the Electricity Act 1989). The Applicant does not therefore consider it necessary to rehearse the statutory context here.

12. Paragraph 12 of the Wull Muir judgment noted that the off-site grid connection for Wull Muir Wind Farm would be subject to an application at a later date once the precise route and associated impact assessment was known. This was not therefore assessed as part of the planning application material. At paragraph 17, the Court recorded the Reporter's conclusion in respect of the absence of a grid route assessment as follows:

13. "129. An objector asserts that, as the appellant has not detailed the grid infrastructure that will be necessary to connect the proposal, it is impossible for the full environmental effects of this proposal to be assessed. I disagree. Whatever grid connection solution is ultimately proposed will (if it requires planning permission) be subject to its own evaluation. It is not part of the current proposal. The objectors (sic) reference to the term "salami slicing" is misdirected. That properly refers to an attempt to circumvent the objectives of the EIA Directive and regulations by dividing what is in reality a single project into separate parts. In this instance, there has been no attempt to avoid the need for an EIA. The development proposal has been subject to EIA in

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<sup>1</sup> Opinion of the Court [2026csih10-raeshaw-farms-limited-against-scottish-ministers-and-another.pdf](#)

the normal way and if a subsequent proposal for a grid connection were EIA development, that too would require to be assessed in accordance with the EIA regulations.”

14. The Wull Muir judgment then goes on to consider prior case law, the findings of which are summarised in Appendix 1 to these submissions for ease of reference. For the purposes of these submissions, however, we predominantly focus on the R (Wingfield) v Canterbury City Council [2020] JPL 154 case as requested by the Reporters.

15. As part of the Wull Muir Wind Farm challenge, four grounds of challenge were advanced. The first being an irrationality challenge about taking the benefits of the project that could only be realised were a grid connection to be installed without taking the disbenefits into account. The remaining three being the central issue of whether the wind farm and the grid connection works constituted a single project for EIA purposes, and inadequacy of the Reporter’s conclusions on this matter.

16. The Court considered that the Reporter failed to address the “critical issue” of whether the wind farm and associated grid connection was a single project for EIA purposes, having carried out no necessary fact specific evaluation of the proposal. It held that in considering a project in an EIA context, the decision maker should consider “the degree of connection” between the development and its putative effects, as per R (Ashchurch Rural Parish Council) v Tewkesbury BC [2023] EWCA Civ 101; [2023] Env LR 25, unconstrained by the terms of the application before them.

17. The Court considered that there was irrationality to the Reporter taking into account the benefits of the wind farm, which were only capable of coming to fruition with the grid connection works, without taking into account the disbenefits (or harm) of the grid connection works.

18. The Court quashed the appeal decision and remitted the matter for redetermination, with a clear directive that it would be necessary for the decision maker to consider whether the wind farm and grid connection works would constitute a single EIA project, as part of that process.

19. We now respond to each of the Reporters’ questions in turn below, on this matter.

- ***what are the implications of the Raeshaw Farms judgment with regards to the above application***

20. The key implication of Raeshaw Farms is that the Scottish Ministers must conduct a project and fact specific evaluation to determine the extent of the Giant’s Burn ‘project’ that needs to be assessed in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA Regulations) and whether it extends beyond the application before them (for Giant’s Burn Wind Farm) to include the grid connection. The Applicant’s answers to the Ministers’ questions below provide that information to allow Ministers to make this determination.

21. In light of that determination, the Scottish Ministers must then ensure they have sufficient information before them to undertake “in an appropriate manner, in light of the circumstances relating to the proposed development” (Regulation 4(2)), an assessment of the likely significant effects of the ‘project’ in accordance with the EIA Regulations.

22. Further to that, the Applicant submits that the Scottish Ministers can properly have regard to the benefits that Giant’s Burn Wind Farm would bring, notwithstanding that the grid connection has not yet been consented. The Additional Information will provide information to allow the Scottish Ministers to reach reasoned conclusions with regards to any likely significant effects that would arise from the grid connection and to weigh

any such disbenefits against the considerable benefits that would be provided by Giant's Burn Wind Farm. The Scottish Ministers analysis can take account of the fact that the grid connection will be delivered at a later date, and without that connection the benefits will not be realised.

• ***whether the wind farm and its grid connection are considered one project for the purposes of EIA – please note that where an applicant considers that they are not one project, justification will be required outlining how this conclusion has been reached***

23. To assist in coming to a view on what constitutes the EIA project, the non-exhaustive list of factors identified in the Wingfield<sup>2</sup> case are considered below. The Wingfield factors are as follows:

24. Common ownership: Where two sites / projects are owned or promoted by the same person, this may indicate that they constitute a single project. In this case Giant's Burn Wind Farm and its grid connection would not share common ownership. The grid connection will be designed, consented, constructed, owned and operated by Scottish Southern Energy Networks.

25. Simultaneous determinations: Where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project. In this case, the section 36 consent application for Giant's Burn Wind Farm does not include or seek consent for any grid connection works. That is because Giant's Burn Wind Farm and its grid connection are being developed and, as a result of the NESO grid reforms, must be consented independently on entirely separate and different timescales (see further in Appendix 1).

26. Functional interdependence: Where one part of a development could not function without another, this may indicate that they constitute a single project. In this case there is functional interdependence between Giant's Burn Wind Farm and the anticipated grid connection to Dunoon GSP, as the wind farm requires the grid connection to supply electricity to the grid.

27. Stand-alone projects: Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a separate project that is not an integral part of a more substantial scheme. It is not known if or what elements of the grid infrastructure between Giant's Burn Wind Farm and Dunoon GSP may serve multiple projects. This section of grid connection works may or may not be a stand-alone project.

28. The court in Wingfield did not identify any hierarchy of the above factors or suggest any one factor is decisive or to be given greater weight than other factors. The factors may point to different conclusions, and a conclusion needs to be reached in the round.

29. Considering the above, two factors suggest that Giant's Burn Wind Farm and the grid connection works are separate projects for EIA purposes and two factors suggest they are one project. As such it is open to the Scottish Ministers to rationally conclude, in the round, that the grid connection works are a separate project for EIA purposes but the opposite conclusion could equally be justified.

30. The Applicant's view on balance in this case is that the precautionary approach is to assume that the elements of the grid infrastructure which would only serve Giant's Burn Wind Farm, and that would not otherwise be built out, comprise part of the same EIA project as the wind farm infrastructure elements.

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<sup>2</sup> R (Wingfield) v Canterbury City Council [2020] JPL 154.

- **where it is considered that that the wind farm and the grid connection are one project, have the significant effects of the project, including the grid connection, been adequately assessed in the EIA report?**

31. The EIA Report submitted in July 2025 presently does not include assessment material of the grid connection works.

32. On the basis that the Scottish Ministers may decide on the facts then available to them that Giant's Burn Wind Farm and its grid connection works (or part of them) are a single project for EIA purposes, without prejudice to the Applicant's final position on that matter, the Applicant intends to provide Additional Information (as defined in Regulation 2 of the EIA Regulations).

33. As the exact route is not yet known, the likely significant environmental effects will be assessed in a proportionate manner to the extent possible in the circumstances at this stage, based on what can reasonably be predicted.

- o **if the significant effects have been adequately assessed, please provide further justification outlining how this conclusion has been reached**

34. As above, the EIA Report presently does not include assessment material of the grid connection works.

35. The Applicant considers that additional environmental assessment material is required on a grid connection to Dunoon GSP. Such assessment material would be presented as formal supplementary information pursuant to Regulation 19 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

36. The Applicant considers that such assessment would require to consider the impacts of the grid connection on an intra-project (often referred to as 'in-combination') basis. This would enable conclusions to be drawn (so far as possible at this stage) on the environmental effects of the defined project, and to confirm whether the significance findings of the Giant's Burn Wind Farm EIA Report as it currently stands are likely to change as a result of incorporating the grid connection.

37. In respect of timescales for the preparation of this supplementary information, the Applicant proposes to submit this by the end of May 2026.

38. Taking the above approach, the Applicant considers that this would comprise an assessment of the entirety of the defined EIA project "at the earliest possible stage in all the technical planning and decision-making processes" (as rehearsed by reference to EU Directive 2011/92/EU in the Wull Muir Judgment). For the foregoing reasons, and subject to the steps being proposed by the Applicant in this submission, the Scottish Ministers will be in a position to determine the application for Giant's Burn Wind Farm in full accordance with the EIA Regulations.

- **where it is considered that the wind farm and grid connection are not one project, has any consideration be given to any likely significant cumulative effects of the proposed development and its grid connection?**

39. The Applicant considers that the wind farm and the grid connection to be a single project.

- ***are all likely significant effects of the project identifiable at this stage?***

***o If the answer to above question is “no”, please provide justification outlining why are the significant effects not identifiable at this stage and how should the Scottish Ministers address that issue in determining the present application?***

40. As has been set out earlier in this submission, a reasonable point of connection and associated cable route has been identified, which will allow the Applicant to carry out an assessment in terms of the grid connection. The precise grid connection point, route and associated infrastructure are not yet confirmed, and are not within the Applicant’s control for reasons set out in Appendix 1. Accordingly, while reasonable predictions can be made, there remains unavoidable uncertainty as to the final location, design and extent of the grid connection works, and consequently the environmental effects which may arise from them.

41. Subject to that limitation, the Applicant has adopted a precautionary approach in seeking to provide Additional Information to assess, as far as possible at this stage and in the circumstances, the likely significant effects of the currently anticipated grid connection in combination with the wind farm.

## **5. Conclusion**

42. The central issue in Raeshaw Farms was the decision maker’s failure to carry out a fact specific evaluation of the proposal to inform and conclude on whether the wind farm and associated grid connection was a single project or two projects for EIA purposes. It is incumbent upon the Scottish Ministers, as decision maker in this case, to carry out such an evaluation having regard to the Wingfield factors.

43. Subject to the provision of the Additional Information, the Applicant submits that the Application will be able to be assessed in accordance with the principles of Raeshaw Farms, and the ‘project’, however delineated by the Scottish Ministers, will be able to be considered in accordance with the EIA Regulations, thereafter enabling the Scottish Ministers to apply the planning balance in the usual way, weighing benefits against disbenefits. It should be noted that whilst assessment material would be provided, the Applicant is not applying for the grid connection works as part of the Section 36 application, and as the grid connection route is unknown assumptions on the location of the route have had to be made.

Kind regards,

Corey Simpson

## Appendix 1: Overview of the grid reform process and status of Giant's Burn Wind Farm

### 1. Introduction

a. Through grid reform, National Energy Systems Operator (NESO) and the network partners aim to achieve a refined queue of viable, real projects that would facilitate in achieving the UK Government's Clean Power 2030 ambitions and eliminate all projects that are unlikely to progress<sup>3</sup>. This is an important overhaul replacing the first-come first-served grid connection processes with a "first ready, first needed and connected" approach. This will facilitate the Transmission Operators (TOs) and NESO to plan and develop the transmission network that is vital for Clean Power and Net Zero targets amid growing demands.

b. Gate 2 to the Whole Queue (G2TWQ) is a one-time exercise which is currently being undertaken that intends to apply the new grid reform criteria retrospectively to all existing projects in the queue. Through the G2TWQ process, the TOs and NESO are restudying and/or optimising how the projects that remain in the refined queue will connect to the transmission network. As a result, the points of connection for most projects will be subject to change, with the aim of achieving the most economic and efficient design.

### 2. Grid Reform Gate

a. As part of G2TWQ process, projects are assessed and assigned a status (Gate 1 or Gate 2) based on their readiness and strategic alignment with the UK's energy goals as defined in the Clean Power 2030 Action Plan.

i. Gate 1 applies to projects that do not meet the Gate 2 criteria. Gate 1 projects will not be assigned a confirmed connection date but may progress through future windows if readiness is demonstrated. These projects will be issued a Gate 1 offer.

ii. Gate 2 applies to projects that meet the new requirements for readiness and Strategic alignment. These projects will be offered a confirmed connection date, connection point, and queue position. These projects will be issued a Gate 2 offer.

b. As part of the G2TWQ process and going forwards, projects will only receive a Gate 2 if they:

- i. Meet Minimum acreage requirements;
- ii. Provision of Original Red Line Boundary for site on which project is located; and
- iii. Secured Land Rights.

c. And they also have to meet one of the Gate 2 Strategic Alignment Criteria:

- i. eligible for relevant 'protections'; or
- ii. aligned to the capacities within the CP30 Action Plan as described in the Connections Network Design Methodology; or
- iii. designated as described in the Project Designation Methodology; or

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<sup>3</sup> For example, projects which do not have land rights, or have no intention of proceeding into planning.

- iv. a project not within scope of the CP30 Action Plan.
- d. All projects currently with a grid application will be allocated to Gate 1 or Gate 2. Projects allocated to Gate 1 will in future only be allowed to progress to Gate 2 subject to them re-applying during specific “windows”, the dates of which have not yet been confirmed, and meeting the Gate 2 criteria as outlined above.
- e. Gate 1 projects who had submitted their planning applications prior to August 2025, also received an additional Protection 3a or Protection 3b status as follows:
  - i. Protection 3a (if the project submitted planning before 20 December 2024) - the wind farm is guaranteed a Gate 2 offer in a future gated application window should the project achieve planning consent, and will be allowed to exceed both the zonal and GB permitted capacities (as set out within the CP30 Action Plan).
  - ii. Protection 3b (if the project submitted planning between 21 December 2024 and August 2025) - the wind farm is guaranteed a Gate 2 offer in a future gated application window should the project achieve planning consent, and there is still headroom within the zonal and GB permitted capacities (as set out within the CP30 Action Plan).
- f. Giant’s Burn Wind Farm has been allocated Gate 2. Therefore, the Applicant is awaiting to be offered a confirmed connection date, connection point, and queue position.
- g. Giant’s Burn Wind Farm has not formally received and signed the Gate 2 offer. Accordingly, all previous grid offers/connection information is null and void.

### **3. Grid Connection Date**

- a. Until Giant’s Burn Wind Farm receives a Gate 2 Offer the grid connection date will not be known.

### **4. Grid Connection Location and Route**

- a. As previously discussed until Giant’s Burn Wind Farm receives a Gate 2 offer, the grid connection point and route connecting Giant’s Burn Wind Farm to the grid network will not be known.
- b. A potential connection point might be to Dunoon GSP. Therefore, for the purposes of the supplementary information a potential connection route between Dunoon GSP and Giant’s Burn Wind Farm has been considered.
- c. It is the TO's responsibility to design, consent, build and operate the grid connection from the wind farm to the transmission substation.