

UNECE – AARHUS CONVENTION COMPLIANCE COMMITTEE – 56th Meeting
Geneva, 28 February - 3 March 2017

SUBMISSION BY THE AVICH AND KILCHRENAN COMMUNITY COUNCIL IN
RESPECT OF COMMUNICATION ACCC/C/2008/33, COMMENTING ON THE
IMPLEMENTATION OF DECISION V/9N IN SCOTLAND

Good afternoon. I am Christine Metcalfe, and my Community Council is a Communicant in this matter. I and my legal adviser are grateful for the invitation to join you. His name is John Campbell and he is a Queen's Counsel in private practice in the UK.

We understand that the last decision of the Committee decided to
*.....recommend with respect to the Committee's findings on
communication ACCC/C/2012/68 that the Party concerned in future
submit plans and programmes similar in nature to NREAPs to public
participation as required by article 7, in conjunction with the relevant
paragraphs of article 6, of the Convention.*

This meeting is therefore concerned with the creation of opportunities for public participation in renewables policies, rather than with actual applications, at a high level (ie a National level) and to consider what has happened since the Compliance Committee last considered the matter and issued decisions V/9a-n following the Meeting of the Parties in 2014.

The first thing to say is that we agree the narrative of our earlier submissions, found in paragraphs 10 and 12, and 27-35 of the Second progress review of the implementation of decision V/9n.

PUBLIC PARTICIPATION IN RENEWABLE GENERATION POLICY AT A
STRATEGIC LEVEL IN SCOTLAND

Obviously, history cannot be unwound. There is little purpose in repeating

previous criticism of Scottish Government policy and practice. It is the policy of the present Scottish (devolved) Government and, we think, fairly widely accepted in Scotland that in considering future generation possibilities, renewables of all kinds are to be preferred to new conventional fossil-fuel generated power. So coal is being phased out with the closure of coal burning stations, and oil is being used more sparingly. Gas is still very important for base load provision. Nuclear power provides base load, but is (quite irrationally) politically unpopular.

Increased reliance on renewables is not a universally popular sentiment, and among rural residents and communities, renewable generation and especially windfarms are the subject of widespread suspicion, dislike and mistrust. The evidence for that comes from the very large proportion of applications that are refused on first application by local decision makers, such as planning authorities, only to be allowed later on appeal. Developers are often choosing to submit applications as s36 proposals to be determined directly by the SG under the Electricity Act 1989. Aside from that, windfarms in particular are widely despised by rural dwellers and small communities for their massive impacts on the countryside, residences, and small settlements. They have a potential to, and in some cases are polluting water supplies. Audible noise impacts are produced and, as some acoustical experts are increasingly reporting, ILFN noise emissions. Both have negative health impact potentials. Wildlife is disturbed which has a dramatic effect on the wider environment, for little or no perceptible local benefit.

Notwithstanding those impacts, the only issue for today, as we understand it, is whether the Scottish Government, to whom both large scale and local Planning decisions are delegated have taken steps to subject their Renewable Energy programmes to public consultation, as required by the Aarhus Convention. The Committee's past findings such as ACCC/C/2012/68 make it clear that they had not.

PUBLICATIONS

The Scottish Government published its Energy Paper “Energy in Scotland 2015” in that year. It invited a response from members of the public who were interested. It set out the state of affairs then, and invited public comment. See <http://www.gov.scot/Resource/0046/00469235.pdf>

Since the last meeting of UNECE that considered the Avich & Kilchrenan Community Council’s Communication ACCC/C/2012/68, the SG it has embarked upon a number of further initiatives and public consultations. We suggest that the impetus for these initiatives and consultations has come, in part, from the Community Council’s Communication.

The SG activity has been as follows

- Consultation on a Scottish Energy Strategy, opening on 24 January 2017 and closing on 30 May 2017.
<https://consult.scotland.gov.uk/energy-and-climate-change-directorate/draft-energy-strategy/>
- Consultation on fracking and Unconventional Gas Extraction, running from 31 January to 31 May 2017. See
<https://consult.scotland.gov.uk/energy-and-climate-change-directorate/fracking-unconventional-oil-and-gas/>
- Consultation on Heat and Energy Efficiency Strategies, and the regulation of District Heating Schemes, opened on 24 January 2017 and closing on 18 April 2017. See
<https://consult.scotland.gov.uk/energy-and-climate-change-directorate/local-heat-and-energy-efficiency/>
- Consultation on a draft Onshore Wind Policy Statement, opened on 24 January 2017, and closing on 30 May 2017. See

<https://consult.scotland.gov.uk/energy-and-climate-change-directorate/draft-onshore-wind-policy-statement/>

- Consultation on Scotland’s Energy Efficiency Programme, opened on 24 January 2017 and closing on 30 May 2017.
- A Consultation on implementing an exemption for Energy Intensive Industries from the Indirect Costs of the Renewables Obligation Scotland closed in June 2016. See <https://consult.scotland.gov.uk/energy-and-climate-change-directorate/scotlands-energy-efficiency-programme/>

In addition, the Scottish Government has undertaken a joint Strategic Environmental Assessment (SEA) of the draft Climate Change Plan and draft Energy Strategy, in accordance with the Environmental Assessment (Scotland) Act 2005, to consider the likely significant environmental effects of the draft Plan and draft Strategy.

See: <http://www.gov.scot/Publications/2017/01/90300>

The SG has published Guidance on Community Benefits from Onshore Renewable Energy Developments in 2013, and “Good Practice Principles” for the Shared Ownership of Onshore Renewable Energy Developments in September 2015. Both were open for public comment and participation before final publication. Proposals for either the provision of Community Benefit or Shared Ownership come forward with every windfarm and many hydropower applications, but we think are not yet fully understood across the public realm. However, publicity issues for such programmes are not for this Committee.

CONCLUSION ON STRATEGIC LEVEL CONSULTATION

From the state of concern as voiced by the AKCC, it can be seen that the Scottish Government has been active. It is too soon to predict the outcome of the current series of important consultations, and importantly, whether

expert comment and advice resulting from the consultations will be heeded at all. It can however be expected that if the current political balance is maintained on energy policy, that there will continue to be political enthusiasm for the growth of renewable generation of all kinds, and a concomitant vital need for public participation.

PUBLIC PARTICIPATION IN RENEWABLE GENERATION POLICY AT A LOCAL LEVEL

Each application for renewable energy generation must be accompanied by an Environmental Impact Assessment, whether compiled under the Town and Country Planning (Electricity Works) (Scotland) Regulations 2000, or the EIA (Scotland) Regulations 2011. It is therefore axiomatic that within the limits of the rules, public participation can take place. EIAs, in the form known as “Environmental Statements” must be publicised and the comments of members of the public who participate in this way by responding to EIAs must be taken into account by decision makers, whether at first application stage (local planning authorities) or on appeal to the Scottish Government. It is enough for today’s purposes to note that public participation opportunities are available. At application stage, only 28 days are allowed for public contributions. At appeal stage, anyone wishing to take part must now “opt in” to the process, rather than simply turning up to speak. It may or may not be that the public is disadvantaged.

OVERALL CONCLUSION

The AKCC’s Communication highlighted some very real deficits both nationally and locally. AKCC was not alone in expressing its concern, but it was our Communication which made the first entry into the UNECE process by a small locally elected Community Council. Our own view is that our intervention has been beneficial to Scotland as a whole, and has spurred and prompted a significant reaction by our national Government.

The outcome of the Consultations which are listed above cannot be predicted except by acknowledgement of the current political climate,

which is strongly pro-renewable. We can expect to see an expansion of these programmes for generation, efficiency, district heating and energy awareness. So as long as the SG keeps in its mind the vital necessity of compliance with the Convention (by which it is bound) and of public participation at appropriate levels while all options are still open, we might have no room for further complaint.

Finally, AKCC is grateful to have had the opportunity to participate in this important and meaningful process.

Christine Metcalfe, AKCC

John Campbell QC

1 March 2017

