

**15 May 2019**

## **BUSINESS RATES FOR SMALL HYDRO**

### **Opinion of the Lands Valuation Appeal Court**

Dear Member

On 15<sup>th</sup> January, the Lands Valuation Appeal Court (LVAC) heard the second appeal of the Assessor against the Tayside Committee and Alba Energy.

This was an important step towards resolving the problem of excessively inflated business rates for the Small Hydro sector.\*

The judgement of the court was published at the end of April. It was very unusual. The judges disagreed with one another and have published their disagreement.

Lord Malcolm found comprehensively in favour of the Tayside Committee – which has now twice supported Alba’s case – but Lord Doherty upheld the Assessor’s appeal in one important regard. Lady Dorrian, presiding, favoured Lord Doherty’s opinion. The majority opinion of the court was to refer the case back to the Tayside Committee for further consideration and clarification.

The appeal of the Assessor has therefore only been successful – in the words of Lady Dorrian – “to the extent described in this opinion”, which was limited in scope and specific in its recommendations.

As we expected, the court has directed the committee to reconsider its division of assets in light of class 4 of the Plant & Machinery order (PMO).

This brings the case back to the question of which elements of a hydro scheme are rateable and which are not. (The resulting divisible balance determines Rateable Value, according to the valuation method being used by the Assessor). The judges found that the committee may not fully have considered all the components of a penstock, some of which may yet fall to be rated under class 4 of the PMO – but only if they are “in the nature of a building or structure”.

What the judges have essentially done is to ask the committee to spell out their workings more clearly. The committee had already included “dams and intake chambers”, so what additional items of significant value there now might be to add, which are “in the nature of buildings or structures”, is not clear. However, on the advice of our counsel, Geoff Clarke, QC, Alba has written to the Committee offering to present evidence to clarify what items – if any – may yet need to be included as rateable to satisfy the instructions of the court.

So long as pipeline, generator and turbine are agreed to be non-rateable, it should become clear that there is not a great deal to add to the proportion of rateable value (25%) applied by the committee: a proportion with which Alba agrees.

Further dialogue is underway with the Assessor, who is showing no signs of shifting position, nor any willingness to reach a reasonable settlement. As a result, we foresee a need to take the 2017 appeals to the Lands Tribunal to resolve the matter decisively.

The 2017 valuations remain the big issue for Small Hydro. The judges have allowed the Assessor's appeal against the committee over the 2010 valuations to a limited extent. But in the process, they have usefully specified and limited the terms of the argument we want to take forward.

From the point of view of the Small Hydro sector in general, the most encouraging aspect of the judgement of Lady Dorrian remains the broad acceptance that the penstock of a run-of-river hydro – or, at least, the pipeline itself – was not rateable for the purposes of valuation. (Though the Assessor's position on this remains opaque and changeable).

The purpose of dialogue is now primarily to agree an exchange of information. Neither Assessor nor Scottish Government\*\* appear minded to find a solution, so – after six years of disagreement – we believe there is little alternative other than to make direct application to the land court for a determination.

This will mean raising funds to raise the case and potentially asking Alba members for further information on their schemes, in order to reinforce our body of evidence.

At the last AGM it was agreed that we would apply to members for a portion of the funds required, the fairest means being to request – in addition to the standard membership fee – £1 per kW of each member's total installed capacity.

We will also be fund-raising elsewhere and would welcome comment from members.

Yours faithfully

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\*The Small Hydro sector receives Rateable Values (from which business rates are calculated) proportionately three times greater than its nearest comparable equivalent, the Small Wind sector, which is supported by the same Feed-in-Tariff system.

\*\*Scottish Government relief on business rates for hydro sites currently represents a discount of 60%. This is the amount the hydro sector argued represented the excess in the valuations. However, this relief is not assured in the long term. Only by correcting the primary valuations of small hydro sites can fair business rates (in line with other comparable sectors) be guaranteed.