



## **BILLET D'ETAT FOR 10-11-2008**

**Date: 10th November, 2008**

Members of the States:

I have the honour to inform you that a Meeting of the States will be held at 5:30pm on Monday 10th November 2008. This will be preceded by the People's Meeting, which will be held on Wednesday 5th November at 7:00pm in the Island Hall.

Mr Colin Williams

Vice President

### **Item I Alderney Tidal Energy Project**

The following letter has been received from Mr Willmott, Chairman of the Policy and Finance Committee:-

The Renewable Energy (Alderney) Law, 2007 (the Law) received Royal Assent on 11 June 2008 and was registered in the Royal Court on 7 July 2008. It provides for the regulation of renewable energy systems and establishes for this purpose the Alderney Commission for Renewable Energy (ACRE). It empowers the States to make Ordinances (including for bringing the Law into force) and may itself be amended by Ordinance.

The States resolved as long ago as May 2005 to set up what it then termed a Commission for the Exploitation of Natural Energy. This was followed by Heads of Agreement entered into between the States of Alderney and Alderney Renewable Energy Limited (ARE) and in December 2005 a formal Agreement Relating to the Tidal Energy Project (the Agreement) was entered into between the same parties. The name of the proposed regulatory body was changed to ACRE.

The Agreement recognised that the Tidal Energy Project (TEP) would require significant investment. It envisaged, once certain criteria were met, the grant to ARE of a Master Power Generation Licence (MPGL). During the term of the TEP (which was set at five years) ARE was granted exclusive access to Alderneys Territorial Waters and associated seabed and sub seabed for the purpose of carrying out oceanographic and tidal stream surveys and the exclusive right to place power generating equipment and testing equipment there. If it met the conditions set out in the Agreement ARE would gain the first option, over all or any other operators, to choose 50% of what were termed the Designated Blocks into which the Territorial Sea had been divided. Following exercise of this option the MPGL would be granted, the effect of which would be to allow ARE to commercially exploit tidal and/or wave power within the blocks selected. The MPGL and Operating Licences granted under it would be for a term of not less than 50 years or such longer period as might be agreed between the States and ARE. The States would have the absolute right not to proceed with the commercial exploitation of tidal/wave power at the end of the five year term but if it did so in circumstances where ARE had complied with its obligations under the Agreement the States would

not be able to grant any licences having the same or substantially similar effect as an MPGL/Operating Licence to any other person during the period of 15 years thereafter. But the effect of the grant of an MPGL/Operating Licences would be to free up 50% of the Designated Blocks for commercial exploitation under other arrangements, either with ARE or other operators. The five year term commenced in December 2005 and, accordingly, still has some time to run. However, the situation in 2008 is now somewhat different from that envisaged in 2005 which, given the nature of the development, is not surprising. The key differences are

1. ARE now have a commercial partner, Open Hydro Group Ltd, which is a leading developer of tidal energy generating equipment. In the opinion of ACRE the company currently has the best technology for use in Alderney waters. ACRE is now satisfied that ARE and its partner have the technical ability to deploy and generate electricity in Alderneys waters.
2. Interest in tidal energy developments has increased significantly and, in recent months, renewable energy commissions on the Alderney model are in the process of being formed in Guernsey and Sark.
3. ARE has been awarded an option to establish a connection to the French (Cotentin) grid which must be exercised by 14 November 2008. If exercised, this will take up the remaining capacity presently available and likely to be available there within the next ten years. There is, of course, no point in generating electricity if there is no available market for it. The exercise of the option (and the subsequent expenditure on establishing the connection) requires substantial investment. That investment will only be forthcoming if ARE can also show that it has obtained the MPGL (or its equivalent)/Operating Licences, without which it cannot generate electricity to supply to the French grid through the Cotentin connection. Should this Option fail to be exercised for any reason, ARE must re-apply and secure this requisite market or lose its rights under these licences.

Since the purpose of the original conditions in the 2005 agreement have in large measure been overtaken by events it is now proposed to replace the 2005 agreement with a new Agreement and Licence which is more appropriate to the current circumstances and which enables Alderney to remain at the forefront of the development of the tidal energy generation industry.

By entering into a new agreement now, not only will ARE be in a position to secure the necessary connection to the French Grid but revenue will also start to flow to Alderney two years earlier than it otherwise would have done and the exclusive right of ARE to Alderneys Territorial Waters will cease.

It is, therefore, proposed to enact the attached Ordinances necessary to give effect to the Law and proceed immediately to what is now termed an Agreement and Licence. The new agreement retains safeguards necessary to protect Alderneys interests in the event that any of the planned events do not happen, either at all, or within specified timescales. In such circumstances the agreement will be terminated and Alderney will be free to enter into fresh negotiations with alternative operators. The Renewable Energy (Alderney) Law, 2007 (Commencement) Ordinance, 2008 will, if approved, bring the Law into force on 10 November 2008. This will establish ACRE as a statutory body and enable the Commissioners to be formally appointed (they have, until now, been acting on the authority of the States rather than under statutory powers).

The Renewable Energy (Alderney) Ordinance, 2008 (the Ordinance) provides the detailed framework within which ACRE will carry out its functions. Part I provides for exemptions from and disapplication of the general prohibition in section 1 of the Law against operating, etc. a renewable energy system other than as permitted by or under the Law or other enactment. The exemptions will cover such things as a renewable energy system heating water for purposes of the premises in which

it is installed.

Part II deals with the licensing of activities by the Commission, Part III with civil penalties and offences, Part IV with powers of investigation, Part V with appeals against decisions of ACRE and Part VI with miscellaneous matters, including designating the Policy and Finance Committee as the committee specified to recommend to the States the persons to be appointed as the Chairman and members of ACRE. The Policy and Finance Committee will recommend to the States that Mr Gordon Fitton be appointed as Chairman and Mrs Pamela Dixon and Dr John Antill as members of ACRE.

Copies of the two Ordinances may be seen at the States General Office Island Hall and at the Library. If the Ordinances are approved the States will also be asked to approve the terms and conditions of an Agreement and Licence under Part II, section 9 of the Ordinance (including the appendices to that document) (the Agreement and Licence) to be made between ACRE and ARE a copy of which having been initialled by way of identification by the President of the States of Alderney. It should be noted that the description MPGL is no longer used. Such agreement grants rights and accepts restrictions over or in relation to the seabed and Territorial Waters of Alderney. For ACRE to be able to enter into it the States will need to confer powers upon it to do so. The States may, under the Law, also give ACRE directions of a general character concerning the policies to be followed by ACRE in carrying out any of its functions including the powers to be conferred on it in relation to the Agreement. This Agreement will create contractual obligations for ACRE which may incur ACRE in liability if the States in pursuance of its functions as Government subsequently make decisions which breach those obligations. The States will therefore be required to take this into account in exercising such functions.

The Agreement Period is sixty five years, which ACRE has advised is reasonable considering the substantial investment required. ARE will be able to select forty eight Blocks from the Designated Blocks (of which there are ninety six). It will then be bound to pay an annual Block Fee in relation to each of these of £7,187.50 (a total of £345,000 per annum). This is separate from and is replaced by the Generation Fee (royalties) which will become payable in respect of electricity generated in the Blocks in due course. It is due from the outset although actual payment of it (with interest) may, in the first instance, be deferred for up to eighteen months. Once royalties fall due these will be paid at the rate of 1% of the gross price received by ARE for the electricity generated.

It is intended that all the Blocks will be fully developed within twenty five years. The continuous and complete development of the Blocks is a requirement of the Agreement. Accordingly, the Agreement provides for a Development Schedule. In the event that ARE fails to fulfil the requirements of this it will pay royalties on the amount of electricity that should have been generated had the block been developed in line with the Development Schedule.

It will be evident from the above that the States will not be a party to the Agreement. A side letter is therefore proposed dealing with aspects of the States position in relation to it. This will deal with such things as title to the Territorial Waters, seabed and sub seabed and the requirement to land electricity in Alderney.

The 2005 Agreement will be terminated by mutual agreement. As it will be evident that one factor in favour of the Agreement and Licence has been brought about because of the availability to ARE of the Cotentin connection and the need to assist ARE in taking practical advantage of this, it is proposed that Heads of Agreement be entered into in terms securing the preferential use of this for electricity generated in Alderneys Territorial Waters

I would be obliged if The Renewable Energy (Alderney) Law, 2007 (Commencement) Ordinance, 2008 and The Renewable Energy (Alderney) (Ordinance) 2008 is placed before the States at its November meeting together with appropriate resolutions.

R. G Willmott  
Chairman

The States is asked:-

1. To approve of The Renewable Energy (Alderney) Law, 2007 (Commencement) Ordinance, 2008.  
2. To approve of The Renewable Energy (Alderney) (Ordinance), 2008.

3. To approve, on the recommendation of the Policy and Finance Committee and in accordance with section 6 of the Renewable Energy (Alderney) Law, 2007, the following appointments:

Mr Gordon Fitton as Chairman of the Alderney Commission for Renewable Energy,

Mrs Pamela Dixon as a member of the Alderney Commission for Renewable Energy,

Dr John Antill as a member of the Alderney Commission for Renewable Energy.

4. If resolutions 1, 2 and 3 are approved, the States is asked to approve the Terms and conditions of an Agreement and Licence under Part II, Section 9 of the Renewable Energy (Alderney) Ordinance, 2008 (including the appendices to that document) (the agreement and Licence) to be made between the Alderney Commission for Renewable Energy and Alderney Renewable Energy Limited a copy of which having been initialled by way of identification by the President of the States of Alderney.

5. If resolutions 1 to 4 are approved, the States is, therefore, asked to approve:

- (a) conferring upon the Alderney Commission for Renewable Energy the power to enter into the Agreement and Licence referred to in resolution 4 (but for the avoidance of doubt the Licence which is incorporated into that Agreement will be issued by the Commission under its powers under Section 9 of The Renewable Energy (Alderney) Ordinance, 2008 and not pursuant to this Resolution);
- (b) the granting to the Commission of all the necessary rights, obligations and powers, that it needs to grant the rights to ARE set out in the Agreement and Licence (including without limitation the rights and restrictions set out in clause 2 of the Agreement and Licence as if they applied to the Commission as opposed to ARE); and
- (c) the granting of the power to grant the rights, undertake and exercise the obligations and powers contained in the Agreement and Licence which will create contractual obligations for the Commission and which therefore the States will be required to take into account subsequently when exercising its functions of Government and which are contained in that document.

6. If resolutions 1 to 5 are approved, the States is asked to approve the terms of a side letter to be issued by the States of Alderney in connection with the Agreement and Licence a copy of which having been initialled by way of identification by the President of the States of Alderney and to authorise the Chief Executive to sign and issue it on behalf of the States of Alderney.

7. If resolutions 1 to 6 are approved, the States is asked to approve Heads of Terms, a copy of which having been initialled by way of identification by the President of the States of Alderney, giving preference in the use of the connection to the Cotentin grid to electricity generated in Alderneys Territorial Waters and to authorise the Chief Executive to sign and issue it on behalf of the States of Alderney. (Note a copy of The Renewable Energy (Alderney) Law, 2007 (Commencement) Ordinance, 2008 and The Renewable Energy (Alderney) (Ordinance), 2008 may be seen at the States General Office, Island Hall and the Library.)

## **Item II Questions and Reports**

Issued Monday 3rd November 2008