



Registration of a Charge

Company name: **WHITESIDE HILL WINDFARM HOLDINGS LIMITED**

Company number: **SC502626**



X495A7Y1

Received for Electronic Filing: **08/06/2015**

Details of Charge

Date of creation: **29/05/2015**

Charge code: **SC50 2626 0001**

Persons entitled: **SSE RENEWABLES DEVELOPMENTS (UK) LIMITED AS SECURITY HOLDER**

Brief description:

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

JENNY BURNS, CMS CAMERON MCKENNA LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 502626

Charge code: SC50 2626 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 29th May 2015 and created by WHITESIDE HILL WINDFARM HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th June 2015 .

Given at Companies House, Edinburgh on 10th June 2015

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

FLOATING CHARGE

by

WHITESIDE HILL WINDFARM HOLDINGS LIMITED

in favour of

SSE RENEWABLES DEVELOPMENTS (UK) LIMITED

**re: Deferred payment obligations under the Sale and Purchase
Agreement in respect of Whiteside Hill Windfarm (Scotland)
Limited**



Pinsent Masons

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FLOATING CHARGE by

- (1) **WHITESIDE HILL WINDFARM HOLDINGS LIMITED** incorporated in Scotland (Company Number SC502626) whose registered office is at 13 Queen's Road, Aberdeen, United Kingdom, AB15 4YL (the "**Company**")

in favour of

- (2) **SSE RENEWABLES DEVELOPMENTS (UK) LIMITED** incorporated in Northern Ireland (Company Number NI043294) whose registered office is at Millennium House, 17-25 Great Victoria Street, Belfast, BT2 7AQ (the "**Security Holder**")

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:-

"**Act**" means the Insolvency Act 1986 as amended

"**BEWAL**" means Blue Energy Whiteside Acquisition Limited (Registered number: 9528956) whose registered office is at 10 West Street, Alderley Edge, Cheshire, SK9 7EG

"**Blackcraig Discharge Date**" means the date on which the Blackcraig Deferred Consideration has been fully and unconditionally paid

"**Blackcraig HoldCo**" means Blackcraig Windfarm Holdings Limited (registered number: SC502633) whose registered office is at 13 Queens Road, Aberdeen, AB15 4YL

"**Blackcraig SPV**" means Blackcraig Wind Farm (Scotland) Limited (registered number SC493311) whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, Scotland, PH1 3AQ

"**Chargor Group**" means:

- (a) BEWAL;
- (b) the Company;
- (c) Blackcraig HoldCo;
- (d) Whiteside SPV; and
- (e) Blackcraig SPV,

provided that, on and from the Blackcraig Discharge Date, Blackcraig HoldCo and Blackcraig SPV shall cease to be a member of the Chargor Group for the purposes of this Security

"**Deferred Payment Obligations**" means the payment obligations of BEWAL under clauses 5.3 (*Blackcraig Deferred Consideration*), 5.7 (*Whiteside Hill Deferred Consideration*) and 5.10 (*Whiteside Hill Additional Deferred Consideration*) of the Sale and Purchase Agreement

"Event of Default"

means the occurrence of either of the following:

- (a) an Insolvency Event in relation to any member of the Chargor Group, provided that no Event of Default shall occur in respect of any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement; or
- (b) a failure by any member of the Chargor Group (as the case may be) to pay or fulfil the Secured Obligations which are payment obligations on:
 - (i) the due date for payment (in respect of the Deferred Payment Obligations); or
 - (ii) the date falling 2 Business Days following the service of demand therefor by the Security Holder on the relevant member of the Chargor Group, in respect of payment obligations other than the Deferred Payment Obligations; or
- (c) any member of the Chargor Group fails to perform any of its material obligations (other than payment obligations) pursuant to the terms of any Security Document

"Insolvency Event"

- (a) means, in respect of any entity, any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (b) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of that entity;
- (c) a composition, compromise, assignment or arrangement with any creditor of that entity;
- (d) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that entity or any material part of its assets,
- (e) or any analogous procedure or step is taken in any jurisdiction

"Permitted Restructure"

means the proposed corporate restructure of BEWAL and its subsidiaries described in the document entitled "Restructuring of Whiteside Hill Windfarm (Scotland) Limited and Subsidiaries – Legal Steps and Documents" in the form approved by the Security Holder prior to the date of this Security

"Permitted Security"

means the share pledge to be granted by the Company in favour of the Security Holder over the shares held by

it in Whiteside SPV

"Receiver"	means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Company or the Court) and includes joint receivers
"Road Upgrade Payment Obligations"	means the payment obligations of BEWAL under clause 5.9.7 (<i>Whiteside Hill Access Adjustment</i>) of the Sale and Purchase Agreement
"Sale and Purchase Agreement"	means the agreement for the sale and purchase of the entire issued share capital of Whiteside SPV and its subsidiaries, dated on or around the date of this Security entered into between BEWAL and the Security Holder, as amended, supplemented, novated, extended or restated from time to time
"Secured Assets"	means the whole of the property (including uncalled capital), which is or may from time to time, while this Security is in force, be comprised in the property and undertaking of the Company
"Secured Obligations"	means the Deferred Payment Obligations, the Road Upgrade Payment Obligations, the VAT Payment Obligations and all or any monies, liabilities and obligations due by any member of the Chargor Group under the Security Documents
"Security"	means these presents (and, as the context may require or imply, the floating charge hereby created) as amended, supplemented, novated, extended or restated from time to time
"Security Documents"	means: <ul style="list-style-type: none">(a) this Security;(b) the floating charge granted by Whiteside SPV in favour of the Security Holder on or about the date of this Security;(c) the floating charge granted by Blackcraig HoldCo in favour of the Security Holder on or about the date of this Security;(d) the floating charge granted by Blackcraig SPV in favour of the Security Holder on or about the date of this Security;(e) the share pledge(s) granted by BEWAL in favour of the Security Holder on or about the date of this Security over the shares held by it in Whiteside SPV, the Company and Blackcraig HoldCo;(f) the share pledge granted by Whiteside SPV in favour of the Security Holder on or about the date of this Security over the shares held by it

in Blackcraig SPV;

- (g) the share pledge to be granted by the Company in favour of the Security Holder over the shares held by it in Whiteside SPV; and
- (h) the share pledge to be granted by Blackcraig HoldCo in favour of the Security Holder over the shares held by it in Blackcraig SPV,

provided that any such document shall cease to be a Security Document for the purposes of this Security on and from the date it is discharged by the Security Holder

"VAT Payment Date" means the date on which the VAT Payment Obligations have been fully and unconditionally discharged

"VAT Payment Obligations" means the payment obligations of BEWAL under clause 4.7.2 (*VAT Payments*) of the Sale and Purchase Agreement

"Whiteside SPV" means Whiteside Hill Windfarm (Scotland) Limited (registered number: SC312729) whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, Scotland, PH1 3AQ

1.2 Sale and Purchase Agreement definitions

In this Security, unless the context requires otherwise terms defined in clause 1.1 (*Interpretation*) of the Sale and Purchase Agreement shall have the same meaning in this Security.

1.3 Interpretation

In this Security unless the context requires otherwise:-

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 references to this Security or any other document shall be construed as references to this Security or such other document as amended, supplemented, novated, extended or restated from time to time;
- 1.3.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3.4 references to a **"person"** shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.5 references to a **"fixed security"** mean a fixed security as defined by Section 486 of the Companies Act 1985;
- 1.3.6 any reference to the Security Holder includes its permitted successors, transferees and assignees; and
- 1.3.7 **"tax"** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but

without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "taxes" and "taxation" shall be construed accordingly.

1.4 Headings

The table of contents and the headings in this Security are included for convenience only and shall be ignored in construing this Security.

2. FLOATING CHARGE

2.1 Floating Charge

In security for the payment, performance and discharge by the Company and each other member of the Chargor Group (as the case may be) of the Secured Obligations when the same fall due for payment or discharge under the terms of the Sale and Purchase Agreement or the relevant Security Document (as the case may be), the Company hereby undertakes to the Security Holder to pay, perform and discharge the Secured Obligations and GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Security Holder.

2.2 Negative pledge and ranking

Unless otherwise agreed in writing by the Security Holder and subject to Section 464(2) of the Companies Act 1985:

2.2.1 the Company shall not create any fixed security or other floating charge over any part of the Secured Assets after its execution of this Security; and

2.2.2 this Security shall rank in priority to any fixed security or other floating charge created by the Company,

in each case other than a Permitted Security.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Security Holder may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

Failure or delay on the part of the Security Holder in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

3.5 Further assurance

The Company shall promptly after being requested to do so by the Security Holder do all such acts and things and execute and deliver all such documents as the Security Holder may reasonably require for perfecting or protecting this Security or its priority or for facilitating the realisation or application of the Secured Assets (after this Security becomes enforceable) and the exercise of the rights, powers and discretions conferred on the Security Holder or any Receiver under this Security.

4. POWER OF ATTORNEY

4.1 Appointment

The Company hereby irrevocably appoints the Security Holder, whether or not a Receiver has been appointed, and separately also any Receiver, as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:-

4.1.1 to do anything which the Company is obliged to do (but has not done) under this Security; and

4.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Security Holder or Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

The Company hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Company under this clause 4.

4.3 Exercise of power

The appointment effected under clause 4.1 (*Appointment*) shall take effect immediately (in the case of a Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing, unwaived or unremedied (which upon the appointment of a Receiver shall be deemed to be the case) or if the Company does not fulfil any of its obligations under clause 3.5 (*Further assurance*) within 2 Business Days of notice from the Security Holder or Receiver to do so.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Representations and warranties

The Company represents and warrants to the Security Holder that:-

5.1.1 it is duly incorporated and validly existing under the law of Scotland;

5.1.2 it has the power to grant this Security and perform its obligations hereunder;

- 5.1.3 it has taken all necessary corporate action to authorise the execution and delivery of this Security and the performance of its obligations hereunder;
- 5.1.4 the grant of this Security and the performance of its obligations hereunder will not contravene any law, regulation or agreement to which the Company is a party or by which it is bound, or cause any limitation on any of the powers of the Company however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded; and
- 5.1.5 all authorisations required for the creation, performance, validity and enforceability of this Security by the Company have been obtained and are in full force and effect.

5.2 Undertaking

The Company agrees that it will not, prior to the date on which the Blackcraig Deferred Consideration has been fully and unconditionally paid or discharged:

- 5.2.1 sell or otherwise dispose of all or any material part of its assets (including the Secured Assets) without the prior written consent of the Security Holder, provided that any transfer or disposal of assets pursuant to a Permitted Restructure shall not constitute a breach of this clause 5.2; or
- 5.2.2 take any action or omit to take any action which would have the effect of materially diminishing the value of the Secured Assets from that which they hold as at the date of this Security.

6. ENFORCEMENT

6.1 Enforceable

This Security shall be enforceable immediately upon, or at any time after an Event of Default occurring which is continuing, unwaived or unremedied.

6.2 Appointment of Receiver or administrator

- 6.2.1 At any time after this Security has become enforceable the Security Holder shall be entitled:-
 - (a) in its absolute discretion to enforce all or any part of this Security in any manner it sees fit, subject to the requirements of any applicable law;
 - (b) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;
 - (c) to appoint one or more persons as an administrator or administrators of the Company;
 - (d) to make an administration application in respect of the Company; or
 - (e) to give notice of intention to appoint an administrator or administrators in respect of the Company.
- 6.2.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by the Security Holder by written instrument or notice in accordance with and in such form as may be

prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Security Holder shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

6.2.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Security.

6.3 Powers of Receiver

A Receiver appointed under this Security shall have the following powers in addition to those specified in Schedule 2 to the Act:-

- 6.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Company, or the Receiver, or its or his/her nominee or trustee;
- 6.3.2 subject to the articles of association, to convene extraordinary general meetings of the Company;
- 6.3.3 generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- 6.3.4 in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

6.4 Agent of Company

A Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act, the Company alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

6.5 Application of proceeds

All monies realised by the Security Holder, a Receiver or otherwise arising from the enforcement of this security shall, subject always to clause 7 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of the Security Holder under this Security, and the terms of Section 60 of the Act, be applied by the Security Holder or a Receiver in or towards settlement of the Secured Obligations and any surplus shall be paid to the Company or any other person entitled thereto.

6.6 Balance

The rights, powers and discretions conferred on a Receiver under this clause are subject only to his/her obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in

his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

6.7 Third parties

6.7.1 No purchaser from or other person dealing with a Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.7.2 The receipt or discharge of a Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at his/her direction.

7. DISCHARGE

On the later of the date on which the Whiteside Hill Deferred Consideration has been fully and unconditionally paid, the Road Upgrade Payment Date and the VAT Payment Date, the Security Holder shall at the Company's request, discharge this Security promptly, and in any event within 10 Business Days, following a written request from the Company to do so.

8. MISCELLANEOUS

8.1 Assignment

8.1.1 The Security Holder may at any time assign the benefit of this Security or any of its rights hereunder to a party to whom it transfers its rights and obligations under the Sale and Purchase Agreement.

8.1.2 The Chargor may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder, without the prior written consent of the Security Holder.

8.2 Entire agreement

This Security constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Security.

8.3 Non-reliance

Each of the parties acknowledges and agrees that in entering into this Security it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Security or not) other than as expressly set out in this Security.

8.4 Amendments

No amendment or variation of this Security shall be effective unless it is in writing and signed by or on behalf of each of the parties.

8.5 Default Interest

Any amount which is not paid under this Security shall bear interest (both before and after judgment) at the rate set out in clause 5.11 of the Sale and Purchase Agreement.

8.6 Immediate Recourse

The Company waives any right it may have of first requiring the Security Holder (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Company under this Security.

8.7 Consent to registration

The Company consents to the registration of this Security and of any certificate under this Security or issued in respect of the Secured Obligations for preservation and execution.

9. NOTICES

9.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing in the English language and delivered by hand, or sent by first class pre-paid recorded delivery post to the party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other party in accordance with this clause 9.1).

9.2 Subject to clause 9.3, any notice or other communication shall be deemed to have been served:-

9.2.1 if delivered by hand, at the time of delivery;

9.2.2 if sent by pre-paid first class recorded delivery post (other than air mail), two days after posting it.

9.3 If a notice or other communication is given or deemed given at a time or on a date which is not a Business Day, it shall be deemed to have been given on the next Business Day.

9.4 To prove service of a notice or other communication, in the case of a notice or other communication delivered by post, the envelope containing the notice or other communication was properly addressed and posted.

9.5 This clause 9 (*Notices*) will not apply to the service of any legal proceedings to the extent that such provisions are inconsistent with the Civil Procedure Rules.

10. GOVERNING LAW

This Security shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 10 preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of
WHITESIDE HILL WINDFARM HOLDINGS LIMITED

at ALDERLEY EDGE

on the 29th day
of MAY 2015

by  Director

..... SIMON JOHN FAY Full Name

..... Director/Secretary

..... Full Name

OR, if only one Director signing, before this witness:

 Witness

SARAH ARMSTRONG Full Name

10 West Street Address
Alderley Edge
Cheshire SK9 7EG