



ALBA ENERGY NEWS

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Alba's mission

Alba Energy is something of a contradiction: a cooperative of independent operators. If hydro people are individualistic by nature, Alba aims to share their experience and expertise. Where there are common causes, Alba will seek to take an informed view and mobilise members to undertake group action. For information, contact executive director Alex Linklater on 07956 303 580, or alexlinklater@mac.com

SEPA'S pound of flesh

The latest threat to Small Hydro seems to be coming from SEPA, which is proposing to charge hydro sites large and increasing sums annually. Hydro incurs no additional cost to the regulator, nor receives any new service. SEPA may be risking its reputation among renewable energy producers, but has invited discussion. See below for news, comment and consultation fixtures.

Business Rates latest

The biggest challenge faced by the Small Hydro industry is the problem of inflated business rates. Get the latest below on negotiations with Scottish Government, appeals and the progress of the hydro case to the Lands Tribunal.

David McKenzie's legacy

The widely-mourned death of David McKenzie (1937-2017) has prompted an outpouring of tributes from Alba Energy veterans to a pioneer of small hydropower in Scotland.

McKenzie was the "original Scottish hydro campaigner", a founding member of Alba and one of the first to predict – back in 2010 – the crisis over business rates, which is now consuming the industry.



He came to hydro as an inspired amateur: grasping the potential, battling the obstacles, arguing the case for independent producers.

Born in Dundee in 1937, McKenzie trained as an accountant ("the old way"), before arriving in Hong Kong in 1961 to work, first for a local firm and eventually for PricewaterhouseCoopers, where he became second senior partner. He returned to Scotland in 1982, established his own accountancy practice in

Dundee and settled with his family in Blairgowrie. His son, Euan, recalls the exuberant variety of his father's talents: golf, fishing, curling, fiddle-playing, storytelling and exploring the wild places of Scotland, where the "frustrated engineer" in him saw what could be achieved with high water, given a little entrepreneurial imagination.

McKenzie was among those who formed the first wave of small (0.05 to 5 megawatt) hydro sites to emerge from the Non-Fossil Fuel and Renewables Obligation schemes. He developed Garbhaig Hydro, near Achnasheen; championed a controversial community scheme with the Assynt Crofters; and partnered developments in Northern Ireland. He became known for sharing advice, spreading the word and paving the way for the boom in construction, which would come with the introduction of the Feed-in-Tariffs in 2010.

The challenges he and others encountered brought them

Have you appealed?

Alba members are advised to note the following deadlines, actions and events:



- ◆ Appeal your Rateable Value before September 30 (guidelines below).
- ◆ Ensure you have applied for Scottish Government relief on your rates bill. (Contact your local authority's Non-Domestic Rates department for advice and forms.)
- ◆ Alba members will be updated on proceedings towards the Lands Tribunal as developments take place, with those willing to constitute an appeal group yet to be identified.
- ◆ A SEPA charging workshop will take place in Perth on Weds September 27. To reserve a place, contact Jill Kelly at jill.Kelly@sepa.org.uk
- ◆ For more on SEPA charging, see below.
- ◆ Alba's next annual site visit is set to take place on October 25 at Glen Quoich, Invergarry. Members are invited to meet and share experience, the hands-on way. Email invitations to be issued.

together as a semi-formal group to share hard-won experience and expertise. Out of that group, in 1998, Alba Energy was formed, so that independent operators could collectively argue their case.

Euan recalls not only his father's enthusiasms, but also his frustrations. The peaks of this emerging rural industry were high, but the bogs were bureaucratic. Few operators gave much thought to the 2010 Rateable Values put on hydro, because renewable energy sites were not, at that time, liable for business rates.

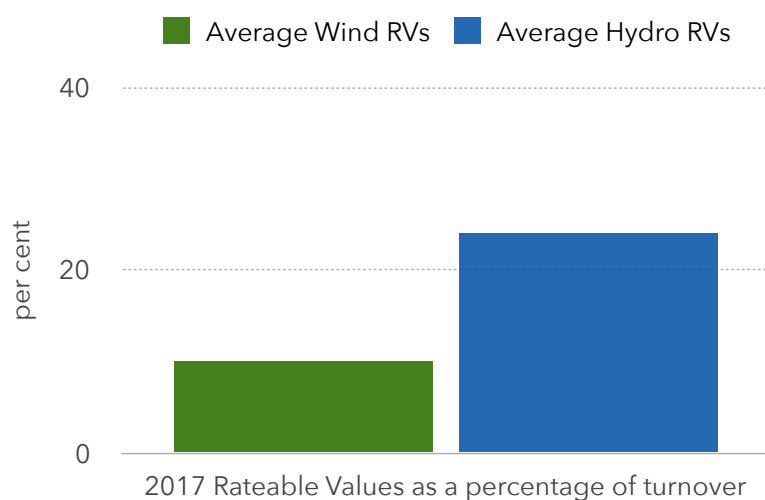
But McKenzie saw that a fundamental principle was at stake. To his sharp accountant's eye, it was clear that the assessors had got hydro conceptually wrong and were misapplying their valuation methods. This, he realised, would end up costing the sector dear.

Alba first took up the rates case in 2012 and, last year, re-booted the arguments in partnership with the British Hydropower Association (BHA) – in order to fight the extreme increases of the 2017 revaluation, which, if unchallenged, would threaten the long-term viability of independent hydropower in Scotland.

The case continues to be fought on behalf of Alba and BHA members and in memory of a founding father.

Mackay to choose a value

The Scottish Government has openly conceded that there is a structural problem in the way Rateable Values (RVs) have been applied to small hydro sites, leading to extraordinarily inflated rates bills. Compare RVs for Small Hydro with those applied to Small Wind – financed by the same system of Feed-in-Tariffs – and the anomaly comes into sharp relief. RVs for wind sites average 10 per cent of their annual turnover, whereas RVs for small hydro average a disproportionately enormous 24 per cent.



Acknowledging the extreme impact on hydro of the 2017 revaluation of business rates, the Scottish Government introduced

a temporary cap on increases for schemes under one megawatt, while engaging with industry representatives. A joint hydro group – comprising the British Hydropower Association, Alba Energy and Scottish Renewables – has now presented finance secretary Derek Mackay with proposals for a solution.

One option available to the Government would be to make a special case of the Small Hydro industry and to “de-rate” it. Another would be to maintain a system of relief so that, whatever the rateable values were, the actual business rates payable by hydro sites would remain in line with other sectors. But these are temporary or reversible measures, neither of which resolves the fundamental question: how to get the right valuations of hydro sites in the first place?

The simplest and most durable solution would require just a minor amendment to the Plant & Machinery Order (PMO) – secondary legislation, devolved to the Scottish Government, that determines which parts of a business property should be valued for the purposes of charging rates. Arguably, the change required would not actually alter the meaning of the PMO, but merely clarify what it already says. Alba Energy has argued continuously, since 2012, that the order already exempts the “penstock” of a hydro from valuation. Had this been accepted by the Assessor when the case was first raised, the problem of inflated business rates for hydro would have been settled in 2013.

So an amendment of a clause in the PMO has been proposed to remove any doubt about the meaning of the order, or the definition of a penstock. The new wording would confirm that, for hydro schemes with a maximum capacity of ten megawatts, all physical aspects, from the point where the water is collected to the point where it is returned to the water course, are exempt from rateable valuation. This would not only clarify what parts of a hydro *should* be rated – principally, the powerhouse – it would also rectify the apportionment of assets between landlord and tenant, which the Assessor uses to arrive at his calculation.

The desired result: rateable values of between 8-10 per cent of turnover, which would reflect real-world rental values and put Small Hydro in line with other industries.

The Barclay postponement

Easy to propose, tricky to legislate. Scottish Finance Secretary Derek Mackay’s motivation to act quickly on behalf of a beleaguered hydro industry appears to have been dissipated by the recent Barclay Review of the ratings system. Instead of coming up with ideas for the renewable energy sector, Ken Barclay’s team has proposed a further review of the Plant & Machinery Order.

As a result, the Scottish Government’s programme for business, unveiled on September 6th, announced “a separate review of plant and machinery valuations with particular focus on renewable energy sector valuations.” While this follow-up report is being investigated, it is unlikely that any actual change will come into effect before 2022.

Is it possible that a preliminary intervention on behalf of hydro-electricity producers might yet be made to resolve their problem before the next financial year?

The industry awaits word from Mr Mackay, but not with bated breath.

Journey to the Lands Tribunal

Small Hydro prepares to take the Assessor to court

It has been a long time coming, but preparations are underway for the hydro industry to take its case into the only arena of public accountability that the Assessor takes seriously. When Alba first brought its case in 2013, on behalf of “Old Faskally Farming Company & Others”, it was based on the 2010-2016 valuations and it was brought before the Tayside Valuation Appeal Committee. The committee found in Alba’s favour,

but the Assessor rejected that judgement and took the case to the Lands Valuation Appeal Court. The court came to no definitive conclusion and remitted the case back to the committee. However, the Assessor made it clear that he did not consider the committee competent to the task. Four years after it first found in favour of Alba, the committee is now about to publish a second judgement. If this again goes in favour of Alba, the Assessor has said he will, once more, take it back to the appeal court.

But the hydro case has since moved on, joined forces with the BHA and become increasingly robust. The industry now has a chance to challenge and rectify its 2017 Rateable Values, prior to the next valuation roll in 2022 – by taking its appeal to the Lands Tribunal, where a judgement is far more likely to be definitive. This is a course of action which the Assessor has also endorsed.

Legal counsel has been appointed and written opinion commissioned.

An appeal group will be selected in due course. Funds will need to be raised to pursue the case. In order to ensure they are included in any successful result, Alba members are advised to appeal *no later than September 30*, according to the following guidelines:

How to appeal your Rateable Value

Ensure you have appealed on the same basis as the group appeal

An appeal does not need to contain details, it merely requires to be lodged and registered by the Scottish Assessor's Association (SAA) appeals system. The precise terms of an appeal may be provided later, in line with the terms of the case being taken to the Lands Tribunal. If the case is not successful, this does not, thereafter, commit you to pursuing an individual appeal. (Appeals may be withdrawn at any time, without repercussions.)

The process is simple and may be completed as follows

1. Go to the Scottish Assessors website: <https://www.saa.gov.uk>
2. In the box marked *To Search For A Rateable Value*, enter the postcode of your site.
3. Click on your site, then click on *Make an appeal*, then click on *Continue to appeal form*.
4. In Part B – *Reasons for Appeal* – click the box that says *Revaluation*, but leave everything else blank.
5. In Part C – *Grounds for Appeal* – write simply: “The valuation is erroneous and overstated.”
6. Where it asks for your proposed Net Annual Value and Rateable Value, leave the boxes blank, but fill in the “effective date” as 1st April, 2017.
7. In Part D – *Details of Appellant* – click the “Proprietor” option and it should produce your details automatically.
8. There is no need to put in the name of an agent, or a reference at the bottom, only email address and telephone number.
9. Click *Continue* and the rest is self-explanatory: you should receive an email confirming the appeal.
10. Appeals should be acknowledged by return of email, but can be confirmed by calling your respective assessor.

The mystery of the SEPA charging system

The Scottish Environment Protection Agency (SEPA) has announced indicative charges for hydro sites which, if approved, will cost operators several thousand pounds a year, with those costs increasing annually. An average scheme would likely find itself being charged in the vicinity of £3,000 in 2018, rising to around £5,000 by 2020. Larger schemes have received indicative annual charges of up to £20,000.

The mystery of this proposal is that hydro operators have already entered into a contract with SEPA, through their Controlled Activities Regulation (CAR) licenses. In order to get permission to abstract water from watercourses, Hydro operators paid SEPA for these licenses and submitted to regulatory examination as a result. The onus, from development to operation, was on the operator/owner to obey the regulations. Hydro owners remain under this obligation and may be fined if they do not comply. But CAR licenses were, and remain, one-off, permanent permissions.

What responsible hydro operators have not done, since acquiring their licenses, is caused extra costs to SEPA, increased damage to the environment, or received any additional service. The monitoring of hydro schemes, by comparison with other industries, involves minimal work from a regulator, which has already taken payment. If put out to tender, such a job would cost a fraction of SEPA's proposed charges.

SEPA is undertaking a consultation with the hydro industry and Scottish Government. A workshop session, intended to help operators understand the charges, is being run by SEPA in Perth on September 27. Alba representatives will be attending, but individual members are encouraged to reserve a place and make their views known. (To do so, register your attendance with Alba, or contact: jill.Kelly@sepa.org.uk)

Thereafter, Alba will provide members with a considered analysis of SEPA's proposals and present our response to the Scottish Government, along with the British Hydropower Association, at the next joint hydro meeting on October 20th. Formal submission of Alba's response to SEPA will be made prior to the closing date of its consultation period, November 3.

SEPA's explanations for its charging and compliance schemes may be viewed in the following locations:

<https://consultation.sepa.org.uk/evidence-and-flooding/charging2018/>

<https://consultation.sepa.org.uk/regulatory-services/cas/>

For a breakdown of how SEPA are calculating charges for individual sites, visit:

<https://informatics.sepa.org.uk/consultation/charging-scheme/>

And for an overview of SEPA's 2012 funding plans, see:

<https://www.sepa.org.uk/media/116056/consultation-on-proposals-for-future-funding-arrangements-for-sepa.pdf>

Alba Energy can currently perceive no meaningful connection between the activity of hydro schemes and the charges being proposed by SEPA. But professional trust between renewable energy producers and the environment agency is fundamental to Scottish rural life and we intend to examine the evidence objectively and process the arguments fairly, before responding in full.

Editorial

Back in 2010, it was only David McKenzie and a few early members of Alba Energy who noticed that the way Rateable Values were being calculated for small hydro sites was a time-bomb, due to go off whenever the Scottish Government removed its relief from business rates for renewable energy sites. Which is what happened last year.

It has never been clear why the rates assessors refused to accept Alba's original, successful appeal against the valuations of Small Hydro. The first part of the Plant & Machinery Order states that a "penstock" is exempt from valuation. Had this been accepted in 2013, the industry, assessors and Government would have been saved five years of dispute.

The Assessor, however, continues to insist that, while the Plant & Machinery Order does indeed make this exemption, it elsewhere itemises all the various component parts of a penstock and these should, therefore, "fall to be valued". Which sounds like Tesco declaring that your shopping will be free, except that you will be charged for all the items in the trolley.

The valuation problem is, of course, more complicated than that; but a clarification of the Plant & Machinery Order would nevertheless rectify it surgically and fast. The question now is whether the dispute will be resolved by the Scottish Government, or by the courts.

While being hammered by business rates, it doesn't help to build trust that the Government's environmental regulator, SEPA, has also stepped in with proposals to use Small Hydro as a means of raising money for itself. The groan from small hydro operators at the size of the proposed charges has resounded across the highlands like off-tune bagpipes.

Some good faith is now required. Even if Derek Mackay must wait for a further review of the P&M order and can do no more than continue with a relief package, it would help create a sense of fairness and coherent policy for the relief to apply, not just to schemes of up to one megawatt, but to all FiT-level hydro, up to five megawatts.

This newsletter has been launched to keep Alba members informed of Scottish Government policy, progress towards the Lands Tribunal and investigations into SEPA's charging regime.

But with a solemn nod of thanks to David McKenzie, we look forward to discussing more positive themes in future issues.

Alex Linklater
Alba Energy