

**Asia Pacific**

Bangkok  
Beijing  
Brisbane  
Hanoi  
Ho Chi Minh City  
Hong Kong  
Jakarta  
Kuala Lumpur\*  
Manila\*  
Melbourne  
Seoul  
Shanghai  
Singapore  
Sydney  
Taipei  
Tokyo  
Yangon

**Europe, Middle East  
& Africa**

Abu Dhabi  
Almaty  
Amsterdam  
Antwerp  
Bahrain  
Barcelona  
Berlin  
Brussels  
Budapest  
Cairo  
Casablanca  
Doha  
Dubai  
Dusseldorf  
Frankfurt/Main  
Geneva  
Istanbul  
Jeddah\*  
Johannesburg  
Kyiv  
London  
Luxembourg  
Madrid  
Milan  
Moscow  
Munich  
Paris  
Prague  
Riyadh\*  
Rome  
St. Petersburg  
Stockholm  
Vienna  
Warsaw  
Zurich

**The Americas**

Bogota  
Brasilia\*\*  
Buenos Aires  
Caracas  
Chicago  
Dallas  
Guadalajara  
Houston  
Juarez  
Lima  
Los Angeles  
Mexico City  
Miami  
Monterrey  
New York  
Palo Alto  
Porto Alegre\*\*  
Rio de Janeiro\*\*  
San Francisco  
Santiago  
Sao Paulo\*\*  
Tijuana  
Toronto  
Valencia  
Washington, DC

\* Associated Firm

\*\* In cooperation with  
Trench, Rossi e Watanabe  
Advogados

02 March 2020

Government Legal Department  
102 Petty France  
London. SW1H 9GL

**Attention:** The Secretary of State

Dear Sirs/Mesdames

## Letter before Claim - Energy National Policy Statements

### The Proposed Claimants:

- (a) Dale Vince is the Founder of Ecotricity, an electricity company relying on renewable energy;
- (b) George Monbiot is a journalist and campaigner on the environment; and
- (c) Good Law Project Limited supports and brings strategic litigation.

**The Defendant:** The Secretary of State

This letter is served on the following emanations of the Secretary of State<sup>1</sup>:

- (a) The Secretary of State for Business Energy and Industrial Strategy (The Rt Hon Alok Sharma MP);
- (b) The Secretary of State for Housing, Communities and Local Government (The Rt Hon Robert Jenrick MP); and
- (c) The Secretary of State for Environment, Farming and Rural Affairs (The Rt Hon George Eustice MP).

<sup>1</sup> There is in constitutional law a single office of the secretary of state.

Baker & McKenzie LLP is a limited liability partnership registered in England and Wales with registered number OC311297. A list of members' names is open to inspection at its registered office and principal place of business, 100 New Bridge Street, London EC4V 6JA.

Baker & McKenzie LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales. Baker & McKenzie LLP's SRA number is 421456. Further information regarding the regulatory position together with our privacy policy is available at: <http://www.bakermckenzie.com/en/locations/emea/united-kingdom/london/legal-notice>.

If the Defendant would prefer to consolidate under a single Secretary of State, we would suggest that the SoS for BEIS would be appropriate. Please tell us if you consider that any party should be named as an interested party.

## **What You are Asked to Do**

The purpose of this letter is to ask the Secretary of State whether he thinks it is now appropriate to review all or parts of each of the National Policy Statements for Energy Infrastructure (EN-1 to EN-6) (the "**Energy NPSs**") pursuant to section 6(1) of the Planning Act 2008. Further, if he thinks that it is appropriate to do so, to confirm that the Energy NPSs will be reviewed forthwith.

Further, our clients' position is that the Secretary of State must immediately think about whether it is appropriate to review the Energy NPSs and whether a failure to do so would be unlawful. Further, it would be irrational not to conclude pursuant to such consideration that the Energy NPSs must be reviewed.

## **Remedy to be Sought**

Failing a satisfactory response to this letter, the Claimants will seek orders from the High Court declaring that in light of the significant changes of circumstance since 2011 it is irrational for the Secretary of State to fail to think about and to fail to decide whether it is appropriate to now review all or part of the Energy NPSs. The Claimants will seek a declaration that the only rational decision for the Secretary of State is that it is appropriate to review all or part of each of the Energy NPSs for Energy Infrastructure now and that he must therefore do so. Alternatively, the Claimants will seek a declaration that the suite of Energy NPSs are now unlawful in that they operate so as to subvert the intention of Parliament in enacting the Netzero target in section 1 of the Climate Change Act 2008.

## **Summary**

The essence of this proposed claim is that, since the suite of Energy NPSs for Energy Infrastructure were designated in 2011, there have been a number of changes of circumstance related to the basis on which that policy was decided that are obviously significant. Such changes were not anticipated in 2011 and if they had been, policy would have been framed materially differently. A failure by the Secretary of State even to think about whether it is now appropriate to review the Energy NPSs is in the circumstances irrational and/or would thwart and run counter to the policy and objects of the Planning Act 2008 and Climate Change Act 2008. If he did think about it, the only rational decision would be that it is appropriate to review the policies now.

Sections 6(1) and 6(2) of the Planning Act 2008 provide that the Secretary of State must review all or parts of the National Policy Statements whenever the Secretary of State













