5th December 2025

BHA's statement on Zenobe's legal challenge to the LDES scheme

The British Hydropower Association highlights a growing concern shared across the Pumped Storage Hydropower (PSH) sector: that Zenobe's legal challenge to Ofgem's Long Duration Energy Storage (LDES) scheme risks creating uncertainty that could materially undermine PSH construction, and by extension the UK's long-term energy security and ambition for low-cost clean power.

At a time when the UK is accelerating its transition to a renewables-led energy network, the deployment of LDES, in particular PSH, is **critical national infrastructure** equivalent in importance to interconnectors and transmission reinforcement. PSH provides services essential to operating a modern electricity grid safely and reliably, multi-hour to multi-day energy storage, synchronous inertia, frequency stability, rapid response and black start functionality. No other technology provides this portfolio of services at the required scale and over such long durations and lifespan.

1. The Zenobē case creates uncertainty leading to systemic risk

The Planning and Infrastructure Bill provides the legislative framework for Ofgem's LDES scheme but the case challenges the scheme's compliance with the Subsidy Control Act and notably the point at which the scheme is 'made'. The case creates risk through uncertainty, not its eventual legal outcome. **The UK cannot afford a pause** in the deployment of PSH. A delay of even a few months could translate into years of lost capacity;

- undermining investor confidence and delaying construction starts
- deterring the global hydropower supply-chain mobilisation intended for the UK
- causing the loss of scarce OEM manufacturing slots to competitor markets
- weakening the UK's ability to meet Clean Power 2030 and system-resilience needs.

2. The cap and floor mechanism addresses market failure

PSH faces a well-defined and internationally recognised market failure which the LDES scheme aims to counteract. Its design incorporates several features aimed squarely at the statutory tests: a defined volume linked to need, technology-neutrality, a debt-based floor, long averaging periods, and allocations based on relative economic benefit. These demonstrate proportionality, reducing distortive effects in the storage market. Without a revenue support mechanism, PSH and other LDES **would never be built** – with market failure characterised by;

- high upfront capital requirements (typical PSH CapEx of £2m per MW);
- development and construction timelines beyond merchant investor appetite;
- essential system-stability services that current markets do not remunerate;
- no feasible merchant route to a Final Investment Decision;
- system benefits like inertia, GW capacity and long duration that are indispensable but not captured in short-term price signals.
- Lifespan far longer than other LDES technologies but not rewarded in an investment case.

Opponents of PSH often emphasize the high CapEx costs but analyses seldom consider its full-life benefits. A central scenario considered by DESNZ shows that 20GW of PSH could save £24 billion of electricity system costs from 2025 to 2050 by reducing generation and network build requirements[1]. Both short-duration BESS and PSH are important and **complementary technologies** when optimised on the grid. They operate in **two distinct storage markets** offering different system services, but short-duration BESS with a viable merchant investment case does not suffer market failure.

When Ofgem's LDES scheme was first designed, BESS was not expected to qualify at durations over 6 hours. Innovation and falling costs of Lithium-ion meant an increase to 8 hours as the best threshold for technologies facing market failure. Despite this, 70% of the 28.7GW deemed eligible is Lithium-ion, much of which can arguably be built on a merchant basis. For the successful deployment of new PSH around the world, government subsidies have been essential. The UK's LDES scheme is well regarded internationally, with policymakers keen to see if the final design could serve their markets. Any second window should **prioritise duration, grid location and lifespan** as key tenets by which to ensure LDES remains a distinct market when compared to Lithium BESS technologies.

3. Government should reaffirm commitment to PSH and the cap and floor scheme

The UK's competitive position in the global race for long-duration energy storage depends on a consistent, sustained and visible energy policy as has been the case over recent and successive governments. We therefore believe that DESNZ, NESO and Ofgem should consider issuing a clear and **coordinated public statement** confirming:

- LDES remains a strategic national priority, essential for resilience and grid services in the transition to a renewables-dominated electricity system;
- A strong aspiration for the LDES scheme and decision timelines to proceed uninterrupted.
- PSH projects are assessed on the attributes they can bring to the UK energy system over their expected lifespan, regardless of the impact on competing technologies.

Such a statement would reassure investors, OEMs, EPC contractors and international supply-chain partners. It would also signal that the UK intends to maintain momentum in deploying critical infrastructure, **irrespective of tactical or opportunistic legal challenges**.

Conclusion and next steps

The UK stands at a pivotal moment in the energy transition and the need for LDES. PSH is essential to the realisation of Clean Power 2030 and to the stability and security of the future electricity system. The legal challenge currently underway, has the potential to introduce damaging uncertainty during a critical phase for investment and supply-chain mobilisation.

We respectfully request that DESNZ, NESO and Ofgem provide a timely public statement in support of the LDES scheme and the technologies it aims to support. Representatives of the UK hydropower industry would welcome the opportunity to provide impact statements as Ofgem prepares a response to the case. The priority for the industry is for the scheme to remain on track with project assessment decisions made in Spring 2026. For follow up discussion, please contact;

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[1] DESNZ research paper – LCP Delta & Regen, Jan 2024