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James Walsh
Natural England

Your Ref:

Our Ref: EN010081

Date: 25 January 2018

Dear Sir

**Planning Act 2008 (as amended)
Rules 17 of the Infrastructure Planning (Examination Procedure) Rules
2010 (as amended)**

**Application for Combined Cycle Gas Turbine at Eggborough Power
Station**

Request for further information

As you may be aware, I previously issued a letter under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), dated 5 December 2017 (Examination Library reference [**PD-010**]). The letter requested further information pertaining to the Habitats Regulations Assessment (HRA) [**APP-111**] and the relationship with the Environmental Statement (ES) accompanying the above-named application. Natural England did not formally respond to my questions although a response from the Applicant was received on 9 January 2018 [**REP5-006**]. I refer you to those questions and responses, as well as my Report on the Implications for European Sites (RIES) which has been published today:

<http://infrastructure.planninginspectorate.gov.uk/document/EN010081-001247>

At present Natural England's participation with the application extends to a single Relevant Representation [**RR-005**] made before Examination and an unsigned Statement of Common Ground prepared and submitted by the Applicant at Deadline 1 [**REP1-007**].

The preparation of the RIES and the points identified therein demonstrate that my concerns regarding the HRA process have not yet been satisfactorily addressed. In broad terms my concerns are as follows.

Firstly, I need to be satisfied that the Applicant's 1% threshold¹ identified in the ES and used for the purpose of HRA screening is an appropriate benchmark for determining the likely significant effects on European sites in respect of the Habitats Regulations².

Secondly assuming the 1% threshold is an acceptable measure, I need to be satisfied that an increase which is below 1% (alone or in-combination) can be judged to have no likely significant effects particularly, where background concentrations already exceed the critical loads/levels. The Applicant's assessment contends that even where the background level exceeds the critical load/level and the Proposed Development will add to that, there is no likely significant effect. Please confirm if you agree with this position and to what extent critical loads/levels are relevant to the finding of likely significant effect.

Thirdly, the Applicant contends that *'where process contributions are 1% (or even slightly above) then the magnitude of change is so inconsequential ("de minimis") that it does not require an in-combination effects assessment'* and cites guidance from the Institute of Air Quality Management (IAQM) in this regard. The Applicant also states that these views are collective and shared by Natural England. This conclusion does not appear to be consistent with the judgement in the case of *Wealden District Council v Secretary of State for Communities and Local Government [2017] EWHC 351*. In particular it overlooks the potential for many small scale insignificant effects to combine and result in an effect that could be significant. At present the Applicant has not provided any form of quantitative in-combination assessment which may resolve this issue. I remain unclear (further to the questions posed in the Rule 17 request) as to the evidential basis for this conclusion.

Finally, and in addition to the points above I am keen to receive any other specific points you would like to make on these matters taking into account your role as the appropriate nature conservation body set out in the Habitats Regulations.

¹ Institute of Air Quality Management (IAQM) (2016) Use of a Criterion for the Determination of an Insignificant Effect of Air Quality Impacts on Sensitive Habitats. IAQM Position Statement – Effect of Air Quality Impacts on Sensitive Habitats

² Conservation of Habitats and Species Regulations 2017 and the Conservation of Habitats and Species Regulations 2010, the latter of which remains the valid Regulations for this application because the application was submitted under transitional arrangements.

It would considerably assist me in this Examination of the proposed development if Natural England would review the aforementioned documents and points discussed above, and respond directly to me by **Deadline 7, Wednesday 14 February 2018**.

Yours sincerely,

Richard Allen

Examining Authority

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.