

Eggborough CCGT - Examining Authority's Written Questions

The following table sets out the Examining Authority (ExA)'s Further Written Questions and requests in relation to the Eggborough CCGT.

Responses are required by Tuesday 9 January 2018. Please note that if this deadline is missed the ExA is not obliged to take account of your response.

Please use the number reference system when responding to a question. Column 2 identifies the organisation(s) or individual(s) from which answers are sought. Column 3 sets out the question, often with a contextual introduction.

The ExA would be grateful if all named bodies would answer questions directed at them, providing either a substantive response or explaining why the question is not relevant to them. The expectation is that each organisation will provide an answer to each question asked of it, but joint answers are acceptable if the relevant issue is addressed. If the answer to a question is set out in, for example, a Statement of Common Ground (SoCG) then a cross reference to where the issue is addressed is acceptable.

The list of organisations to which an individual question is addressed is not exclusive. You may put relevant evidence to the ExA in response to any question asked of any party.

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AQ	Air Quality	
AQ 2.1	<i>Black Start Facility</i> The Applicant The Environment Agency	<p>The Environmental Statement (ES) [APP-046] states that the Black Start facility will not operate more than 50 hours per annum. The ExA is concerned that, should the Environmental Permitting Regime allow this figure to be increased, potential additional effects would not have been assessed in the ES.</p> <p>Notwithstanding the Applicant's response to the ExA's Written Question AQ 1.14 [REP2-014], explain whether a restriction of hours for the operation of the Black Start facility, as assessed in the ES should be secured in the draft Development Consent Order (DCO) [REP3-003], or cite existing provisions in the draft DCO which serve this purpose.</p>
AQ 2.2	<i>Odour from Ammonia</i> The Applicant	<p>Hensall Parish Council (Mr Tams) in its Written Representation submitted after the date for Deadline 3 [REP3-028] raises concerns in respect to odour from ammonia should selective catalytic reduction be deemed to be the best available technology. The ExA notes the Applicant's statements on such matters contained within the Statutory Nuisance Statement [APP-034] and also contained within paragraphs 8.6.32 to 8.6.39 of the ES [APP-046], although reference to odour is limited.</p> <p>The ExA invites the Applicant to make a specific response in this regard.</p>

AH	Archaeology and Heritage	
AH 2.1	<i>Requirement 16</i> North Yorkshire County Council Selby District	<p>Confirm that the wording of Requirement 16 of the draft DCO [REP3-003] addresses concerns on adequate recording of archaeological findings if discovered during the construction of Works No 6.</p>

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BE	Biodiversity and Ecology	
BE 2.1	<i>Precautionary Working Method Statement</i> The Applicant	The Statement of Common Ground between the Applicant and Natural England [REP1-007] agrees that a Precautionary Working Method Statement is necessary for both pre-construction and construction phases of the proposed development within 300m of Waterbody 11 to manage small risks on wildlife. Clarify how this is secured in the draft DCO [REP3-003].
BE 2.2	<i>Off-site Mitigation</i> The Applicant	<ul style="list-style-type: none"> i) Provide an update, if necessary, on the Planning Agreement to secure off-site biodiversity enhancements as discussed at the Issue Specific Hearing on Environmental Matters [EV-007] and set out in written responses by the Yorkshire Wildlife Trust and the Applicant at Deadline 3 [REP3-016 to 019] and [REP3-010] respectively, and when this will be submitted. ii) Confirm that such off-site enhancements have no bearing on the ES.

CA	Compulsory Acquisition	
CA 2.1	<i>Update</i> The Applicant	Provide an update on negotiations with the Webster Family Trust and the Environment Agency in respect to agreements to use land.
CA 2.2	<i>Plots 610 and 615</i> The Applicant	<ul style="list-style-type: none"> i) Explain why the Land Plans [REP2-007] show the land divided differently from the Works Plan Sheet No 6 [APP-015].

		<p>ii) In the absence of indicative drawings within the Works Plans [APP-015], justify the amount of the land take needed for both Works Nos 7A and 7B.</p>
CA 2.3	<p><i>Protected Provisions – Indemnity Cap</i> The Applicant</p>	<p>The Canal & River Trust (CRT) at the Compulsory Acquisitions Hearing [EV-012] raised concerns regarding the indemnity cap set out in paragraph 32(6) and the exclusion of consequential losses in paragraph 32(2)(b) of Schedule 12 of the DCO [REP2-003], confirmed in writing in its post-Hearing submissions [REP3-020]. The Applicant states in its written response at Deadline 3 [REP3-009] that <i>“it is not reasonable or proportionate to have an unlimited indemnity, and that the cap is more than sufficient”</i></p> <p>i) Justify the approach taken to require CRT, a charitable trust, to be liable for costs as a result of works undertaken by the applicant.</p> <p>ii) Explain why it is not reasonable or proportionate to remove any liability on CRT, and to enable the CRT to recover consequential losses.</p> <p>iii) The SoS accepted that CRT should not be subjected to an indemnity cap on the Wrexham DCO. Explain why the SoS should he accept such a requirement in this DCO.</p> <p>iv) If the ExA was minded to remove such a cap on the CRT, explain the consequences to the project.</p>
CA 2.4	<p><i>Crown Land</i> The Applicant</p>	<p>Provide an update on negotiations with the Crown Estate in respect to agreements to use land</p>
CA 2.5	<p><i>Plot 40</i> The Applicant</p>	<p>Explain why this plot is required for Compulsory Acquisition of land.</p>

COD	Construction, Operation and Demolition	
COD 2.1	<p><i>Demolition of Existing Coal Fired Station</i></p> <p>The Applicant</p>	<p>At the Issue Specific Hearing on Environmental Matters [EV-007], the Applicant agreed to review its position in respect to whether the demolition of the existing power station should be controlled. In its post-Hearing submissions [REP3-010 and REP3-014], the Applicant explained that it will secure its demolition in the form of a Planning Agreement. The ExA welcomes the Appellant's change of position in this regard.</p> <p>i) Confirm the form such planning agreement will take (<i>i.e through a development consent obligation under s.106 of the Town and Country Planning Act, or other mechanism</i>), and when such an agreement/obligation will be submitted, and whether it will be done so in draft.</p>
COD 2.2	<p><i>Demolition of Existing Coal Fired Station</i></p> <p>The Applicant</p>	<p>In paragraph 2.8 of the Applicant's submission document on the demolition of the existing power station [REP3-014], it is stated that the Applicant would be obligated to apply for Prior Approval Under Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for removal of the existing power station within two years of commercial operation of the proposed development, and must be demolished within five years of receiving prior approval, or, if it is not needed, within 7 years of first commercial operation of the power plant.</p> <p>i) Explain when the Applicant intends to apply for Prior Approval, as it is not clear when this application is to be made.</p> <p>ii) If Prior Approval is deemed by the relevant planning authority to be required, explain why a scheme for demolition can only be worked up after the proposed CCGT has been constructed and is operational, and not prior to or during its construction.</p> <p>iii) Justify the need for such proposals to take two years for a scheme of</p>

		<p>demolition to be worked up.</p> <p>iv) Explain the contingencies should Prior Approval be refused, and how this would affect the timescales for demolition as set out in Paragraph 2.8 [REP3-014].</p> <p>v) In respect of the questions above, the ExA requests the Applicant revise such wording in the forthcoming Planning Agreement which removes 2.8.1 and the first part of 2.8.2, and states that "<i>demolition of the existing power station be completed within five years of the first commercial operation of the proposed development</i>".</p>
COD 2.3	<p><i>Demolition of Existing Coal Fired Station</i></p> <p>The Applicant</p>	<p>In paragraph 2.12 of the Applicant's response to Deadline 3 [REP3-014], it is stated that there would be "<i>no obligation to demolish any part of the existing coal-fired power station which is to be used for another purpose pursuant to permitted development rights</i>".</p> <p>i) Explain what the Applicant envisages by this.</p> <p>ii) Explain whether these envisaged uses been assessed in the ES.</p> <p>iii) Explain whether this exemption conflicts with Requirement 4 of the draft Development Consent Order [REP3-003] which forbids the authorised development from entering commercial use if the existing coal-fired power station has not ceased to generate electricity.</p> <p>iv) Consider revising/removing this specific exemption.</p>

DML	Draft Deemed Marine Licence	
DML 2.1	<p><i>Paragraph 3(4)(b)</i> <i>Schedule 12</i></p> <p>The Applicant Marine Management Organisation</p>	<p>At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Marine Management Organisation set out ongoing concerns with the wording of Paragraph 3(4)(b) as currently worded in the draft DCO [REP2-003] which they say potentially allows for works not assessed in the ES. The ExA was informed at the Hearing that revised wording had been discussed between the parties.</p> <p>Provide an update in respect to the acceptability of this paragraph.</p>

DCO	Draft Development Consent Order	
DCO 2.1	<p><i>Definition of "Commence" – Part 1 Article 2</i></p> <p>The Applicant</p>	<p>At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of "commence" be set out in once place in the draft DCO, and have one definition save for areas where it did not apply.</p> <p>The ExA notes that the revised draft DCO [REP3-003] removes reference to "commence" in Schedule 2, and also moves the definition of "permitted preliminary works" from Schedule 2 to Article 2. The ExA welcomes this change.</p> <p>However, the ExA remains concerned that the definition is confusing, because it essentially has two part meanings for different parts of the draft DCO. The ExA considers the Applicant has merely stitched the two definitions together rather than amend and redefine the definition to be clear and concise.</p> <p>i) Consider substituting:</p> <p><i>"the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins) other than</i></p>

		<p><i>permitted preliminary works, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly.</i></p> <p>ii) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording.</p> <p>[N.B – removing Articles 11 and 21 from the definition of “permitted preliminary works” is dealt with below].</p>
DCO 2.2	<p><i>Definition of “Permitted Preliminary Works” – Part 1 Article 2</i></p> <p>The Applicant</p>	<p>At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of “permitted preliminary works” be amended to be considerably more focused and narrower in definition to that as set out in the draft DCO [REP2-003].</p> <p>The ExA notes that the definition has been removed from Schedule 2 to Article 2 of the revised draft DCO [REP3-003]. The ExA welcomes this change. However, the Applicant has ignored all other requests of the ExA.</p> <p>The ExA accepts that “permitted preliminary works” may likely be necessary for matters relating to, for example, land contamination and archaeological works to enable pre-investigation works to take place prior to discharging of requirements and commencement works for the proposed development. The ExA is concerned that as currently worded, the Order permits the Applicant to undertake a wide ranging number of works across a number of area which the ExA considers has not been adequately justified.</p> <p>i) Precisely explain the purpose of “permitted preliminary works”.</p> <p>ii) Explain why, for example, “permitted preliminary works” is necessary for matters such as surface and foul water drainage, access or fire prevention matters, which could be undertaken under the current definition.</p>

DCO 2.3	<p><i>Definition of "Permitted Preliminary Works" – Part 1 Article 2</i></p> <p>The Applicant</p>	<p>In the Applicant's post-Hearing response to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Applicant states at paragraphs 2.19 and 2.20 [REP3-011] that a tighter definition of "permitted preliminary works" would <i>"detrimentally affect the deliverability of the Proposed Development"</i> and <i>"...would prevent the Applicant from starting works on Site as soon as possible..."</i></p> <ul style="list-style-type: none"> i) Justify this assertion precisely, and particularly how a tighter and more focused definition would do this having regard to the above questions. ii) Consider substituting: <i>"excluding Articles 11 and 21 of this Order, means any investigation works that may be required for the purposes of...[applicant to insert Requirements where "permitted preliminary works" are necessary in respect to response to questions above"]</i>. iii) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording.
DCO 2.4	<p><i>Definition of "Maintain" – Part 1 Article 2</i></p> <p>The Applicant</p>	<p>At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of "maintain" be amended to be considerably more focused and narrower in definition to that as set out in the draft DCO [REP2-003].</p> <p>The ExA notes that the definition has been altered in the revised draft DCO [REP3-003], which distinguishes maintenance works to <i>"in part, but not the whole"</i> of the authorised development. The ExA welcomes this change.</p> <p>However, the ExA remains concerned that the definition as currently worded permits a wide range of maintenance works which could exceed the Rochdale Envelope of the ES.</p> <p>In the Applicant's post-Hearing response to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Applicant states at paragraph 2.24 [REP3-011] that <i>"...maintenance has been implicitly assessed in the ES...the Applicant considers that any maintenance activities would fall within the envelope of the</i></p>

		<p><i>assessment presented in the ES”.</i></p> <ul style="list-style-type: none"> i) Justify why therefore the Applicant will not commit to this assertion in the draft DCO. ii) The Applicant’s post-Hearing response to the Issue Specific Hearing on the draft Development Consent Order held on Thursday 23 November 2017 [EV-011] does not explain how <i>“materially new or different”</i> is to be determined, and by whom. Explain who would be the arbiter of such works being <i>“materially new or different”</i> as opposed to being only <i>“new or different”</i>. iii) Explain how maintenance works which are <i>“materially new or different”</i> would be enforceable in practice. iv) The Applicant is at pains to point out in its post-Hearing response [REP3-011] to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011] that maintenance activities cannot be quantified precisely. Explain how tying the definition of <i>“maintain”</i> to the scope assessed in the ES in any way prejudices such activities from taking place. v) Consider substituting: <i>“to the extent that such works have been assessed in the Environmental Statement, includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of the authorised development and “maintenance” and “maintaining” are to be construed accordingly.</i> vi) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording.
DCO 2.5	<i>Requirement 26</i> The Applicant	In Paragraph 23.2 of the draft Statement of Common Ground with North Yorkshire County Council and Selby District Council [REP2-011], it is stated that Requirement 26 be amended so that NYCC is specifically consulted as the waste planning authority, and

		<p>the Applicant is in agreement to make this amendment. No such changes appear to have been made in any version of the draft DCO [APP-005, REP2-003, REP3-003].</p> <p>Clarify and if necessary, amend the draft DCO.</p>
DCO 2.6	<p><i>Guide to the Application</i></p> <p>The Applicant</p>	<p>The ExA wishes to be assured that the definition of 'Environmental Statement' contained within Article 2, and Article 38 of the draft DCO [REP3-003] encompass the totality of all certified document and all up-to-date plans and statements and disregard those which have been superseded.</p> <ul style="list-style-type: none"> i) Consider whether the Guide to the Application [currently REP3-002] should form part of the Certified Plans in Article 38 of the DCO [REP3-003] and/or should be included as part of the definition of 'Environmental Statement' set out in Article 2 of the draft DCO. ii) Ensure all revisions to Tables 20.3 of the ES [REP2-019], 8.20A and 8.20B [REP2-018], 8.22A and 8.22B [REP2-023] are referenced in the Guide to the Application document [REP3-002] as the Applicant has cited these as updating and/or providing additional information to that presented in the ES.
DCO 2.7	<p><i>Article 14</i></p> <p>The Applicant</p>	<p>Consider amending paragraph (1) by inserting "<i>subject to paragraphs (3) and (4)</i>" before "<i>the undertaker may use any watercourse...</i>" to correctly reflect the limitations on the power of this Article.</p>
DCO 2.8	<p><i>Article 20</i></p> <p>The Applicant</p>	<p>Consider substituting paragraph (3) to reflect the changes in the Housing and Planning Act 2016 with as follows:</p> <p><i>"(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land, the undertaker is not required to acquire a greater interest in that land".</i></p>

LV	Landscape and Visual	
LV 2.1	<p><i>Indicative Landscape and Biodiversity Strategy</i></p> <p>North Yorkshire County Council</p> <p>Selby District Council</p>	<p>In their response to Deadline 2 [REP2-037 and REP2-039] and as specified in the draft Statement of Common Ground [REP2-011], North Yorkshire County Council and Selby District Council raise concerns with what they say is the inadequacy of the Indicative Landscape and Biodiversity Strategy [APP-035] in respect to planting and hedgerows, and improvements to green infrastructure within the local area.</p> <p>The Applicant states in its response to Deadline 3 [REP3-009] that Requirement 6 will be sufficient to ensure such a strategy is acceptable, which must be agreed by the relevant planning authority.</p> <ul style="list-style-type: none"> i) Comment whether Requirement 6 of the draft DCO [REP3-003] would adequately deal with Councils' concerns. ii) If not, set out what it would expect to see either within the ILBS or in Requirement 6.

NV	Noise and Vibration	
NV 2.1	<p><i>Operational Noise</i></p> <p>North Yorkshire County Council</p> <p>Selby District Council</p>	<p>Comment on the revised wording of Requirement 24 of the draft DCO [REP3-003].</p>