From:	Sam Hunter Jones
To:	DraxRe-power@pins.gsi.gov.uk
Subject:	Drax Re-power (EN010091) / IP ref: 20011838 - ClientEarth"s Response to the Applicant's D7 submission + the ExA's request for info
Date:	28 March 2019 14:33:56
Attachments:	ClientEarth_Response to Applicant"s D7 Submission + ExA"s RFI_28 March 2019.pdf

Dear Sir / Madam

I attach ClientEarth's Response to the Applicant's late Deadline 7 Submission and the Examining Authority's Request for Information.

Where possible, the document contains hyperlinks to sources outside of the Examination Library and planning policy and legislation.

Yours faithfully

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28 March 2019

Response to the Applicant's Deadline 7 submission and the Examining Authority's request for information in respect of Drax Re-power (App. No. EN010091)

1. This submission is made by ClientEarth[1] in response to (i) the Applicant's late Deadline 7 submission, and (ii) the Examining Authority's letter dated 14 March 2019 requesting further information from the Applicant regarding the consenting of Unit X only and inviting Interested Parties to provide responses.[2]

1 Response to the Applicant's Deadline 7 submission

2. The Applicant's responses to ClientEarth's Deadline 6 submission do not support the consenting of the Proposed Development:

    a. The Applicant has failed to demonstrate a need for the Proposed Development applying the approach required by EN-1 or otherwise under s 104(7) of the Act:

        i. The Applicant continues to advance an interpretation of the relevant paragraphs of EN-1 that (a) wrongly equates "types of infrastructure" with individual projects, and (b) requires a complex hybrid approach that has no basis in the NPS, with a project's contribution to need being both assumed and assessed.[3] In addition, the Applicant now suggests that the initial presumption in favour of consent under EN-1 demonstrates that the need for an individual project should be assumed.[4] Clearly, this does not

[1] Interested Party reference: 20011838. ClientEarth is an environmental law charity with offices in London, Brussels, Berlin, Warsaw, Beijing and New York (registered in England and Wales, Charity Registration No. 1053988. Company Registration No. 2863827).

[2] Unless specified otherwise, abbreviations and defined terms used in this submission are the same as those used in ClientEarth's Written Representation of 8 November 2018, ClientEarth's Post-Hearing Submission of 13 December 2018, ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment of 9 January 2019, and ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission of 30 January 2019.

[3] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.14-1.21. See ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 10-15.

[4] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.15-1.16.

follow and fails to give any meaningful content to paragraphs 3.1.4 and 3.2.3 of EN-1.[5]

ii. The Applicant has not demonstrated the Proposed Development's "anticipated actual contribution" to need and continues simply to dismiss government projections as irrelevant in this context.[6] However, such projections are important evidence in assessing this core consideration under EN-1. In particular:

1. Consenting the Proposed Development would bring the level of consented CCGT capacity to over three times the government's projections for new-build gas generation capacity (CCGT and OCGT) out to 2035.[7]

2. This lack of need for new large-scale gas generation capacity is reinforced by projections from National Grid and the Committee on Climate Change, which envisage only a residual role for unabated gas generation by 2030 (of as little as 5% of total power generation).[8]

3. The Applicant itself cites National Grid's projection of 24GW of total gas capacity in 2030 in support of its application,[9] but it fails

[5] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 12-14.

[6] See, e.g., Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.18-1.19.

[7] ClientEarth's Written Representation, 8 November 2018, paras 22-25. See also ClientEarth's Post-Hearing Submission, 13 December 2018, paras 16-17.

[8] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 6-7.

[9] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, para 1.58.

to mention that this represents a significant *fall* in capacity against the current level of 38GW.[10]

iii. Contrary to the Applicant's previous submissions, there is also no need for the Proposed Development due to local grid requirements. At ISH1 and in its Deadline 5 submission, the Applicant had suggested that there was such a need and that this was evidenced by National Grid's latest Ten Year Statement.[11] However, in its Deadline 7 submission the Applicant appears to have retreated from many of these misleading claims, including by accepting that Figure B7a.2 says nothing about the need for a given amount of capacity in the Drax area (or elsewhere), given that it addresses the future transmission network capability needed at that boundary. Specifically:

1. Having suggested previously that National Grid's Ten Year Statement showed a future need for 16GW of conventional thermal capacity in the Drax area,[12] the Applicant now suggests that the Ten Year Statement only indicates power flows that would be "generated somewhere on the network" and that the relevant capacity could be "situated in different parts of the country".[13]

2. The Applicant now speculates instead that the Proposed Development's location could make the transmission network more efficient.[14] However, this argument is difficult to follow given that the largest demand is in the southern transmission regions and

[10] BEIS, Updated Energy and Emissions Projections, 2017, Annex L (total electricity generating capacity) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666267/Annex-l-total-capacity.xls).

[11] See Applicant's Note on the Substantial Weight to be Given to Need and Application of the Tests Under Section 104 of the Planning Act 2008, paras 3.33-3.37; Applicant's Written Summary of Oral Case Put at ISH1, paras 3.45-3.47.

[12] Applicant's Note on the Substantial Weight to be Given to Need and Application of the Tests Under Section 104 of the Planning Act 2008, paras 3.4 and 3.40; Applicant's Written Summary of Oral Case Put at ISH1, paras 3.30 and 3.61.

[13] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.27 and 1.36.

[14] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.37 and 1.43.

that the North of England region already contains a high density of conventional thermal capacity.[15] Indeed, if anything, the Proposed Development would exacerbate existing local network restrictions resulting from the large amount of conventional thermal capacity in the area.[16]

3. It is equally unclear what the Applicant means when it states that "addressing" other boundaries' requirements such as those of Boundary 8 – the most relevant to the Proposed Development given the predominant north-south power flows – would require "a different project."[17]

b. In terms of climate impacts, the Applicant has failed to demonstrate that the Proposed Development will not lock in substantial unnecessary emissions – a risk warned against in the strongest terms in EN-1.[18] Specifically:

i. The Proposed Development's climate impact needs to be understood in terms of whether the proposed capacity is consistent with the UK's decarbonisation commitments. As EN-1 states, fossil fuel power stations "must be constructed, and operate, in line with increasingly demanding climate goals."[19] The question is therefore whether the operation of the Proposed Development over its 25-year-plus operating life is consistent with the power sector scenarios in which the UK meets its emissions reduction commitments. However, the Applicant is yet to explain how the Proposed Development is consistent with such scenarios:

[15] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, para 20.

[16] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, para 24.

[17] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, para 1.44.

[18] EN-1, para 3.3.16 ("A failure to decarbonise and diversify our energy sources now could result in the UK becoming locked into a system of high carbon generation, which would make it very difficult and expensive to meet our 2050 carbon reduction target. We cannot afford for this to happen.").

[19] EN-1, para 3.6.1.

1. If the Proposed Development is operated to the extent apparently envisaged by the Applicant,[20] then it would – on its own – exceed the UK power sector's emissions allocation.[21] As mentioned above, unabated gas generation can only be a residual or back-up power source by 2030, i.e. shortly after the Proposed Development would become fully operational.[22] In its Deadline 7 submission, the Applicant states that "in reality" the Proposed Development will be used "significantly less" than the 100% load factor used in its Environmental Statement.[23] However, it fails to specify what load factor it does expect the Proposed Development to operate at, even approximately.

2. ClientEarth's climate impact assessment demonstrates the extent to which the Proposed Development would need to be constrained to be in step with the government's projections for power sector emissions, as depicted by the gap between the emissions intensities of the Proposed Development and the ClientEarth baseline in the below graph:[24]

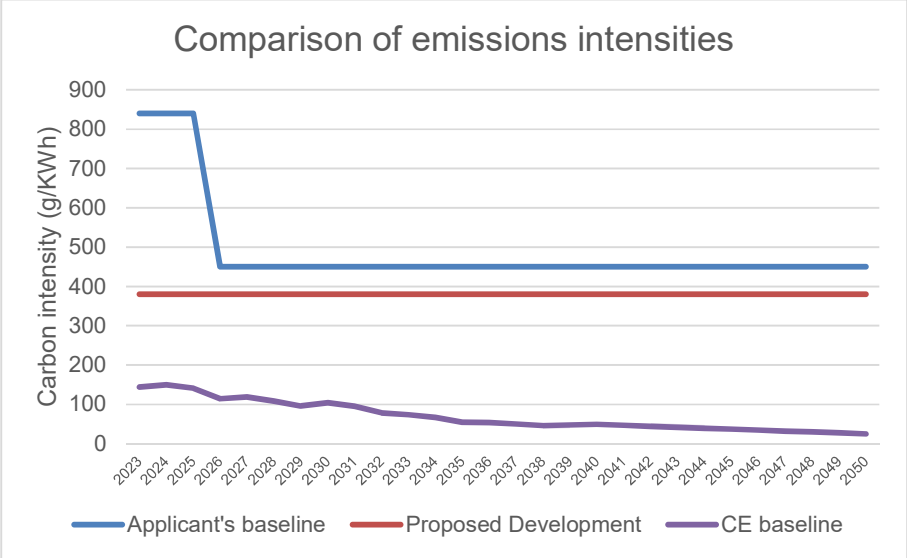
[20] The Applicant's CCR Statement assumes a 75% load factor over the life of the Proposed Development (p. 16), and the Applicant's Environmental Statement assumes a load factor of 100% (Table 15-9), on the basis that it cannot exclude the possibility of the Proposed Development operating at full load (See Applicant's Written Summary of Oral Case at ISH1, para 3.80).

[21] ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, para 7(e).

[22] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 6-7; ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, paras 18-19.

[23] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, para 1.57.

[24] See ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, paras 13-15.



ii. The Applicant's approach to assessing the Proposed Development's climate impacts is also unlawful in view of the requirements under the EIA regulations. These include the obligation to assess the project against a baseline that (among other things) takes into account the likely evolution of circumstances over the project's operating life, including the extent to which the project would contribute to relevant greenhouse gas reduction targets.[25]

iii. Even if the relevant comparator was – as the Applicant suggests[26] – the type of capacity the Proposed Development would likely displace at the time that it commences operation, the Applicant's analysis fails to take into

[25] See ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, paras 3-12.

[26] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.33-1.34.

account that other new CCGT capacity on the grid is likely to be equally or more efficient.[27]

c. If the Proposed Development is built but not used to a significant extent, there is a substantial risk of it becoming a stranded asset and / or requiring public subsidy in respect of decommissioning costs.[28] The Applicant's reference to the provision that would be made in its accounts for decommissioning does not exclude these risks.[29] Leaving aside whether (once it is made) such provision is sufficient, simply making provision in a company's accounts clearly cannot exclude stranded asset risk generally or the more specific risk of failing to meet decommissioning costs. Indeed, if doing so did protect against such risks, then there would be no reason to require financial security in the numerous contexts that such security is routinely required by lenders and regulators.

d. In respect of s 104(4) of the Planning Act 2008, the Applicant states that it is not clear how a decision made in accordance with EN-1 could breach the UK's international obligations.[30] As explained previously, to comply with the UK's obligations under the Paris Agreement, EN-1 must be applied in a way that aims to meet the 1.5 degree / "well below" 2 degrees Paris temperature goal that EN-1 pre-dates. This would include placing increased weight on the need to decarbonise the power sector (should the Examining Authority or the SoS consider that the NPS does not already place maximum weight on this need).[31]

e. In respect of s 104(7) of the Act, the Applicant continues to advance an interpretation that gives this section no meaningful content, simply replicating in

[27] ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, para 5, fn 10; ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, para 39; ClientEarth's Written Representation, 8 November 2018, para 25.
[28] ClientEarth's Written Representation, 8 November 2018, para 31; ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 37-39; ClientEarth's Post-Hearing Submission, 13 December 2018, para 53.
[29] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, para 1.65.
[30] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, para 1.68.
[31] See ClientEarth's Post-Hearing Submission, 13 December 2018, para 20; ClientEarth's Written Representation, 8 November 2018, para 19.

its entirety the decision-making framework under EN-1 (or indeed any other applicable NPS).[32] However:

i. As explained in ClientEarth's Post-Hearing Submission in respect of ISH1, by allowing presumptions, assumptions and other decision rules to override the general balancing exercise required by s 104(7) would be to make the exception entirely circular and redundant. It would also insert qualifications into the section that do not exist and remove its function of guarding against decisions that are not expected to provide net overall benefits to the public.[33] Accordingly, such an approach was rejected in the *Thames Tideway* judgments.[34]

ii. The application of NPS decision rules to the balancing exercise under s 104(7) may have little or no effect in practice – as here where there is no need for the Proposed Development and it has major adverse impacts. However, that would not be the case if, as the Applicant argues, EN-1 were to be interpreted to require that the need for any given project be assumed or that the Proposed Development's climate impacts be given only "limited weight".[35]

f. In summary, consent for the Proposed Development should be refused under both EN-1 and s 104(7), given (among other things) the clear lack of need for the Proposed Development and its substantial adverse climate impact and stranded asset risk.

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[32] Applicant's Response to ClientEarth's Deadline 6 Submission, 27 February 2019, paras 1.69-1.70.

[33] ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 43-45; ClientEarth's Post-Hearing Submission, 13 December 2018, para 20; ClientEarth's Written Representation, 8 November 2018, paras 47-48.

[34] ClientEarth's Post-Hearing Submission, 13 December 2018, para 20; ClientEarth's Written Representation, 8 November 2018, paras 44-45; see also ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 42-45.

[35] See ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, para 45.

g. Alternatively, CCS would be a reasonable condition to impose on the consent to help avoid the Proposed Development's adverse impacts.[36] This is reinforced by the large amount of unbuilt CCGT capacity with development consent that would be able to meet any need for generation capacity in the period while viable CCS solutions are tested and developed.[37] We discuss below the implications of consenting only part of the proposed capacity (i.e. only Unit X).

2 Consenting Unit X only

3. ClientEarth makes the following observations regarding the option of granting consent for Unit X alone:

   a. Consenting only part of the proposed capacity – i.e. Unit X only – would be preferable to consenting the full proposed capacity, as doing so would reduce the scale of the project's potential climate impact and stranded asset risk. It is also the case that the existing coal units are running at diminishingly low levels and are expected to be decommissioned ahead of the coal phase-out.

   b. However, it is not clear that even this reduced scale is consistent with (i) the level of anticipated need for new unabated gas generation in light of the already consented capacity, and (ii) power sector scenarios that comply with the UK's emissions reduction commitments. The construction of Unit X alone would also result in a significant increase in generating capacity – of 35% – against Unit 5 and 6's total capacity.

   c. In its letter, the Examining Authority refers to the Applicant's response to Written Question ANC 1.12. We note that the calculations provided by the Applicant in its response in respect of Scenario 3 (i.e. Unit X and one of Unit 5 or 6 operating) are not accurate or reliable:

      i. The baseline used is a "snapshot" assessment against on-site generation alone when a dynamic grid-wide comparator should be used, particularly

[36] See ClientEarth's Response to Written Question ANC 2.5 and the Applicant's Deadline 5 Submission, 30 January 2019, paras 32-36; ClientEarth's Post-Hearing Submission, 13 December 2018, paras 37-41; ClientEarth's Written Representation, 8 November 2018, paras 51-52.

[37] ClientEarth's Written Representation, 8 November 2018, para 25.

given that Unit X alone would be capable of supplying additional generation to that produced by the existing capacity.[38]

ii. The Applicant incorrectly assumes – both in its baseline and in Scenario 3 – that Unit 5 or 6 will continue operating after the coal phase-out. Among other things, this is not consistent with the Applicant's public statements that it will end its coal-fired generation by 2025 at the latest.[39] As Drax's recent annual report recognises, both units already operate at low load factors,[40] and the units will in all likelihood be decommissioned when the coal phase-out is introduced in 2025, if not well in advance of that date.[41] Indeed, another UK coal power station – Cottam – recently confirmed that it will close in September 2019.[42]

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[38] See ClientEarth's Revised Baseline Scenario and Quantitative Climate Impact Assessment, 9 January 2019, paras 7-9.

[39] https://www.drax.com/press_release/uks-biggest-power-station-signs-powering-past-coal-alliance/ ("Will Gardiner, Drax Group CEO, said: … The government made it very clear earlier this year that it wants the UK's power sector to be coal free in 2025 – and we will achieve that, and possibly even beat it. We're exploring options for repowering our remaining coal units to use sustainable biomass and gas which we believe could help us to become coal free even earlier than the 2025 deadline.").

[40] See Drax Group plc, Annual report and accounts 2018 (https://www.drax.com/wp-content/uploads/2019/03/Drax-Annual-report-accounts-2018.pdf), p. 7 ("… the market for coal generation was challenging and our two remaining units increasingly focus on short-term power market opportunities, rather than baseload power generation.").

[41] See ClientEarth's Written Representation, 8 November 2018, para 35(a); ClientEarth's Post-Hearing Submission, 13 December 2018, paras 22-25.

[42] See https://www.theguardian.com/environment/2019/feb/07/coal-power-station-cottam-to-close-after-half-a-century ("One of the UK's last seven coal power stations will close this year after half a century of generating electricity, as the polluting fuel continues its rapid decline in the energy mix. … The power station was no longer economically viable, the company said … Just seven years ago, coal was a cornerstone of the energy system, providing more than 40% of electricity, but a series of closures in the face of poor economics have led to it tumbling to 5% last year. The most recent plant to shut was Eggborough in Yorkshire last year." See also https://www.msn.com/en-gb/news/environment/british-carbon-footprint-shrinks-to-smallest-since-1859/ar-BBOu1R2 ("Coal is yesterday's fuel," said Claire Perry, the minister for energy and clean growth. "We're proud to be leading the world when it comes to getting rid of it, well ahead of our 2025 target.").

iii. Finally, the calculations do not use an abated emissions intensity figure for Unit 5 / 6 as requested by the Examining Authority and stated in the accompanying text:

> Scenario 3 includes the construction of one gas-powered Unit X (only) with one coal powered unit retained, *albeit after 2025 the emissions for this are abated to the government's proposed limit of 450 gCO2e/kWh*.[43]

The 503gCO2e/kWh emissions intensity figure included in the Applicant's Table 2-15 would instead appear to be a weighted average of 380gCO2e/kWh (Unit X) and 840gCO2e/kWh (*unabated* Unit 5 / 6). Using the abated emissions intensity of 450gCO2e/kWh for Unit 5 / 6 would give an overall emissions intensity of approximately 399gCO2e/kWh for Scenario 3.

[43] Applicant's Response to the Examining Authority's Written Questions, 6 November 2018, para 2.1.60.

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