Dear Tom,

Please see attached letter.

Please acknowledge receipt.

Regards

Paul Grace
Date: 7 September 2012
Our ref: PGRC/29691.00001
Your ref: 
DDI: 020 3400 4478
E-mail: Paul.Grace@blplaw.com

Mr Tom Carpen
Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Dear Mr Carpen

Application for proposed Underground Gas Storage Facility at Preesall, Lancashire
PINs reference no. ENO30001
Request for Further Information under Rule 17 Infrastructure Planning (Examination
Procedure) Rules 2010

We write in response to the Examining Authority (ExA)’s letter of 24 August 2012 (your reference
ENO30001) requesting advice as to whether, and if so how, the amendments to the Conservation and
Habitats and Species Regulations 2010 (the Regulations) affect Halite Energy Group Limited’s (Halite)
representations made on the Preesall Underground Gas Storage Facility Development Consent Order
(DCO) application (Application).

Summary of Changes Introduced by the Amendment Regulations

As stated in the ExA’s letter, the amendment came into force on 16 August 2012 through The
Conservation of Habitats and Species (Amendment) Regulations 2012 - SI 2012 No. 1927 (the
Amendment Regulations).

The Amendment Regulations amend some of the duties contained within The Conservation of Habitats
and Species Regulations 2010 – SI 2010 No. 490 (the 2010 Habitats Regulations). In particular,
the Amendment Regulations have broadened the scope of the express duties upon national authorities in
respect to wild bird habitat. Article 2 of the Wild Birds Directive (2009/147/EC) requires Member
States to take requisite measures to maintain wild bird populations at a level which corresponds in
particular to ecological, scientific and cultural requirements, while taking account of economic and
recreational requirements, or to adapt the population of these species to that level. Articles 3 and 4(4)
(second sentence) of the Wild Birds Directive are designed to ensure Member States preserve,
maintain or re-establish a sufficient diversity and area of habitats for wild birds and to ensure that
outside those areas which are specifically designated as important bird habitats, efforts are taken to
avoid pollution or deterioration of habitats. Article 10 requires Member States to encourage research
and any work required as a basis for the protection, management and use of wild bird populations.
The Amendment Regulations are intended to ensure clearer transposition of these provisions by giving
additional and specific duties to relevant bodies. The Amendment Regulations also make a number of
amendments to transpose more clearly certain elements of the Habitats Directive (92/43/EEC).

In this regard, Regulation 8 of the Amendment Regulations substitutes Regulation 9 of the 2010
Habitats Regulations, to provide that public bodies must exercise their conservation functions so as to
comply with the Habitats Directive and the Wild Birds Directive. Regulation 8 of the Amendment
Regulations also inserts Regulation 9A, which imposes new duties on public bodies in relation to wild
bird habitat, and Regulation 9B, which requires nature conservation bodies to review and report on whether the obligations under Regulation 9A have been met.

Of particular relevance to the Application are the duties included under Regulation 9A of the Amendment Regulations, which apply to wild bird habitat beyond the boundaries of Special Protection Areas (SPAs) (refer to Article 4 of the Wild Birds Directive).

**Effect on Halite’s DCO Application**

Halite’s Application was supported by an Environmental Statement (Documents 5.1 – 5.4), which considered the likely significant effects on breeding bird populations and their habitat, wintering bird populations and their habitat, and European sites designated for their ornithological interest. Three further documents specifically considered the likely significant effects on European sites, these being the 'Information to Support a Habitats Regulations Assessment – Morecambe Bay SAC, Liverpool Bay SPA, Shell Flat and Lune Deep cSAC' (Document 3.2), the 'Information to Support a Habitats Regulations Assessment – Morecambe Bay SPA and Ramsar' (Document 3.3), and the 'Responses to Natural England' document, which is appended to the Statement of Common Ground between Halite and Natural England on the topic of Ecology and Habitats Regulations Assessment (SoCG2). All four documents also consider appropriate mitigation proposals for wild birds and their habitat.

In conjunction with the documents listed above, the Landscape and Ecological Management Strategy Plan (LEMSP), (initially presented on Figure 14.10 of Volume 2B of the ES (Document 5.4) and within Appendix 14.11 of Volume 1B of the ES (Document 5.2), with an updated version appended to the Statements of Common Ground on the topic of the Landscape and Ecological Management Strategy Plan (LEMSP) provides detail on mitigation proposals for that area of the Project. A significant proportion of the mitigation measures presented within the LEMSP are proposed in recognition of the ornithological interest of the site itself and local area, not least in relation to, but not exclusive to, the Morecambe Bay SPA and Ramsar. Furthermore, Schedule 9 of the draft DCO submitted to the ExA on 31st August 2012 (Requirements 8 and 9) provide a vehicle for the delivery of both the LEMSP (and the Ecological Management Scheme that would also be part of delivery of the LEMSP).

The conclusion of the ES, both HRA reports and the 'Responses to Natural England' document is that with the implementation of appropriate mitigation there would be no significant effect upon the qualifying species/features of the Morecambe Bay SAC, Liverpool Bay SPA, Shell Flat and Lune Deep cSAC, Morecambe Bay SPA and Ramsar (nor their habitat), and that an Appropriate Assessment is not required to be undertaken by the competent authority. Furthermore, the conclusion of the ES is that with the implementation of appropriate mitigation, there would be no significant effects upon breeding and wintering bird species and their habitat generally, not just those that are listed as a qualifying interest of the afore-mentioned European designated sites. These conclusions have been agreed with Natural England (see Statement of Common Ground between Halite and Natural England on the topic of Ecology and Habitats Regulations Assessment – SoCG2).

In conclusion, Halite is therefore of the view that the amendments to the 2010 Habitats Regulations do not have any effect on the information contained within, or the conclusions of, the documents submitted in support of the Application (listed above), nor any representations made by Halite during the course of the Examination phase. This view is supported, not least, by the consideration of impacts on wild bird habitat beyond the boundaries of Liverpool Bay SPA and Morecambe Bay SPA. In taking the information already provided by Halite into account as part of his determination of the Application, the Secretary of State will be complying with his duty under the Amendment Regulations to secure compliance with the Wild Birds Directive.
Yours sincerely

Paul Grace

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