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From: [redacted]@gmail.com>
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To: One Earth Solar
Subject: Response to Request for Information dated 1st May 2026 –Project Reference EN010159

Categories: Deadline submission

To John Wheadon

Head of Energy Infrastructure Planning Delivery & Innovation

Department of Energy Security & Net

3-8 Whitehall Place London SW1A 2AW

By Email Only

5 May 2026

RE: Response to Request for Information (RfI) dated 1st May 2026 –Project Reference EN010159

Dear Mr Wheadon

I am writing in formal response to your Request for Information (RfI) regarding the above-referenced Development Consent Order (DCO) application.

1. The Legal Misdirection: Fry vs. Statutory Front-Loading

The Secretary of State's reliance on the "staged assessment" logic of **CG Fry & Son Ltd v SoS [2025] EWCA Civ 1** to justify Requirements 7 and 22 is a **fundamental legal misdirection**. Unlike the administrative balancing of environmental credits in *Fry*, matters of primary life-safety—specifically **Flood Risk and BESS Fire Safety**—constitute a **"condition precedent"** that must establish a **"proof of principle"** at the point of decision. The January 2026 updates to EN-1 (Section 4.1) and EN-3 explicitly distinguish between 'technical refinements' and the 'Fundamental Safety Case' (FSC). By failing to secure the FSC during the Examination, the SoS is attempting to utilize a 'staged assessment' where the law now mandates 'Front-Loaded Certainty. The RfI itself demonstrates the SoS has already accepted the Applicant's staged-assessment framing, thereby compounding the Fry misdirection.

Under the **"front-loading" mandate of Section 37 of the Planning Act 2008**, the SoS cannot lawfully grant consent where the project's safety remains a **mathematical and engineering impossibility**. Deferring the resolution of an up to **11.7 times peak discharge increase and a potential 200000 cubic meters of storage loss across the Trent valley and the compounding wave effect** and **thermal runaway risks** to a private, post-consent discharge process is a calculated attempt to circumvent the statutory system and violates the **Tameside Duty of Inquiry ([1977] AC 1014)**. Such a

delegation, in the face of terminal evidentiary deficits, is manifestly **Wednesbury unreasonable ([1948] 1 KB 223).[AS -061 & REP 5 -111 both papers]**

We are writing to put the Secretary of State on formal notice that any grant of the Development Consent Order in its current form would be fundamentally ultra vires and a legal nullity. The **January 6, 2026 updates to National Policy Statements EN-1 and EN-3** do not provide a blanket license to bypass safety through 'Parallel Tracking'; rather, they mandate that such tracking is strictly contingent upon a completed **Fundamental Safety Case (FSC)**. By attempting to rely on **Conditions 7 and 22** to defer core safety assessments to a post-consent stage, the process as currently structured fails the threshold requirements of the **March 2026 Planning Practice Guidance**. Any order issued on this basis would constitute an unlawful delegation of the Secretary of State's statutory duty to be satisfied of safety *at the point of decision*. We contend that the current application lacks the 'jurisdictional prerequisites' mandated by the 2026 reforms, and as such, any certification granted would be void ab initio and subject to immediate application to be quashed

The Examination has been defined by a **systematic effort by this Applicant** to circumvent statutory scrutiny through a **calculated refusal** to engage with expert technical challenges. This is most starkly evidenced by the Applicant's **direct defiance of the Examining Authority's (ExA) Action Point** issued following the Issue Specific Hearing 3 (ISH) **[EV8 -007time 1:03:49:06 to 1:05:16:24]**, which explicitly required the disclosure of the **underlying runoff coefficients**. **[Rep AS -062 & REP 5 -071].**

This refusal is not a mere technical oversight; it is a **clear demonstration of intent to suppress critical data** during the public phase of the Examination. By withholding these variables, the Applicant has ensured that their modelling remains an **un-verifiable "Black Box,"** shielded from the transparency of the Examination. This conduct reveals a strategic objective: to move fundamental safety determinations into **private, post-consent negotiations** where the Applicant can deploy its **superior resources** to persuade and influence regulators without the interference of public or expert counterevidence.

This is not "speculative science"; it is a fundamental legal requirement. The **January 2026 NPS (EN-1 & EN-3)** and **March 2026 PPG updates**, alongside the **Pickering [2025] EWCA Civ 378** mandate, now explicitly require granular, data based site-specific proof of safety and cumulative impact assessment at the application stage, not post-consent. The Applicant's refusal to provide this data—specifically regarding the hydraulic "drip-line" effects and volumetric displacement of support frames—is in direct conflict with these mandates, which require proof that the intensified channelling effects of large-scale arrays are safely managed.

By substituting the forensic requirements of the **2026 updates** and the **Pickering [2025]** mandate with the procedural deferral of **Requirements 7 and 22**, the Applicant has manufactured a "procedural stalemate" to move fundamental life-safety scrutiny out of the public Examination and into a private, post-consent forum. Unlike the administrative balancing of environmental credits in *Fry*, primary life-safety cannot be deferred; this systemic subversion of the **Planning Act 2008** has been used to secure an administrative "free hand" while bypassing scrutiny of significant flood risks.

The success of this strategy is visible in the **Environment Agency's (EA) irrational pivot** regarding floodplain storage. Following a series of private, un-scrutinized meetings, the EA was persuaded to abandon its scientifically sound **"no storage loss"** requirement in favour of a **"5mm modelling tolerance."** The adoption of the '5mm modelling tolerance'—a procedural fiction—directly violates the **March 2026 Strategic Mandate for the Building Safety Regulator (BSR)**, which requires 'transparent, evidence-based determinations.' By masking a 200,000 cubic meter storage loss behind 'modelling noise,' the EA has effectively repealed the Law of Conservation of Mass. Under the **Pickering [2025]** mandate, the SoS is legally prohibited from accepting 'mitigation-by-assertion' in place of granular, data-backed proof. This **"5mm fiction"** serves no hydraulic purpose and was

adopted solely under the weight of persistent pressure from the Applicant. [**REP 4 -080, 3.2**, **Rep 7-075, Appendix D & REP 8 – 017 – section 2.]**

By issuing this **Request for Information (RFI)**, the Secretary of State is delivering the exact **"administrative shelter"** the Applicant sought: a mechanism to "Requirement" the project past terminal deficits while consulting only the bodies that have already demonstrated a **systemic vulnerability** to the Applicant's influence. To delegate technical safety to a post-consent forum under these conditions—knowing the Applicant's history of defiance and the regulators admitted lack of competence—is **plainly unreasonable** and a breach of the **Tameside Duty of Inquiry**.

2. The Institutional Competence Void: Why Regulatory "Assurance" is Irrationally Founded

The Secretary of State cannot rationally rely on the "assurances" provided by the statutory regulators, as the record reveals a **systemic failure of oversight, technical capacity, and impartiality**. To treat these bodies as competent guardians of public safety in a post-consent environment is a **manifest error of judgment** for the following reasons:

- **Explicit Admission of Institutional Incompetence:** The Lead Local Flood Authority (LLFA), **Nottinghamshire County Council**, has explicitly conceded in writing **[REP1-096, Para 5.4.3 & REP 5- 111,5.2 & REP 8-015]** that it possesses neither the **"expertise nor resource"** required to verify the technical drainage strategy for a project of this scale. Under the **March 2026 Planning Practice Guidance (PPG)**, the SoS is directed to ensure that technical scrutiny is 'proportionate and expert-led.' Delegating safety to a body that has self-certified as incompetent is a '**jurisdictional error of fact.** It is a fundamental breach of the **Tameside Duty of Inquiry** for the SoS to delegate the safety of the Trent Valley to a body that has already formally declared its own inability to scrutinize the engineering. Relying on an "assurance" from a body that has admitted its own incompetence is the definition of **legal irrationality**.
- **Tainted Review and the Apparent Bias Test:** During ISH3 **[EV8-005 00:08:17:21at 01:14:30 00:12:11:25, REP3 -086,1, & REP 6 -093 section V]**, it was confirmed that the LLFA delegated its technical review to **AECOM**—a consultancy concurrently engaged by the Applicant on other workstreams. This dual role, where the "reviewer" is financially and commercially linked to the "reviewed," fails the **apparent bias test** established in **Porter v Magill [2001]**. A regulator's assurance is legally worthless if the "independent" scrutiny was outsourced to the Applicant's own commercial associates, particularly when that consultant's **"superior resources"** have been deployed to move the EA from its original, scientifically sound positions.

3. The Environment Agency's (EA) Scientific Vacuum

The Environment Agency's (EA) performance throughout this Examination has been defined by a **retreat from scientific rigor into a "scientific vacuum,"** rendering their assurances legally and technically worthless. The Secretary of State cannot rationally delegate safety oversight to an Agency that has demonstrated the following failures:

- **Terminal WFD Deficit:** The Examination concluded without a mandatory **Stage 3 Water Framework Directive (WFD) Assessment [AS -057, 7.2 & REP 8-014]** for sediment mobilization. This is not a minor procedural oversight; it is a **terminal legal defect**. Under the precedent of **Pickering [2025]**, the SoS is legally prohibited from delegating this primary safety duty back to an Agency that has already demonstrated a total failure to discharge its preliminary Stage 1 obligations. If the EA failed to insist on WFD compliance in a public forum, there is no rational basis to believe they will do so in private negotiations where the Applicant's influence remains unchecked.

- **The "5mm Fiction" and Storage Loss:** The EA's unreliability is further evidenced by its **irrational pivot regarding floodplain storage**. After maintaining a scientifically sound "no storage loss" position, the EA—following private meetings with the Applicant—accepted a **"5mm modelling tolerance."** This is a **procedural fiction** that violates the **Law of Conservation of Mass**, masking a cumulative, uncompensated loss of **200,000 cubic metres of storage [REP8-017]**. By accepting "modelling noise" as a substitute for physical reality, the EA has abandoned its role as a technical regulator.
- **The Baiamonte Failure in the FRA:** Most critically, the EA's assessment of the Flood Risk Assessment (FRA) is fundamentally defective for failing to address the **Baiamonte 11.7 times peak discharge amplification factor**. Despite this being a requirement for **"Modern Science" under EIA Regulation 14(3)(b)**, the EA has permitted a **"Black Box" modelling approach** that ignores the hydraulic synchronization (the **"wave effect"**) of thousands of hectares of glass panels**. [AS-061,REP 8 -015, REP 8-017 & REP 8 -018]**

Granting consent while delegating the resolution of these mathematical and legal certainties to the EA is a breach of the **Tameside Duty of Inquiry**. Under **Shadwell [2013]**, the SoS is compelled to depart from the EA's advice precisely because that advice is demonstrably defective on these three fronts.

4. Mandatory Departure from Defective Advice (Shadwell)

The convergence of these institutional failures and scientific deficits leads directly to the mandate established in **R (Shadwell Basin Outdoor Activity Centre) v Tower Hamlets LBC [2013] EWHC 10 (Admin)**. Under *Shadwell*, the Secretary of State is **legally compelled to depart from the advice of statutory consultees** when presented with **"cogent and compelling" evidence** that such advice is defective. [**REP 5 -111** The EXA's Imperative: Mandating Scientific Standards and Financial Surety for One Earth Amidst Institutional Advice Failure and Resource Deficits. This is the second paper on REP 5 -111**]**.

The record provides exactly such evidence: the LLFA's formal admission of a **"competence void,"** the EA's adoption of a **"5mm fiction"** that defies the Law of Conservation of Mass, and the failure of both to address the **11.7 times Baiamonte peak discharge factor** required by Modern Science. Relying on the "assurances" of regulators who have either admitted their own incompetence or abandoned scientific rigor under the Applicant's influence would be a **manifest breach of the Tameside Duty of Inquiry**. Consequently, the SoS cannot rationally use these flawed assurances to justify a "staged assessment" via Requirement 22; he is instead **legally bound to reject the defective advice and refuse the Order.**

5. BESS Fire Safety: Manufactured Stalemate and Deferral

The stalemate regarding **BESS fire safety**, as embodied in the deferral of Requirement 7, is a direct consequence of the Applicant's **calculated failure to engage proactively** with the relevant fire authorities throughout the Examination. This lack of engagement was not an oversight, but a strategic objective designed to manufacture a **"procedural stalemate"** thereby justifying the deferral of primary safety scrutiny to a post-consent phase. The manufacture of a 'procedural stalemate' regarding BESS fire safety is a direct circumvention of the **Section 37 Planning Act 2008 front-loading requirement**. Deferring Requirement 7 to a post-consent phase ignores the **March 2026 BSR operational updates**, which set a strict **36-week cap** for complex safety cases to be resolved *within* the regulatory window, not after it. This deferral constitutes an **unlawful delegation of the SoS's statutory duty** to be satisfied of safety at the point of inception

Simultaneously, the failure of the fire authorities to progress their own assessments has created a **vacuum of accountability**. This mutual abdication of responsibility has allowed the Applicant to

bypass the **"front-loading" requirements of Section 37 of the Planning Act 2008**, replacing rigorous public examination with a mechanism of **"staged ignorance."** To delegate the management of high-consequence life-safety risks—such as **thermal runaway**—to a post-consent process under these conditions is fundamentally irrational and a further breach of the **Tameside Duty of Inquiry**.

6. The Engineering Impossibility of Mitigation

The fundamental science establishes that the cumulative impact of the **Baiamonte 11.7 times peak discharge amplification factor**, when coupled with the uncompensated loss of floodplain storage masked by the **"5mm fiction,"** creates a physical state that **simply cannot be "engineered away."**

This is not a matter of granular design adjustment; it is a **terminal failure of the project's hydraulic principle**. No Requirement can cure a hydraulic impossibility; a Requirement cannot repeal the Law of Conservation of Mass. The sheer volume of water— up to nearly twelve times the modelled peak—displaced into a reduced storage area makes **regional and local flooding an engineering certainty**. It is, therefore, fundamentally irrational to leave the resolution of this mathematical impossibility to **under-resourced regulators** who have already admitted a lack of technical capacity and have proven susceptible to the Applicant's influence. To do so is to sanction a project that is, by the laws of physics, **unsafe at its point of inception.**

This is not 'speculative science'; the **January 2026 NPS (EN-1 & EN-3)** and **March 2026 PPG updates**, alongside the **Pickering [2025] EWCA Civ 378** mandate, now explicitly require granular, site-specific proof of safety and cumulative impact assessment at the application stage, not post-consent. This deliberate strategy was manufactured to create a 'procedural stalemate,' specifically to move fundamental life-safety scrutiny out of the public Examination and into the private, post-consent forum of **Requirements 7 and 22**. Unlike the administrative balancing of environmental credits in *Fry*, primary life-safety cannot be deferred; this systemic subversion of the Planning Act 2008 has been used to secure an administrative 'free hand' for the Applicant, and it cannot be allowed to stand.

7. The WFD Legal Fatality and Inevitable Deterioration

The postponement of the **Stage 3 Water Framework Directive (WFD) Assessment [REP8-017 and REP 8 -016]** is both legally and physically impossible to justify. Given the up to **11.7 times peak discharge amplification factor (Baiamonte)** and the Applicant's **refusal to disclose the underlying runoff coefficients**, a deterioration in water quality through massive sediment mobilization is a **mathematical certainty**.

Under the **"no deterioration" principle** established in **Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland (Case C-461/13) [2015] ECR I-433 ("Weser")** and the domestic application in **Secretary of State for Environment, Food and Rural Affairs v R (on the application of Pickering Fishery Association) [2025] EWCA Civ 378**, the Secretary of State is **legally prohibited** from delegating this assessment to a post-consent phase once a risk of deterioration has been identified.

Furthermore, the Secretary of State is **precluded from granting a derogation under Article 4(7) of the Water Framework Directive 2000/60/EC** because the evidence in **[REP4-079]** confirms that the project fails to meet the mandatory cumulative tests required for such an exemption. To allow the Applicant to bypass these prospective legal duties via a post-consent Requirement is to sanction a **pre-determined violation of the law** that—much like the loss of floodplain storage—cannot be engineered away by under-resourced regulators.

8. The Breach of Open Justice and the Selective RfI Process.

The selective nature of this Request for Information (RfI) process constitutes a profound breach of the principle of **Open Justice** and directly subverts the inquisitorial mandate of the **Planning Act 2008**. I formally query why this RfI has been addressed almost exclusively to the Applicant and the statutory consultees. The matters raised—specifically the hydrological safety of the Trent floodplain and the catastrophic risks associated with BESS fire safety—are the precise points where these statutory bodies have been documented as failing in their professional and statutory duties.

To exclude the Interested Parties (IPs) who provided the primary forensic evidence of the **"systemic collapse of scientific rigour"** from commenting on the "suitability" of revised DCO Requirements is a calculated subversion of the process. The exclusion of the community and independent experts who led the challenge on BESS safety and fire-risk mitigation is particularly egregious; it isolates the Secretary of State from the only parties capable of identifying the technical deficits in the Applicant's "procedural stalemate."

By excluding these voices, the SoS is effectively **'curating' the Administrative Record** to ensure he receives only a "sanitized" narrative from bodies whose competence and impartiality are currently under challenge. This violates the **January 2026 NPS (EN-1)** commitment to transparency and the **Tameside Duty of Inquiry**, which requires the SoS to inform himself of all relevant perspectives. This selective consultation renders the public examination process—and the safeguards intended by it—a **procedural nullity**.

9. Verification of Strategic Evasion: The Applicant's Systematic Failure to Engage with Scientific Challenges

The Secretary of State must evaluate the Applicant's uniform failure to provide a substantive technical answer to a single scientific query raised throughout the Examination. Without exception, every technical challenge—whether concerning the **Baiamonte 11.7x factor**, BESS thermal runaway, or Water Framework Directive (WFD) deterioration—has been met with generic, "boilerplate" deferrals stating that definitive data will only be available in the final Environmental Statement or post-consent. This calculated avoidance is a deliberate strategy to shield the project from expert scrutiny during the public phase of the Examination. By consistently substituting engineering rigor with boilerplate evasion, the Applicant has manufactured a "procedural stalemate" specifically to secure the "free hand" provided by **Requirements 7 and 22**. This effectively forces the Secretary of State to delegate primary safety determinations to a private, post-consent forum where public and expert counter-evidence is legally excluded.

10. Notice of Nullity and the Suppression of Evidence

The Secretary of State is hereby reminded that he has been on notice that the Examination has been a **nullity** since 31 October 2025. Any attempt to 'cure' terminal safety deficits via post-consent Requirements (7 and 22) is a direct violation of the **January 2026 NPS** and the **March 2026 PPG**. We contend that the current application lacks the **'jurisdictional prerequisites'** for a lawful grant. Any DCO issued in the face of these mathematical and legal certainties will be **void ab initio** and subject to immediate application for quashing in the High Court.

Reservation of Rights (Litigant in Person) This submission is made under explicit protest and strictly without prejudice to the Interested Party's right to challenge the lawfulness and procedural integrity of the Examination. The Interested Party's continued participation is legally compelled by the statutory process (Planning Act 2008) to maintain standing, but this action does not constitute a waiver, acceptance, or validation of any alleged procedural impropriety, ExA bias, unlawful

censorship, or fundamental flaws in the Administrative Record. All rights to seek Statutory Appeal and Judicial Review against the final Development Consent Order decision are fully reserved.

Conclusion

The evidence before the Secretary of State is no longer a matter of conflicting professional opinion; it is a matter of documented institutional failure and mathematical certainty. The Applicant's conduct throughout the Examination—defined by a refusal to provide essential runoff coefficients and a strategic reliance on private negotiations—has terminally compromised the integrity of the planning process.

By attempting to resolve these fatal flaws through a private, post-consent forum involving regulators who have already admitted their own lack of competence, the Secretary of State is inviting a project that is unsafe by design and unlawful by procedure. The only rational and lawful course of action, consistent with the **Tameside Duty of Inquiry** and the ***Shadwell*** mandate, is to refuse the Order. Any attempt to grant consent in the face of these terminal defects would itself be unlawful and susceptible to immediate challenge.

Yours sincerely,

Stephen Fox

Interested Party Reference: [redacted]

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Regards

Stephen