

White Rose Carbon Capture and Storage (CCS) Project

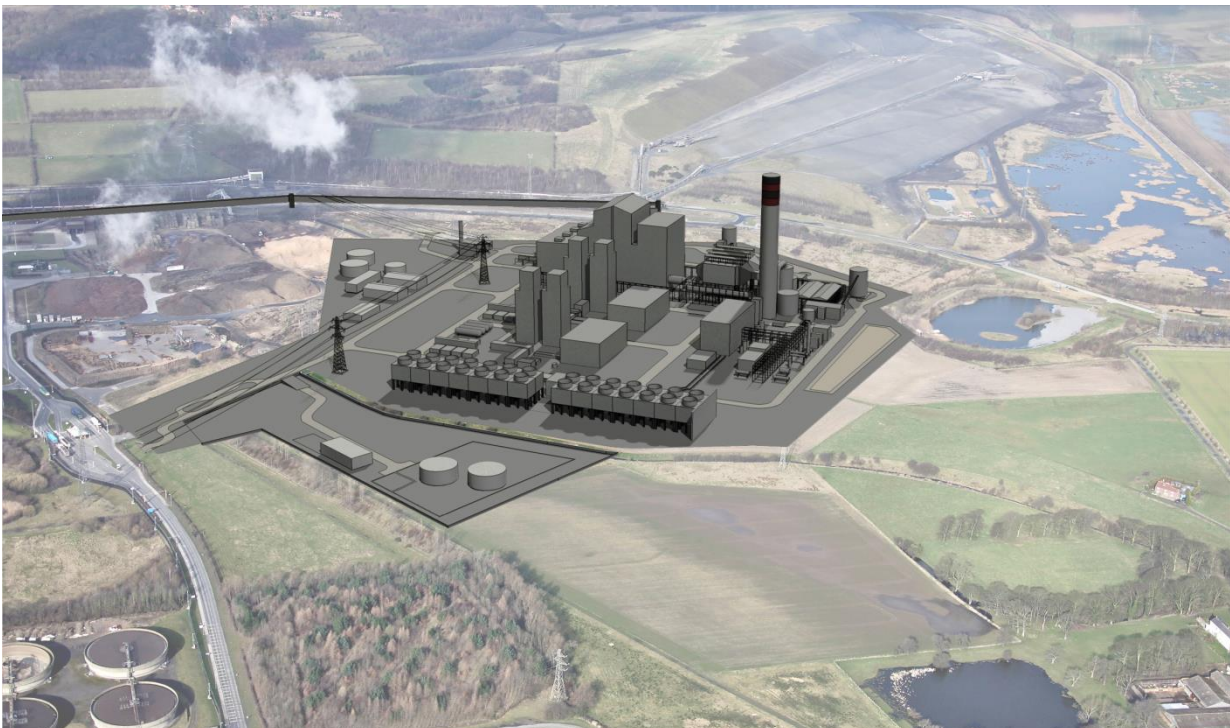
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The White Rose CCS (Generating Station) Order

Land adjacent to and within the Drax Power Station, Drax,
near Selby, North Yorkshire

Compulsory Acquisition Status Update - Affected Parties

The Planning Act 2008



Applicant: Capture Power Limited
Date: July 2015

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1.0 INTRODUCTION

- 1.1 This document has been prepared in respect of Capture Power Limited's (the Applicant's) application (the Application) submitted, pursuant to Section 37 of The Planning Act 2008, for a Development Consent Order ('DCO') for the White Rose Carbon Capture and Storage ('CCS') Project (the 'Project') to the Secretary of State c/o The Planning Inspectorate ('PINS') on 21 November 2014. The Application was accepted for Examination on 17 December 2014.
- 1.2 The Project comprises the construction, operation and maintenance of a new thermal generating station (an ultra-supercritical oxy-fuel coal-fired power plant of up to 448 megawatts gross with the ability to co-fire biomass) that will be fitted with CCS technology in addition to associated development, on land within and adjacent to the existing Drax Power Station site, Drax, near Selby, North Yorkshire, YO8 8PH, within the administrative areas of North Yorkshire County Council and Selby District Council.
- 1.3 This document sets out the current status of negotiations with those Affected Parties listed in the Book of Reference, by way of further response to Question 1.1 of the Examining Authority's First Written Questions (Document Ref. 9.1, submitted at Deadline 1) and the Schedule of Third Party Rights Holders (Document ref 3.5, submitted at Deadline 2). A verbal update in respect of the matters set out in this document was provided by Counsel for the Applicant at the Compulsory Acquisition Hearing held on 2 July 2015.

2.0 APPLICANT'S STATUS UPDATE

2.1 For the purpose of this update the Affected Parties specified in the Book of Reference have been allocated into the following categories based on the nature of their land interests:

1. Owner / Freeholder;
2. Tenants / Occupiers;
3. Statutory Undertakers; and
4. Other Third Party Rights Holders.

FREEHOLDERS

(a) Drax Power Limited

2.2 Drax Power Ltd ('DPL') is the registered freehold owner of the majority of the Order land, including the permanent operational site, laydown areas (other than the land upon which the jetty structure sits) and the majority of rights plots. The plots for which this is not the case are:

- Plots within the adopted highway, although wherever DPL's land fronts on to the highway it is the presumed freehold owner of the sub-soil. This is a rebuttable presumption and whilst no evidence of ownership by other parties is known about, the compulsory acquisition ('CA') powers are required in order to ensure that the land will be available for the Project;
- Plot 30, a small unregistered plot the ownership of which is unknown, and which is part of the route of the diverted 11kV electricity cable along Pear Tree Avenue. Plot 30 is a drain adjacent to a lane. DPL owns the land on either side of the drain which may mean that it has a claim to own plot 30 but this is not certain. CA powers are required in order to ensure that this area of land will be available for the Project; and
- Certain plots which concern National Grid Electricity Transmission (NGET), The Crown Estate, North Yorkshire County Council and the Environment Agency, which are dealt with separately below.

2.3 Instead of relying on the exercise of compulsory acquisition (CA) powers the Applicant is seeking to obtain the necessary land and rights from DPL by way of mutual agreement, pursuant to the following documents:

- a) an option agreement (exercisable by CPL) for the grant of the lease of the oxy-power plant (OPP) Site;
- b) the draft lease for the operational power plant site ('OPP Site') (the OPP Site Lease);
- c) an option agreement for the grant of the lease of the temporary laydown areas; and
- d) the draft lease for the laydown areas,

(the **CPL Property Agreements**).

2.4 Negotiations in relation to the relevant documents are progressing well and the intention is that the binding option agreements would be entered into on or about 31 July 2015 with the negotiated forms of the respective draft leases appended to the relevant agreement. The option agreements would secure the ability for CPL to call for the leases to be granted at the relevant point in time. The final form leases will then be entered into on or immediately prior to financial close in respect of the Project.

2.5 The intention is that the CPL Property Agreements will contain mutual protective provisions to protect the existing assets belonging to DPL and the operation of their existing power station at the site, as well as the OPP Site and assets that will be owned / operated by CPL.

2.6 DPL is also in the process of negotiating a number of property documents with National Grid Carbon Ltd ('NGCL') with respect to the land requirements for the CCS pipeline project that they are promoting to support the White Rose CCS Generating Station (the **NGCL Property Agreements**). The Applicant has been directly involved in discussions with DPL and NGCL in relation to the NGCL

Property Agreements as once the lease for NGCL's Pig Trap (its apparatus to be sited adjacent to the OPP Site) ('the Pig Trap Lease') and the OPP Site Lease are entered into, CPL will be interposed (replacing DPL) as landlord under the Pig Trap Lease.

- 2.7 DPL, CPL and NGCL concluded a jointly agreed and signed statement (in the form of a Memorandum of Understanding dated 1 May 2015 (the 'MoU')) for the purposes of the NGCL DCO process. The MoU documents the status of negotiations in relation to the CPL Property Agreements and the NGCL Property Agreements (together the 'Property Agreements') and regulates, in relation to the Pig Trap Site, the exercise of CA powers (if granted by either the Applicant's DCO or the NGCL DCO) prior to finalisation of the Property Agreements.

(b) National Grid Electricity Transmission (NGET)

- 2.8 See below statutory undertakers section.

(c) The Crown Estate

- 2.9 The Crown owns the plots of land within the current or previous extent of the River Ouse (the extent of the river bank appears to have altered, and both DPL's and the Crown's titles now cover one part), and the Crown is the owner of the jetty. DPL owns the land around the jetty including the access road, and has rights to use the jetty pursuant to an easement dated 26 February 1968. The Crown Estate submitted a letter of consent to the inclusion of their land within the DCO and CPL is content that it has the rights necessary to secure use of the Jetty.

(d) Public bodies - North Yorkshire County Council / Environment Agency

- 2.10 North Yorkshire County Council ('NYCC') is listed in the Book of Reference, but this is in relation to its role as local highway authority in respect of adopted highways and public rights of way. There is no proposal to stop up any highways as part of the Project, and the highways will therefore all remain vested in NYCC. Other provisions in the Draft DCO deal with works within streets and powers to temporarily stop up streets and public rights of way.
- 2.11 Similarly, the Environment Agency ('EA') is listed in the Book of Reference in its role as river authority and this will not be affected by the DCO. CPL does not propose to seek powers of compulsory acquisition in respect of the interests of these public bodies.

Existing Leaseholders / Occupiers

(a) David Charles Darsie Watson and Richard Ian Watson – Tenant and Occupier (OPP Site and Laydown Areas)

- 2.12 Much of the DPL freehold land required for the OPP Site and temporary laydown areas is currently in agricultural use under an agricultural lease to the above Tenant, as noted in the Book of Reference. The relevant plots that are covered by the Watson tenancy are 16-19, 23-27, 29 and 31. DPL, on behalf of the Applicant, has been negotiating with the Tenant to seek a surrender of the existing lease and to grant farm business tenancies that will facilitate the granting of the necessary property rights by DPL to CPL at the relevant time.
- 2.13 DPL is in the process of finalising the commercial terms of the following agreements in respect of this tenancy in advance of signature:
- Notice to Quit in respect of the existing agricultural tenancy;
 - Agreement for the Grant of New Tenancies and Option to Lease;
 - Long Farm Business Tenancy (in respect of land not within the Order land); and
 - Periodic Farm Business Tenancy (terminable on one month's notice, in respect of land within the Order land),

(the **Watson Agreements**).

- 2.14 The purpose of the Watson Agreements is to secure vacant possession of the land that is the subject of the agricultural lease, in accordance with the timescales of the Project.

- 2.15 Conclusion of the Watson Agreements will secure the availability of the land and facilitate the unhindered grant by DPL of the Property Agreements. In the unlikely event that it is not possible to secure the conclusion of the Watson Agreements then CPL will require recourse to the CA powers sought within the draft DCO.

(b) Martin Nunns – Tenant and Occupier (Barlow Mound)

- 2.16 Mr Nunns has the benefit of a grazing tenancy granted by DPL in respect of certain parts of Barlow Mound. A part of Mr Nunns' grazing tenancy is included within the area for ash storage (Work No. 3). In the Book of Reference Mr Nunns' tenancy was noted in relation to plots 2 and 4, however, further investigations have determined that it is only relevant for the purposes of plot 4. The tenancy also covers various other parts of Barlow Mound which are not relevant to the Project.
- 2.17 CPL (through DPL who will be contractually responsible for the storage of ash) will seek to avoid impacting on the tenanted area when carrying out operations on Barlow Mound, but the land is included so as to ensure it is available. The terms of the tenancy make provision for reductions to its area required for the purposes of operations and termination. It is anticipated that, if the tenanted area were to be impacted, the provision to reduce the tenanted area would be relied on in preference to using powers of compulsory acquisition, although these are required as a default power to ensure the land would be available.

(c) Public bodies - Selby Area Internal Drainage Board / Heritage England

- 2.18 Selby Area Internal Drainage Board ('Selby IDB') (plots 7 to 9, 15 to 17, 20, 22 to 28, 30, 48, 54, 58) – Selby IDB is listed in its statutory role as drainage board responsible for Carr Dyke, Sand Lane Drain and Drain Nos. 44, 20/9 and 20/10. CPL will ensure that the access required by Selby IDB is continued, and this is being discussed with the IDB.
- 2.19 English Heritage (now Heritage England ('HE')) (plots 18, 19) – similarly to Selby IDB, HE is included in its statutory role (in relation to the Priory site).

(d) Cemex UK Operations Ltd (plot 11)

- 2.20 Cemex are the tenants in respect of an area of the existing DPL operational site. There is an overlap between a small area of the land that is the subject of the Cemex lease and plot 11 (part of the infrastructure connections area on the south west side of the Order land). The practical effect is that CPL's ash conveyors would have to pass over a small strip of land that is currently leased to Cemex. CPL is investigating the nature of any consent or agreement that may be required from Cemex in relation to the proposed arrangements. If CPL is unable to secure any necessary agreement then it will need to rely on the CA powers sought in the DCO.
- 2.21 In relation to the rights of access enjoyed by Cemex see further below.

(e) Diane Hey / Timothy Hey (plot 31)

- 2.22 Mr and Mrs Hey were included in the Book of Reference in error, based on information provided by another neighbouring landowner and can now be removed.

(f) Drawsign Image Engineering Ltd (plot 50)

- 2.23 The occupational interests held by Drawsign have been confirmed as being outside of plot 50 (in respect of which they were included in the Book of Reference) and accordingly the DCO redline. Drawsign can now be removed as an occupier from the Book of Reference.
- 2.24 In relation to the rights of access enjoyed by Drawsign appurtenant to the Drax Business Park, see further below.

STATUTORY UNDERTAKERS – OWNERS AND THOSE WITH APPARATUS

- 2.25 The following statutory undertakers have been identified as affected persons on the basis that they are known to have apparatus in, on, under or adjacent to the land that is the subject of the draft Order. An update in terms of the status of negotiations with each statutory undertaker is included below.

(a) National Grid Electricity Transmission plc (NGET)

- 2.26 NGET is the registered freehold owner of the 400kV electricity sub-station and adjacent land (plots 34, 35 and 38), and is also presumed to be the owner of the highway sub-soil on New Road which fronts the sub-station.
- 2.27 As confirmed to the Examining Authority at Deadline 3, CPL has entered into a Connection Agreement with NGET on 1 June 2015 and the principle of the grid connection for the Project is therefore secured.
- 2.28 CPL and NGET have also agreed the terms of protective provisions relating to the NGET apparatus . NGET has provided a letter to the Examining Authority (dated 1 July 2015) confirming that agreement has been reached and that, once the provisions have been formally executed, NGET will withdraw their representation.
- 2.29 CPL is content that it will not need to rely upon powers of compulsory acquisition in order to obtain the necessary land rights and has agreed not to exercise any such rights, pursuant to the agreed terms of the protective provisions. CPL will secure these rights by way of agreement with NGET in the form of the Connection Agreement and an Interface Agreement. As noted above, all Connection Agreement documentation was signed by both parties on 1 June. The Interface Agreement has not yet been entered into and would not ordinarily be entered into at this stage. The form of Interface Agreement is prescribed pursuant to the Connection and Use of System Code (CUSC) and it is CPL's understanding that NGET cannot refuse to enter into this agreement once a connection offer has been signed.

(b) Northern Powergrid (Yorkshire) plc (previously Yorkshire Electricity Group, Book of Reference to be updated in respect of their name)

- 2.30 Technical discussions were held in 2014 with Northern Powergrid (Yorkshire) plc concerning the diversion of a section of their 11kV overhead line that crosses part of the temporary laydown area. It is proposed that Northern Powergrid will carry out the diversion works on behalf of CPL. CPL have made contact with the lawyers acting on behalf of Northern Powergrid (Watson Burton) for the purpose of seeking to agree the terms of protective provisions in relation to these and other assets belonging to Northern Powergrid. CPL have not to date received any comment from Northern Powergrid indicating that the standard DCO protective provisions are not sufficient. In the event of any contrary indications CPL will endeavour to negotiate suitable bespoke terms.

(c) Yorkshire Water Services Limited

- 2.31 CPL has contacted Yorkshire Water and its solicitors with a view to agreeing the terms of the protective provisions in respect of water/sewerage apparatus. Yorkshire Water's solicitors are seeking instructions from their client and have undertaken to revert once they have done. CPL has not received any comment to date indicating that the standard DCO protective provisions are not sufficient. In the event of any contrary indications CPL will endeavour to negotiate suitable bespoke terms.

(d) British Telecommunications plc (BT)

- 2.32 The Applicant has included protective provisions (for the benefit of telecommunications providers) in the Draft DCO submitted at Deadline 2 which sufficiently protect their apparatus, and the position remains that no representations have been submitted on behalf of BT.

(e) Drax Power Limited

- 2.33 See above in freehold section.

(f) National Grid Carbon Limited

- 2.34 NGCL is not currently an affected party but is relevant as their DCO scheme, and land included within it, overlaps with the WRCCS Order limits. See above in freehold section.

(g) EDF Energy plc / E.ON UK plc / RWE NPower Group

- 2.35 These parties are considered together as they may have rights (retention, use, removal, relocation, replacement, maintenance and security of and access to assets and the provision of services on or in land) as contained in an Interface Agreement dated 31 March 1990 as well as rights to transport goods over land and berthing rights contained in Agreements dated 31 March 1990. These rights were granted widely over land upon the privatisation of the electricity industry and it is not considered that these parties would seek to exercise any of the rights in relation to assets or the provision of services, now that the power station (formerly owned by the Central Electricity Generating Board) is owned by DPL and they do not undertake any generation activities or have any assets on the site.
- 2.36 In terms of the berthing rights, it is considered that there is a remote risk that the relevant parties may seek to exercise these rights for the purposes of transporting goods in connection with the operation and use of their own assets on other sites (although no such sites are known to exist locally). Therefore, CPL has written to the relevant parties in the context of the berthing rights, seeking confirmation that they do not propose to exercise the relevant rights. No responses have been received to date.

(g) National Grid Gas plc (NGG)

- 2.37 The solicitors acting for NGG have confirmed that NGG does not have any apparatus within the Order limits and this party is therefore no longer relevant to the Project.

OTHER PERSONS WITH INTERESTS – VARIOUS

- 2.38 In respect of the other persons with interests in the Order land (as listed in the Book of Reference) the Applicant provided a detailed narrative in the Schedule of Third Party Rights Holders (Document Ref. 3.5, submitted at Deadline 2).
- 2.39 As noted in that Schedule the large majority of the rights within this category derive from historic conveyances, when areas of land (including a limited number of the DCO plots on the periphery of the Order land) were sold by the Secretary of State for Defence to the Central Electricity Generating Board. These rights are theoretically applicable but given their nature it is highly unlikely that they would ever be exercised in practice, and this has informed the basis of approach that the Applicant has taken in relation to these rights.
- 2.40 The affected parties contained in the Schedule can be categorised as follows based on the nature of the rights and the proposed course of action that the Applicant proposes to adopt:
- a) Rights in respect of which further due diligence has demonstrated that they do not in fact relate to land that is within the Order limits. The Applicant proposes to update the Book of Reference to remove such rights.
 - b) Rights that, whilst in existence, are sufficiently remote in their application that the Applicant considers that implementation of the DCO will not interfere with the interests or require them to be suspended or extinguished. In respect of such rights the Applicant does not propose to rely on the powers of compulsory acquisition or seek their discharge or suspension and has not, therefore, sought to agree statements with those benefitting from the rights at this stage.
 - c) Rights that may be impacted to a minor extent but are unlikely to be prevented or extinguished as a result of the Project. CPL has contacted the relevant rights holders with a view to achieving a mutually acceptable acknowledgements / agreements in lieu of reliance upon powers of compulsory acquisition. CPL wrote to the relevant parties in advance of Deadline 2 to explain the position and to invite comments regarding the same. The only response that has been received to date is a request for further information from Barlow Parish Council (in respect of interest ID 63) and this information has been duly provided.

PARTIES WITH INTERESTS THAT ARE NOT CURRENTLY INCLUDED WITH THE BOOK OF REFERENCE

- 2.41 The rights of access enjoyed by Lytag Ltd (who operate an adjacent industrial facility on the wider Drax site) over the private roads within the Drax existing operational site could be impacted to some extent by virtue of the proposal to permit traffic for the Project to use the same route. Lytag was not

included within the original Book of Reference due to a land referencing error relating to how Lytag accesses its site. CPL has made contact with Lytag to discuss the Project and Lytag's access rights, and to express CPL's intention to agree proposals in relation to co-ordinated rights of access that seek to minimise disruption to the Drax road network. CPL is continuing to engage with Lytag in relation to the interface between the respective rights of access and is confident that matters will be concluded successfully.