

BP'S RESPONSE TO DEADLINE 5

1. BP'S RESPONSE TO THE EXAMINING AUTHORITY'S FURTHER WRITTEN QUESTIONS

- 1.1 BP Exploration Operating Company Limited ("bp") has prepared this submission in response to the Examining Authority's ("ExA") further written questions published on 30 May 2022, and specifically to those questions directed towards bp.
- 1.2 More generally, bp notes Orsted Hornsea Project Four Limited ("Orsted") is proposing to provide their detailed responses in relation to bp's previous submissions into the Hornsea Project Four ("Hornsea 4") DCO Application at this Deadline 5. In anticipation of this, bp acknowledges the new interim Deadline 5a set for 4 July 2022 where the ExA has requested responses to Deadline 5 submissions in time to inform the proposed Hearings later that month. bp will endeavour to provide any further responses to Orsted's submissions at that Deadline 5a; however, depending on the nature/detail of Orsted's submissions, it may be that certain elements need to be deferred until the Hearings and the subsequent written representations at Deadline 6.
- 1.3 For ease of cross-reference, bp has set out the ExA's question in italics and then responded underneath.

2. RESPONSE TO QUESTION CA.2.8

"Burbo Bank DCO and the implications for Part 4 of the BoR

To Applicant:

Please review your response to the ExQ1 CA.1.18 [REP2-038] in light of the response from the Crown Estate [REP2-095].

To bp Exploration Operating Company Limited:

In your D2 response [REP2-062] to ExQ1 CA.1.18, you advised that you considered that the question would be more appropriately answered by the Applicant and the Crown Estate but that you would review their answers and respond at D3. No response seems to have been submitted. Can you therefore review the response provided by the Applicant [REP2-038] and the Crown Estate [REP2-095] and comment? If you have responded signpost where this can be found."

- 2.1 bp notes the responses provided by Orsted and the Crown Estate and confirms it does not have anything further to add to its original response to CA.1.18 at Deadline 2 ([REP2-062](#), electronic page 14).

3. RESPONSE TO QUESTION INF.2.1

"Viability and the Interface Agreement

Both parties have made various references [REP1-057, REP3-045, REP3-047 and REP4-059] your respective opinions that the application or disapplication of the Interface Agreement would render your respective schemes unviable. Provide evidence to support your claim."

- 3.1 bp is conscious that a number of detailed submissions have been made in the examination to date, focussing broadly on (i) the prospective interface between the respective projects and their ability, or not, to co-exist in an overlapping area of seabed, and (ii) the need to

disapply the Interface Agreement ("IA") which purports to govern such interface/co-existence.

- 3.2 In responding to this question concerning the application of the IA rendering the 'scheme' of the Northern Endurance Partnership ("NEP") unviable, the components of/context to the scheme need to be reviewed and considered before addressing the impact that Hornsea Project 4 and the existence of the IA have on the viability of the scheme.

Context

- 3.3 bp is the appointed operator of the NEP, which includes bp, Equinor, National Grid, Shell and TotalEnergies. The NEP proposes to construct and operate a CO₂ transportation and storage system that will enable CO₂ from certain carbon capture projects on Teesside and the Humber to be transported to a geological storage facility in the 'Endurance' saline aquifer, a geological reservoir below the Southern North Sea seabed (the "Endurance Store") (such component parts collectively referred to as the "NEP Project" for ease).
- 3.4 The carbon capture projects across Teesside and the Humber, enabled by the NEP Project, are together known as the "East Coast Cluster" (or "ECC"), which was selected in October 2021 as one of the UK's first two carbon capture, usage and storage ("CCUS") clusters following a successful bid to the Department for Business, Energy and Industrial Strategy ("BEIS").
- 3.5 Teesside and the Humber represent almost 50% of the UK's current industrial cluster CO₂ emissions as defined by BEIS, and the proposed plan for deployment of CCUS by the ECC (the "ECC plan") by the mid-2020s will play a key role in reaching the UK's target of net zero by 2050. The ECC plan aims to deliver 20 million tonnes per annum ("MTPA") of CCUS capacity by 2030, with further expansion to 27MTPA of CCUS capacity by 2035.
- 3.6 **Importantly, the ECC plan is only viable if the NEP Project is permitted to develop to its full extent in accordance with the bid submission to BEIS, which was premised on the Endurance Store achieving its full capacity.**
- 3.7 A DCO application for the Teesside onshore elements of the NEP Project (the "Net Zero Teesside DCO" or "NZN DCO") was made in mid-2021 and examination commenced on 10 May 2022. Applications for consent for the offshore elements of the NEP Project (in particular for the Endurance Store itself) will be made from September 2022.
- 3.8 The area of seabed subject to the agreement for lease granted by The Crown Estate ("TCE") in relation to Hornsea Project 4 partly overlaps with the area of seabed subject to the agreement for lease granted by TCE in relation to the Endurance Store (the "Overlap Zone").
- 3.9 In the event that the Hornsea 4 DCO is granted in a form allowing wind infrastructure to be located across the entirety of the Overlap Zone, the Endurance Store could only be developed outside of the Overlap Zone, meaning the Endurance Store would only achieve approximately 30% of its potential capacity **and rendering the ECC plan unviable.**
- 3.10 As such, to safeguard the viability of the ECC plan, bp has put forward proposed protective provisions for inclusion in the Hornsea 4 DCO which precludes the construction of wind infrastructure in the area of the Overlap Zone which is specifically required for the Endurance Store (the "Exclusion Area").
- 3.11 To confirm, it is the **ECC plan which would be rendered unviable** in circumstances where, contrary to bp's proposed protective provisions, Hornsea Project 4 was authorised to construct wind infrastructure in the Exclusion Area. The **NEP Project would still remain viable, in-principle**, at this reduced capacity (subject though, to the submissions in relation to the Interface Agreement below). However, losing up to 70% of the Endurance Store would represent up to 10-11MTPA which is greater than 50% of the Government's minimum CCUS capacity target for 2030, stated in the UK's Net Zero Strategy, "Build Back Greener" (Oct 2021).

Interface Agreement

- 3.12 bp has previously set out the background to and purpose of the IA (see section 15 of its Deadline 1 submission, [REP1-057](#), electronic page 140) and why it is necessary and appropriate in the public interest to disapply its effect pursuant to bp's proposed protective provisions (Annex 3 to its Deadline 2 submission, [REP2-062](#), electronic page 16 and Appendix 3 of its Deadline 3 submission, [REP3-047](#), electronic page 69).
- 3.13 bp's proposed protective provisions would disapply the effect of the IA and preclude any claim to be made, or award granted, for any damages resulting from an alleged antecedent breach to the same prior to the date of the Hornsea 4 DCO.
- 3.14 The primary reason for the proposed disapplication is the potential compensation liability that the IA may generate.
- 3.15 bp's detailed summary of the IA in its Deadline 3 submission (Appendix 3 of its Deadline 3 submission, [REP3-047](#), electronic page 69) explained the provisions of the IA and bp would highlight in particular the effect of clause 3.4 (row 13 on electronic page 73). This provision governs the situation where both parties are deemed to have entered their 'consenting phase' (such definition explained in row 10, clause 3.1 and electronic page 73) and a party is proposing to move to the next stage and confirm the proposed location of their infrastructure and seek 'approval' to the same from TCE. In those circumstances, as highlighted in the comments against clause 3.4, there is provision for the counter-party to claim for a 'material adverse effect', potentially giving rise to a claim for compensation, which could be ultimately settled by Expert determination.
- 3.16 In the context of where both projects could co-exist (as was the assumed position at the time of the creation of the IA in 2013), the provisions in clause 3.4 address the framework through which development solutions and any necessary modest compensation payments could be made. However, in the present circumstances, where co-development in the Exclusion Area will not be possible (in bp's submissions), then its provisions introduce too great an uncertainty/risk to regulate the matter.
- 3.17 Orsted have made a number of submissions (for example, paragraphs 5.11 to 5.12 of their Deadline 1 submission, [REP1-057](#) (electronic page 16)) to the potential financial implications which would result from being unable to develop in the Exclusion Area. Whilst bp does not agree with the premise of those submissions, including that it follows that bp should be liable for any such resultant financial loss, it is possible that an Expert determining a dispute in accordance with the provisions of the IA will agree, which could then trigger a significant and currently unquantifiable compensation claim.
- 3.18 The financing model for the NEP Project (discussed in bp's Deadline 1 submission ([REP1-057](#), Appendix 2, Section 9 (electronic page numbers 132 to 134)) means that NEP will have limited ability to cover additional exceptional costs such as a significant compensation payment. As such, the risk of a significant compensation claim pursuant to the IA threatens the investability and financiability of the NEP Project.
- 3.19 In circumstances where the IA remained extant, and the risk of significant compensation remained, it is likely that NEP would elect not to propose utilising the part of the Endurance Store within the Exclusion Area so as to avoid the potential for Orsted to allege that a 'material adverse effect' existed and seek to be awarded such significant compensation.
- 3.20 Whilst this would avoid the potential liability, it would mean that the NEP project would only be built outside of the Exclusion Area, so limiting the Endurance Store to 30% of its capacity. As above, **this would render the ECC plan unviable**. Further, losing up to 70% of the Endurance Store would represent up to 10-11MTPA, which is greater than 50% of the Government's minimum CCUS capacity target for 2030, stated in the UK's Net Zero Strategy, "Build Back Greener" (Oct 2021).
- 3.21 For completeness, the element of the provision preventing any claims being made, or award granted, for any antecedent breach of the IA prior to the date of the Hornsea 4 DCO coming into effect is necessary to mitigate the risk of Orsted taking action against bp under the terms of the IA for bp seeking and obtaining such protective provisions and making

representations on the same (at a time when the IA existed and before its disapplication by the DCO).