

Net Zero Teesside Project (EN010103)

Development Consent Order Written Representations made on behalf of Air Products Public Limited Company and Air Products Renewable Energy Limited

(made in accordance with the Examination Timetable and Procedure issued under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010)

Introduction

These representations are made on behalf of Air Products Public Limited Company (“**APPLC**”) and Air Products Renewable Energy Limited (“**APRE**”) in response to the application for a Development Consent Order (“**DCO Submission**”) submitted by Net Zero Teesside Power Limited “**NZT Power**” and Net Zero North Sea Storage Limited “**NZNS Storage**” (together forming the “**Applicant**”) to the National Infrastructure Directorate on 19 July 2021 and pursuant to Directions issued by the Examining Authority on 19 May 2022.

Reference is made to the Pre-Application Consultation Response submitted by APPLC and APRE dated 21 January 2021 (“**PCR**”) and to the Initial Representations submitted by APPLC and APRE on 17 December 2021 (“**IR**”).

APPLC and APRE have interests in and around the vicinity of the area proposed for a Development Consent Order (“**DCO**”). APPLC and APRE also make these written representations for and on behalf of each and every other entity within the Air Products group of companies that may be affected by the application for the DCO.

APPLC and APRE are a world-leading Industrial Gases company, providing atmospheric and process gases and related equipment and is also the world’s leading supplier of liquefied natural gas process technology and equipment.

In the area affected by the proposed Project, APPLC and APRE are concerned with the supply of gas and other utilities to local installations and form a fundamental part of the local energy industry. APPLC and APRE supply, amongst other things, Natural Gas, Oxygen and Water, via pipelines, to refineries which are critical to their operation. In summary, APPLC’s and APRE’s interests within the area proposed for the DCO comprise of, without limitation, a 6-inch natural gas pipeline, a further natural gas pipeline, a 10-inch oxygen pipeline and various other water pipelines (of various sizes).

As a consequence, APPLC and APRE are Category 1 statutory consultees as defined by Section 44 of the Planning Act 2008.

The Applicant’s proposals to permanently acquire land and rights has the potential for conflicting with and compromising the security of existing pipes and associated infrastructure owned and/or used by APPLC and APRE in connection with their pre-existing business activities.

It is therefore critical that, notwithstanding the Project, APPLC and APRE can continue to use the pipelines in the manner in which they are accustomed to and which is vital to the local energy industry.

Furthermore, to the extent that land is acquired compulsorily by the Applicants (or any associated entity) and/or is due to be granted a legal interest in land through which APPLC and APRE's pipelines pass, APPLC and APRE must be granted sufficient rights and interests to maintain its use which has been established. Appropriate protective provisions are required to maintain the consistency of supply, safe use and maintenance of the infrastructure.

APPLC's and APRE's Concerns

APPLC and APRE have a number of serious concerns about the Project as currently proposed and believe the documentation provided by the Applicants to date falls short of demonstrating that the Project will be delivered in a way that supports the needs of the Project whilst not compromising or risking the integrity and/or maintenance needs of APPLC's and APRE's own infrastructure and/or such infrastructure in respect of which it has rights. Further, it is not considered that the compulsory acquisition of land in the terms proposed is proportionate, or even necessary, nor that it properly accounts for the existence of the infrastructure belonging to and/or otherwise used by APPLC and/or APRE. These written representations explain those concerns and raise a number of currently unanswered questions over the technical aspects of the Project.

Impact

The Project, as currently proposed, will involve significant works. The proposed DCO will, if approved, provide the necessary authorisations and consents for the construction, operation and maintenance of the proposed development.

In order to undertake these works the Applicants will also, amongst many other things, need to compulsorily acquire both land and rights in land as well as secure rights of access over land such that what is proposed is a highly significant proposal with substantial impact on local landowners, occupiers and beneficiaries of rights (including APPLC and APRE).

The proposed works and the acquisition of land and rights will have a significant effect on APPLC's and APRE's interests and operations in both the short and long term. In the short term the digging of trenches for cables and the construction of buildings is proposed to commence following the grant of the proposed DCO bringing with it disturbance and potential impact on infrastructure owned and/or operated by APPLC and APRE along with the associated uncertainty (not properly addressed in the Application) as to the impact on the existing pipelines used by APPLC and APRE and in respect of which APPLC and APRE have rights. In the longer term, it is wholly unclear as to the impact that the Project may have on the ability of APPLC and APRE to continue their operations safely and economically (bearing in mind the stated intention that the Project would remain operational for the long term).

It is of highly significant concern that the Project involves works and further new pipelines (and associated infrastructure) in close proximity to other gas (and other) pipelines (that are in regular use by APPLC and APRE) yet there is no adequate consideration within the application documents to demonstrate the proposals for addressing the impact on APPLC and APRE (and others).

Of even greater concern is that no or no adequate mention is made of the use of the existing infrastructure by APPLC and APRE (or any other party), or the proximity of that existing infrastructure to the new infrastructure proposed as part of the Project. Further, the application documents do not, whether adequately or at all, address the use of the areas above ground under which the existing pipelines pass or the proposed use of the land over which the existing pipelines pass.

It follows, therefore, that APPLC and APRE are unable in any respect to properly address the likely impact of the proposals on their operations both in terms of maintaining the existing service provided by APPLC and APRE and the need to ensure that suitable permissions and protection is provided to the existing infrastructure.

APPLC and APRE therefore call on the Applicants to produce the information (whether technical or otherwise) necessary to enable APPLC and APRE to properly assess the potential impact of the Project. APPLC and APRE reserve their respective rights to add to or otherwise amend these written representations upon receipt of such information.

Technical Questions

Within the PCR, various matters were raised and specifically the Applicants were asked to supply full details of their development proposals for the subject area including the following matters:

1. What the Applicants propose to construct and where;
2. Details of any anticipated disruption to third party infrastructure; and
3. Details of how the Applicants propose to manage such interference.

Regrettably, those technical questions have not been answered (whether adequately or at all).

Further, APPLC and APRE have the following further questions of the Applicants:

1. As far as the infrastructure owned by (or in respect of which an interest is held by) APPLC and APRE are concerned, please confirm the proposed construction activity both generally and in terms of method of construction including the proposed quantity of traffic movements, whereabouts and proposed (or potential) excavations in proximity to the said infrastructure.
2. With respect to any new pipelines (or other infrastructure) to be constructed or installed in the proximity of the infrastructure referred to above, please confirm whether such pipelines or other infrastructure will be under or overground, with depths (if applicable) and anticipated interaction with existing infrastructure.
3. In support of the Applicants' answers in respect of the above, APPLC and APRE request full details, with appropriate plans, sections and technical specifications and reports setting out the proposed works in sufficient detail to enable APPLC and/or APRE to properly understand (a) what is proposed by the

Applicants as will affect APPLC and/or APRE and (b) the threat to APPLC's and/or APRE's existing infrastructure by the said proposals.

Whilst it is the case that some amendment to the proposals has been made, such amendments do not in any way (or in any substantial way) satisfy APPLC's and/or APRE's concerns. All that the amendments to the proposals do is reduce the extent of the area proposed for the DCO. However, APPLC and APRE continue to have interests in (and around) the area proposed for the DCO and the concerns APPLC and APRE have continue to be extant.

Accordingly, APPLC and APRE formally object to the DCO Submission both for the reasons set out previously and as set out below.

The documentation provided by the Applicants fails to demonstrate that the DCO will be delivered in a way that supports the needs of the DCO whilst not compromising or risking the integrity and/or maintenance needs of APPLC and APRE's own pipeline infrastructure and/or such infrastructure in respect of which it has rights (and which is vital to the local energy industry).

There is also no or no adequate evidence to demonstrate that the Applicants are capable of delivering this project.

The compulsory acquisition of land and rights in the terms proposed is not proportionate, or even necessary, and fails to properly account for the existence of the infrastructure belonging to and/or otherwise used by APPLC and APRE and fails to ensure that APPLC and APRE are granted sufficient rights and interest to maintain the use already established. It also fails to ensure that suitable protective provisions are provided to ensure that the consistency of supply, safe use and maintenance of the infrastructure can be safeguarded.

The construction process, disturbance and duration is not properly addressed in the DCO Submission. In the longer term, it is wholly unclear as to the impact that the DCO may have on the ability of APPLC and/or APRE to continue their respective operations safely and economically (bearing in mind that it is expected that the underlying project would remain operational in the long term).

APPLC and APRE are still awaiting responses to the technical questions raised in the PCR (as referred to above). These include, but are not limited to, the extent of rights sought, what is proposed to be constructed and where, the anticipated construction process, timing, the impact on APPLC's and APRE's existing infrastructure and the method by which suitable protections will be put in place. These issues have not been considered or responded to (whether adequately or at all).

It is acknowledged that discussions are ongoing but these discussions have not yet satisfied APPLC's and APRE's concerns.

In accordance with Sections 42, 47, 48 and 49 of the Planning Act 2008, the Applicant has a "*duty to take account of responses to consultation and publicity*" (Section 49). For the reasons set out above and previously, APPLC and APRE contend that inadequate consultation has taken place and that, notwithstanding the inadequate consultation, the Applicant has failed (whether adequately or at all) to take account of responses (from APPLC and APRE, and possibly others) to consultation and publicity.

'Advice Note 9: Rochdale Envelope' published by Infrastructure Planning Commission February 2011 states

"Clearly for consultation to be effective there will need to be a genuine possibility to influence the proposal and therefore a project should not be so fixed as to be unable to respond to comments from consultees. The importance of consultation during the pre-application phase cannot be overemphasised...Such consultation needs to be appropriate (in terms of content, timing and clarity) and reported fully in the consultation report such that the response of the developer to the comments made in terms of the evolution of the proposals can be clearly understood".

Whilst the Rochdale Envelope is principally involved with environmental matters, it deals with principles which (in APPLC's and APRE's submissions) are relevant to the Applicants' approach to this matter.

It is evident that APPLC's and APRE's concerns to date have not and are not being addressed within the DCO process.

Accordingly, it therefore follows that Advice Note 9 has not been followed in the DCO process and the application now made.

APPLC and APRE submit that the unreasonable level of inflexibility the Applicants are displaying is in itself a reason for the DCO to be refused.

APPLC and APRE are rightly concerned that if terms cannot be agreed, the DCO in its present form (if approved) would enable the Applicant to acquire property and rights that may impact APPLC's and/or APRE's businesses negatively and the case for this is not properly addressed.

APPLC and APRE are willing to engage in constructive dialogue with the Applicants for early agreement in respect of the DCO.

However, until this process has been completed or negotiations have been exhausted, APPLC and APRE (and their associated entities) object to the DCO in its present form for the reasons set out and reserve their rights to provide further submissions (beyond those provided to date) during the course of the DCO examination process.

APPLC and APRE also claim an indemnity in respect of their costs, particularly given that APPLC's and APRE opposition could have been avoided had proper consultation taken place and had the previous comments made by APPLC and APRE been properly taken into account and actioned promptly. The terms of the PCR made it clear that early engagement was welcomed.

APPLC and APRE wish (unless APPLC and/or APRE notify the Planning Inspectorate to the contrary) to be represented at, and to appear and adduce evidence at the Specific Issues/ Open Floor/ Compulsory Acquisition Hearings and also request an Accompanied Site Inspection.

Charles Russell Speechlys LLP

For and on behalf of Air Products Public Limited Company and Air Products Renewable Energy Limited

Date: 9 June 2022