

Net Zero Teesside Project (EN010103 / IP Ref: 20029846)

Deadline 4 submission

Response to the Applicants' comments at Deadline 3

1. Following the Applicants' Deadline 3 comments (REP3-012), ClientEarth reiterates its position that changes to the draft DCO are required to secure the carbon capture and storage aspects of the project assumed in the environmental statement for the reasons explained in ClientEarth's Deadline 2 submissions (REP2-079).
2. ClientEarth makes the following additional comments in response to the Applicants' comments in REP3-012:
 - a. The Applicants have stated that they consider the amended Requirement 31 included in the draft DCO submitted at Deadline 2 "*achieves the same 'overall obligations' as set out in the draft Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order and which Client Earth has indicated it would be 'content with' and 'address the same fundamental concerns'.*" (REP3-012, p. 24, para 1). However, the changes made to the draft DCO appear simply to replicate the conditions included in the Keadby 3 DCO before the Keadby 3 applicant made changes to the DCO in response to ClientEarth's concerns. In other words, none of the changes showing in track changes in the version of the Keadby 3 DCO annexed to ClientEarth's Deadline 2 submission appear to have been implemented in the draft DCO. ClientEarth would therefore welcome confirmation from the Applicants as to whether this is a deliberate omission or whether they are in fact willing to implement the relevant changes made by the Keadby 3 applicant that were referred to in ClientEarth's Deadline 2 submission.

- b. The Applicants have asserted without reference to any supporting evidence that “*the Environmental Permit will require the capture plant to be built to achieve a 90% or greater capture rate of CO₂*” (REP3-012); however, leaving aside the lack of substantiation for this apparently unequivocal statement, it is also the case that this statement concerns only the design and capability of the plant rather than its actual operation. Accordingly, the Applicants have not suggested that the Environmental Permit will require carbon dioxide produced by the generating station to be captured during its operation, whether at the rate assumed in the environmental statement or at all.
 - c. ClientEarth notes the Applicants’ confirmation that there is no present intention for the captured carbon dioxide to be used onshore, rather than being permanently stored in the identified offshore geological site (REP3-012, p. 26, para 2(c)(ii)). However, in response to the statement that any such usage would require additional planning consent and assessment of impacts and risks, it is not clear to ClientEarth that planning consent would necessarily be required, depending on the way in which the captured carbon dioxide would be removed from the proposed development and the extent of the infrastructure required. There is accordingly a need for the DCO to stipulate that all captured carbon dioxide be supplied to the gathering network for onward permanent offshore geological storage, as assumed in the environmental statement.
 - d. Finally, ClientEarth notes (i) that the Applicants “*acknowledge that there is no guarantee that the DPA will be entered into*” (REP3-012, p. 25, para 2(b)), and (ii) that the Applicants have not contested the points made in ClientEarth’s Deadline 2 submission regarding the 70% average capture rate required under the current draft DPA (to the extent a DPA may be entered into in that form or at all) – such rate being well below the minimum 90% level assumed in the environmental statement, as well as being subject to significant grace periods for lower capture rates.
3. In view of the above, ClientEarth maintains that there is a clear need for the draft DCO to include provisions that secure the capture and storage of carbon dioxide produced by the generating station in line with the assumptions in the environmental statement. As previously explained, ClientEarth would be content with the approach taken in the Keadby 3 DCO being replicated in this DCO. Alternatively, ClientEarth has proposed illustrative conditions at Annex A of its Deadline 2 submission that it views as meeting the planning tests for conditions under 4.1.7 EN-1 (being “*necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects*”). It is of course also open to the Applicants to propose a different approach that secures these core aspects of the proposed development through the DCO.
 4. ClientEarth would be happy to provide any additional information or clarification if it would assist the Examining Authority.

Sam Hunter Jones

Senior Lawyer

@clientearth.org



Beijing Berlin Brussels London Los Angeles Luxembourg Madrid Warsaw

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.