

Keadby 3 Low Carbon Gas Power Station Project (EN010114 / IP Ref: 20029046)

Deadline 2 submission

Response to Applicant's Deadline 1 comments on ClientEarth's written representation RR-001

1. At the outset ClientEarth notes that the Applicant has not contested the principle of including conditions in the DCO to ensure (i) a minimum carbon dioxide capture rate during commercial operation of the generating capacity, and (ii) that all captured carbon dioxide is sent to the proposed offshore geological site for permanent storage (see paras 9.1.4-5, Document Ref. 9.1, REP1-021). The Applicant has instead contested the precise scope or wording of the proposed conditions (despite the fact that ClientEarth's representation did not set out detailed drafting to be included in the DCO).
2. The Applicant has also not suggested that the current DCO conditions, including in draft Requirement 33, are intended to secure a minimum carbon dioxide capture rate or that all capture carbon dioxide is sent to the proposed offshore geological site for permanent storage.
3. ClientEarth therefore maintains that its proposed DCO conditions are necessary and reasonable to secure these core aspects of the Applicant's proposal; however, ClientEarth is happy to suggest possible clarifications as to the precise scope of its proposed conditions to address the concerns raised by the Applicant at Deadline 1. In the Annex to this document, ClientEarth has suggested drafting for its proposed conditions (in underline) to illustrate the way in which the Applicant's concerns may be accommodated in the precise wording and scope of the conditions.

4. In respect of ClientEarth's proposed condition to ensure a minimum capture rate during commercial operation:
 - a. ClientEarth acknowledges the Applicant's clarification that a capture rate of 90% may not be possible at all times of operation – for example during start up – and that the environmental permit to be issued by the Environment Agency will “*control the capture rate and how this is to be delivered, measured and monitored, including any limited operating exceptions.*”
 - b. However, it is not clear why such limited operating exceptions cannot be reflected and incorporated in a DCO condition. For example, a condition can require a minimum 90% capture rate during commercial operation “*subject to any specified operating exceptions or lower capture rates in any environmental permit in place for the authorised development*” – such an approach (as per the Annex) would be acceptable to ClientEarth.
 - c. In this context, ClientEarth is also not aware of any indication, much less assurance, that the project's environmental permit will require that the project's generating capacity is operated only when the project's carbon capture infrastructure is also in operation (at a particular capture rate or otherwise). Rather the environmental permit will regulate the operation of the capture and related infrastructure when such infrastructure is in operation. It is therefore of critical importance that these aspects of the Proposed Development – which underpin its planning merits – are secured by the terms of the DCO.
5. In respect of ClientEarth's proposed condition to ensure the permanent storage of all captured carbon dioxide at the proposed geological site (as opposed to e.g. its commercial use and consequent emission to the atmosphere):
 - a. ClientEarth agrees that the precise requirement placed on the Applicant in the DCO should be to take steps that are within the Applicant's control.
 - b. Accordingly, ClientEarth would welcome this proposed condition specifying that the Applicant must “*supply*” (or similar) all of the carbon dioxide captured on the site to the proposed offshore geological site for permanent storage (e.g. as per the Annex).
6. In summary, ClientEarth is of the view that the concerns cited by the Applicant can be readily accommodated in ClientEarth's proposed conditions, which remain necessary and reasonable in light of the Applicant's response. As noted, the Applicant appears to accept that the current draft DCO conditions do not secure the capture and permanent storage of produced carbon dioxide that is assumed in the Application; the Applicant also does not appear to object in principle to the inclusion of conditions securing these aspects of the proposal, subject to clarifying their precise scope.
7. ClientEarth would be happy to provide further comment or clarification in relation to these issues in writing or at a hearing should this assist the Examining Authority.

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ANNEX – PROPOSED CONDITIONS**“Carbon capture plant**

33.—(1) *No part of the authorised development may commence, save for the permitted preliminary works, until details of the following have been submitted to and approved by the relevant planning authority-*

(a) evidence that development consent is in place for the construction of the National Grid Carbon Gathering Network;

(b) evidence that a carbon dioxide storage licence for the intended storage site for the National Grid Carbon Gathering Network is in place; and

(c) evidence that an environmental permit is in place for the authorised development.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not (save where the benefit of the Order has been transferred pursuant to article 66) without the consent of the Secretary of State—

(a) dispose of any interest in the land required for Work No. 1C or Work No. 7; or

(b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker’s ability, within two years of such action or occurrence, to prepare Work No. 1C and Work No. 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work No. 1C and Work No. 7A also being brought into commercial use.

(4) The undertaker must ensure a minimum carbon dioxide capture rate of at least 90% at all times during commercial use of Work No. 1A, as assumed in the environmental statement, subject to any specified operating exceptions or lower capture rates in any environmental permit in place for the authorised development.

(5) The undertaker must supply all of the carbon dioxide captured during commercial use of the authorised development to the National Grid Carbon Gathering Network for the purpose of onwards permanent geological storage.”

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