

Response to ExQ2: 19 April 2023 GEN.2.5

Apologies for having not provided the supporting text required in my Submission for Deadline 5. I hope that the following quotes from ClientEarth's submissions concerning the Net Zero Teesside Project suffice.

By way of reinforcement, in a separate submission under Deadline 6, I supplement those quotes with similar quotes from ClientEarth's submissions concerning the Project Application for Keadby 3 Carbon Capture Power Station.

Project Application for the Net Zero Teesside Project

REF-004 (08 November 2021)

We understand from the application, including the Environmental Statement, that the Applicant's proposal is to operate the power plant commercially only when the associated carbon capture, transport and storage infrastructure are also in operation, with the effect that at least 90% of the carbon emissions generated by the power plant will not be emitted into the atmosphere and stored permanently underground. However, we are concerned that the terms of the proposed draft DCO do not appear to include any conditions requiring that the plant be operated in this way and that this minimum level of emissions be captured and permanently stored (notwithstanding para 31 of the draft Requirements Schedule). We would therefore suggest that a condition be inserted in the Requirements Schedule to the DCO, to include clear requirements that: (i) at least 90% of the total carbon emissions generated by the power plant must be captured at all times during the power plant's commercial operation, and (ii) captured emissions must be stored permanently in the proposed offshore geological storage site.

REF02-079 (June 2022)

3. In view of the above, ClientEarth maintains that there is a 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.³ These aspects of the proposed development are fundamental to its planning merits and are the basis upon which the application is currently being assessed. In particular, there are currently no provisions in the draft DCO to require that, subject to reasonable operating exceptions:

- a. the generating station will only be operated commercially with carbon capture;*
- b. a minimum carbon dioxide capture rate of 90% will be achieved during commercial operation of the generating station; and*
- c. all captured carbon dioxide will be supplied to the carbon dioxide gathering network for onward permanent storage offshore.*

4. To assist the Examining Authority's consideration of the issue, ClientEarth has set out in Annex A illustrative drafting of provisions that could be inserted into the Requirements Schedule to secure the above aspects of the proposed development.

REP9-025 (October 2022)

1. This submission responds to the following request for information addressed to ClientEarth in Annex C of the Examining Authority's letter dated 16 September 2022:

“ClientEarth’s proposed requirement states that ‘at least 90% of the total carbon emissions generated by the power plant must be captured at all times during the power plant’s commercial operation’ [RR-004]. The Applicants suggest that the plant may need to run in unabated mode for testing and maintenance [REP2-016]. - Does ClientEarth consider that these activities would be a ‘commercial operation’?”

2. ClientEarth confirms that its proposed requirement is intended to allow for reasonable operating exceptions, such as during testing or maintenance. ClientEarth’s illustrative drafting (set out in Annex A of ClientEarth’s REP2-079) does so by reference to any operating exceptions included in the Environmental Permit in respect of the operation of the capture plant.

REP11-027 (October 2022)

1. At ISH5, ClientEarth confirmed that:

a. ClientEarth welcomes the Environment Agency’s clarification in REP9-027 that the BAT capture rate will apply to regulate the operation of the generating station (and not only the capture plant when it is in operation). However, it remains ClientEarth’s view that including a minimum capture rate in the DCO would be appropriate given:

i. the continuing uncertainty, evident from REP9-027, regarding the terms of the Environmental Permit in this regard, and

ii. that there would be no regulatory duplication in view of the separate function and purpose of (1) the BAT regime, which imposes broadly determined and applicable ‘best available techniques’, and (2) including provisions in the DCO to secure core aspects of this proposed development and of the planning merits being assessed in this examination. As explained previously, this lack of duplication is also supported by the inclusion of such provisions in the draft preferred Keadby 3 DCO.

b. There is no suggestion that the Environmental Permit will require the export of captured carbon dioxide to the gathering network for onward geological storage. Accordingly, ClientEarth maintains that there is an even clearer need for additional provisions to be included in the DCO to secure this core aspect of the proposed development (and core assumption in the environmental statement).