



# **APPLICANT'S CLOSING POSITION STATEMENT AT DEADLINE 10**

## **Drax Bioenergy with Carbon Capture and Storage**

Planning Act 2008; Infrastructure Planning (Examination Procedure) Rules 2010

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## APPENDICES

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Appendix A - Draft Protective Provisions for the Protection of the Onshore Carbon Pipeline Operator

# 1. INTRODUCTION

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## 1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1. This Position Paper summarises the position of Drax Power Limited ('The Applicant') with regard to outstanding matters which are still to be agreed with the stakeholders as set out in the following sections.
- 1.1.2. It does not make new points, but is provided to ensure that the Examining Authority, and ultimately the Secretary of State, are clear on the Applicant's position in relation to these matters and the remaining points of dispute that arise from them.
- 1.1.3. It deals with the following matters:
- the Applicant's position on noise and landscape matters, further to NYC's Deadline 9 submission on this point;
  - the Applicant's position on negotiations with statutory undertakers; and
  - the Applicant's position on negotiations with land interests.
- 1.1.4. It does not deal with the following matters, as they are dealt in the separate document (Document 8.10.9) "Applicant's responses to submissions at Deadline 9" also submitted at Deadline 10 as they have not been long running matters during Examination:
- discussion of the position on the Applicant's request for an extended period to implement the Proposed Development; and
  - similarly (and given that HRA matters are agreed with Natural England in its SoCG), Biofuelwatch's comments on the REIS.
- 1.1.5. It also does not deal with the position on carbon assessment, further to Climate Emergency Planning and Policy's Deadline 9 submissions. This is because the Applicant's overall position is set out as part of responding to those submissions (and providing suitable cross references to earlier Examination submissions) in the separate "Applicant's responses to submissions at Deadline 9" document also submitted at Deadline 10.
- 1.1.6. Finally, it also does not set out a position statement in relation to Biofuelwatch's concerns with the Applicant's air quality assessment, as it is considered that the Applicant has already done this in its most recent submission responding to their points within its Deadline 8 document responding to Interested Parties' Deadline 7 submissions [REP8-026].
- 1.1.7. The Applicant considers that the matters set out above are the only outstanding matters in Examination, with all others agreed with the relevant statutory body and so this Position Paper does not cover any other issues.

## **2. LIST OF MATTERS NOT AGREED WHERE ANY SOCG COULD NOT BE FINALISED**

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- 2.1.1. In accordance with the Examination timetable, the Application is asked to provide a list of matters not agreed where any Statement of Common Ground could not be finalised.
- 2.1.2. The SoCG with NYC has been finalised and signed and confirms the following matters are not agreed:
- Noise assessment outcome and the Draft DCO including requirements (in respect of Requirement 17 only); and
  - Landscape in relation to retained vegetation.
- 2.1.3. The following SoCGs could not be finalised and therefore the following matters are not confirmed as agreed in a signed final version, albeit the Applicant considers the matters to be agreed:
- ERYC – The Applicant understands that the SoCG accurately states both parties' positions, namely that all matters are agreed; and
  - NGET – The Applicant understands that the SoCG accurately states both parties' positions, namely that all matters are agreed.
- 2.1.4. Finally, the following SoCG could not be finalised, albeit the Applicant considers the SoCG accurately states both parties' positions, namely that there remain matters outstanding that the Applicant and the other party agree will not be resolved during the Examination:
- NGCL – The Applicant understands that the SoCG accurately states both parties' positions, namely that all matters are agreed other than whether protective provisions for NGCL should be included in the dDCO.

### 3. THE APPLICANT'S POSITION ON NOISE AND LANDSCAPE MATTERS NOT AGREED WITH NYC

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#### 3.1. OVERVIEW OF OUTSTANDING MATTERS

3.1.1. Matters not agreed with NYC relate to the following issues:

- a. Significance of operational noise effects. NYC has not agreed to the conclusions of the ES which state that there are no significant effects on operational noise. Specifically, whilst NYC has acknowledged the use of the contextual considerations utilised by the Applicant to reach that conclusion, NYC has not confirmed their agreement to the conclusions themselves. This leads to their request described below;
- b. Rating levels on operational noise in Requirement 17. NYC has not agreed to the rating level limits included in Requirement 17 of the dDCO. NYC's preference on this matter is that rating level limits included in the Requirement for Receptors 6 and 14 are reduced; and
- c. Vegetation retention, in particular in relation to the maintenance of vegetation that has not been identified for retention or is not new landscape, habitat creation and enhancement works. This topic has been covered in discussions between the Applicant and NYC. NYC is content that the vegetation retention is sufficiently covered in the REAC and within the revised OLBS. However, NYC considers that the Applicant should also commit to "no net loss of landscaping features", although what constitutes a "landscape feature" has not been defined.

3.1.2. The Applicant had regular engagement with NYC on these matters.

#### 3.2. THE APPLICANT'S POSITION

3.2.1. The Applicant's position at the end of Examination is set out in **Table 3-1** below.

**Table 3-1: The Applicant's Position as at the end of Examination**

The issue in question	The position of the Applicant as at the end of Examination
<b>Operational Noise Impact</b>	<p>The initial impact estimation of the assessment, in accordance with BS4142:2014+A1:2019, is indicative of an adverse impact depending on the context at two receptors (R6 and R14). However, taking into account the contextual considerations (in accordance with BS4142:214+A1:2019), the operational noise effect due to operation of the post combustion carbon capture technology would be <b>not significant</b>, as noted in paragraph 7.9.20 of the ES Chapter 7 (Noise and Vibration).</p> <p>The Applicant clarifies that there is no 'adverse exceedance' in relation to BS8233:2014 but an initial estimate in accordance with</p>



BS4142:2014+A1:2019 does indicate an adverse impact. However, once context is taken into account, the operational noise effect due to operation of the post combustion carbon capture technology would be not significant, as noted in paragraph 7.9.20 of the ES Chapter 7 (Noise and Vibration).

The conclusions of the contextual considerations assessed in ES Chapter 7 (Noise and Vibration) can be summarised as follows:

- a. There will be no change in ambient noise levels at Receptor 6 and 14 during operation of the Proposed Scheme, as presented in Table 7.27 and 7.28 of the ES where a 0 dB difference is indicated at each noise sensitive receptor;
- b. Internal noise levels in the habitable rooms of Receptors 6 and 14 will be below the noise guidelines in British Standard 8233:2014 during operation of the Proposed Scheme as presented in Table 7.29 and 7.30 of the ES. It can be seen from the tables that, in overall terms and also in frequency octave bands, the internal noise levels due to the Proposed Scheme are predicted to be at least 10dB lower than the guidelines; and
- c. Analysis undertaken on the background noise levels reveal that the values used in the noise assessment correspond to a reasonable worst-case noise assessment. The initial estimate for the operational noise levels is based on the background noise levels recorded during 30% of the measurement period. This means that approximately 70% of the time the background noise levels are likely to be higher than those selected for the assessment. Therefore, the operational noise assessment is considered to be robust.

The operational noise assessment has assumed that key noisy equipment will operate 100% of the time during the assessment period, as described in Appendix 7.2 (Operational Noise Assumptions) of the ES and this therefore presents a reasonable worst-case assessment but also realistic of the normal operations.

The Applicant has undertaken a robust good acoustic design during the preliminary design where discussions between the acoustic consultant and the pre-FEED contractors were a key consideration and led to substantial engineering interventions to reduce noise. Examples of this are included in ES Appendix 7.2 (Operational Noise Assumptions) (APP-131). For instance, the mitigated noise levels for the carbon dioxide compressor buildings in Table 4.3 of Appendix 7.2 (Operational Noise Assumptions) are considerably lower than those presented in Table 1.1 of the same document, showing the unmitigated noise levels for the same equipment. Similarly, unmitigated and mitigated noise levels for

pumps, power turbines and flue gas booster fans are presented in Appendix 7.2 (Operational Noise Assumptions).

NYC requested that good acoustic design is demonstrated and that the predicted sound levels be reduced if possible. The Applicant has confirmed that it would not be practicably feasible to reduce the rating levels further and that the Applicant has already done everything reasonably practicable to mitigate and minimise adverse impacts through good acoustic design at this stage. For example, the rating levels predicted in the assessment have been achieved using double acoustic enclosures for the carbon dioxide compressor buildings and double acoustic enclosures for the flue gas booster fans. The Applicant has discussed this with NYC; however, NYC has not yet confirmed whether the evidence submitted is sufficient to support the conclusions of the assessment.

NYC's rationale to reduce the predicted noise levels further is linked to Clause 11 of BS4142:2014+A1:2019 stating that as an initial estimate: "A difference of around +5dB is likely to be an indication of an adverse impact, depending on the context". Receptors 6 and 14 are predicted to experience a difference of +6dB and +7dB, respectively, during the night-time period. However, the Applicant has presented contextual evidence to demonstrate that the NPS aims, described below, are fulfilled and therefore the Applicant considers that there is no justification to reduce the noise levels further.

It is important to note that, based on NPS<sup>1</sup> paragraph 5.11.9 (also paragraph 5.12.17 of the draft EN-1), the Secretary of State should not grant development consent unless they are satisfied that the proposals will meet the following aims:

- a. avoid significant adverse impacts on health and quality of life from noise;
- b. mitigate and minimise other adverse impacts on health and quality of life from noise; and
- c. where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

The conclusion of the ES chapter demonstrates that significant adverse effects have been avoided, as stated in paragraph 7.9.23 and that impacts have been mitigated by the inclusion of primary mitigation explained in paragraphs 7.5.51 to 7.5.53.

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<sup>1</sup> Overarching National Policy Statement of Energy (EN-1), July 2011, and Draft Overarching National Policy Statement of Energy (EN-1), March 2023

<p><b>Rating levels in Requirement 17</b></p>	<p>Requirement 17 of Schedule 2 of the draft DCO requires a noise mitigation scheme to be submitted to and approved by the relevant local planning authority. The noise mitigation scheme must contain details of how the design for work nos. 1 (carbon capture plant), 2 (infrastructure to transport compressed CO<sub>2</sub>) and 3 (supporting works) has ensured that the operational noise rating levels will not be exceeded.</p> <p>The relevant local planning authority will therefore have an opportunity to ensure that the good acoustic design is improved if it is possible to do so during the detailed design stage as appropriate (to reiterate – the good acoustic design process followed to-date has already secured significant reductions in the noise levels anticipated from key operational components and sources). As such, it is considered that a suitable and robust mechanism for mitigating noise impacts during the operation phase is secured via the DCO.</p> <p>With regards to NYC’s request or reducing the rating levels included in Requirement 17 for receptors R6 and R14, the Applicant considers that this would impose an unrealistic and unnecessarily onerous condition on the design. It is considered that such a requirement would be neither necessary nor reasonable.</p>
<p><b>Maintenance of existing vegetation</b></p>	<p>The Applicant has proposed landscape mitigation proposals that minimise harm caused by the Proposed Scheme to the landscape, and these have been set out in the Outline Landscape and Biodiversity Strategy (REP6-017) which is secured via Requirement 7 of the Draft DCO. Furthermore, the Applicant has carried out an assessment of the potential impacts from the Proposed Scheme and identified appropriate measures to mitigate likely significant effects in this respect.</p> <p>The Applicant discussed with NYC that it is not considered appropriate to also commit to maintaining other vegetation within the Works Areas on the Drax Power Station Site, apart from:</p> <ul style="list-style-type: none"> <li>a. New amenity planting (which will be determined at detailed design stage) within the Works Areas;</li> <li>b. Existing landscape areas and vegetation that have been identified for retention as detailed on OLBS Figure 3 (Existing Retained Vegetation) (APP-183); and</li> <li>c. Removed and reinstated amenity planting within the Works Areas.</li> </ul> <p>This is for the following reasons:</p> <ul style="list-style-type: none"> <li>a. This vegetation is not being affected by the Proposed Scheme, nor is it necessary in order to mitigate impacts of the Proposed Scheme;</li> </ul>



- b. The vegetation within the Works Areas on the Drax Power Station Site does not provide significant screening of the Power Station from the viewpoints used in the LVIA, apart from the linear belt of trees and shrubs around the perimeter of the Woodyard to the north of the Proposed Scheme. For the LVIA it was assumed that this vegetation was to be retained and such retention is secured as shown on OLBS Figure 3 (Existing Retained Vegetation) (APP-183).
- c. The LVIA that was carried out for the Proposed Scheme, as detailed in Chapter 9 (Landscape and Visual Amenity) of the ES (APP-045) concluded no permanent significant adverse effects for landscape and visual amenity during construction, decommissioning or operation. Furthermore, the LVIA did not rely upon the vegetation in question to reach this conclusion, and NYC have agreed with the conclusion that there are no significant effects;
- d. The Applicant cannot commit to maintaining all other existing amenity planting within the Works Areas on the Drax Power Station Site for 30 years as such a commitment could impede the ability for Drax to carry out day to day operations on the site. The Applicant confirms however that it would only seek to remove vegetation for operational reasons;
- e. Future development on the Drax Power Station Site that requires consent e.g., planning consent, would require approval from the LPA including with respect to mitigation for that particular development and associated vegetation removal. Therefore, any existing vegetation affected by such future developments would be dealt with through the appropriate processes;
- f. The Applicant is not aware how NYC considers a requirement to maintain the vegetation in question would meet the relevant tests for requirements / planning conditions, in particular in terms of being necessary and relevant to the development being consented; and
- g. As recorded in NPS EN-1 the aim should be to minimise harm to the landscape (from the Proposed Scheme), providing reasonable mitigation where possible and appropriate. The Applicant has done this and secured appropriate mitigation. Given the limited (if any) contribution from the existing vegetation on the Scheme's impact on the landscape, (amenity planting within the Works Areas that is not shown on the Existing Retained Vegetation Plan and that is not affected by the Proposed Scheme) the Applicant is unclear why such vegetation is sought to be maintained – certainly it could not be said that it is required to be maintained in

	order to mitigate and minimise harm to the landscape resulting from the Proposed Scheme.
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## 4. THE APPLICANT'S FINAL POSITION ON LAND INTERESTS

### 4.1. OVERVIEW OF OUTSTANDING MATTERS

4.1.1. Negotiations have been ongoing with affected parties in order to reach voluntary agreements with landowners and tenants.

### 4.2. SUMMARY OF FINAL POSITION AT THE END OF THE EXAMINATION

4.2.1. The discussions are summarised in document 4.1.1 – Schedule of Negotiations and Powers Sought, and a summary of the position reached with each affected party at the end of the Examination is provided in the table below.

**Table 4-1: Summary of Final Position on Land Interests**

Status of Voluntary Agreement with Parties	Parties	Number
Signed Agreement regarding habitat provision areas	Mr Watson	1
Signed and returned HoTs for voluntary agreements or written confirmation of voluntary agreement.	Mr Roustoby Mr Jowett, EOF Holdings Limited Mr Cowling Mr Dickinson	4
Ongoing discussions regarding HoTs, including positive discussions and willingness to enter into a voluntary agreement but no formal response to date	Mr Hussain Mr Milner, ERYC Mr Pickering, on behalf of the Consortium Mr Andrews, JRS Services (Goole) Ltd	4
Confirmation of no objection from ERYC to use of highway land (plots of land owned by DfT and NH but conferred to and maintained by ERYC) for the AIL works provided.	ERYC	1
Consent from DfT to the Applicant for the use of	Department for Transport	1

<b>Crown Land granted 17/07/23</b> <b>*see Appendix B of Document 4.1.1 – Schedule of Negotiations and Powers Sought</b>		
<b>Ongoing discussions between Applicant and NH (in its role as registered owner of land maintained by ERYC as highway land). NH have indicated no concern and a formal response is awaited.</b>	National Highways	1

- 4.2.2. With regard to the discussions with ERYC on the HoTs, as set out in document 4.1.1, it is understood that the Council agrees that the concerns previously raised in relation to the First Change Application and as amended by the Second Change Application are resolvable through an agreement, which the Applicant considers should be achievable. The Applicant provided ERYC with updated HoTs to reflect this matter and is awaiting a formal response from ERYC at the end of the Examination.
- 4.2.3. With all parties where voluntary agreement has not yet been reached, the Applicant will continue to engage during the post-examination period to seek agreement.

## 5. THE APPLICANT'S FINAL POSITION ON PROTECTIVE PROVISIONS WITH STATUTORY UNDERTAKERS

### 5.1. THE APPLICANT'S POSITION

5.1.1. Table 2-2 of the Schedule of Negotiations and Powers Sought provides the detail of negotiations, and the final position, with statutory undertakers. The table below provides an overview of the position as at the end of the Examination with statutory undertakers and other parties requiring protective provisions.

**Table 5-1: The Applicant's Final Position on Protective Provisions with Statutory Undertakers**

Other party	Applicability of s127, s138 tests	Position as at end of the Examination
<b>British Telecommunications plc (Openreach)</b>	Not a statutory undertaker for the purposes of s 127. S 138 applies.	The dDCO includes protective provisions in Part 2, Schedule 12 for the protection of operators of electronic communications code networks. These provisions provide adequate protection for British Telecommunications plc's assets.  Accordingly, the Applicant considers that British Telecommunications plc (Openreach) will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in section 138 of the PA 2008 are therefore satisfied.
<b>euNetworks Fiber UK Limited</b>	Not a statutory undertaker for the purposes of s 127. S 138 applies.	The dDCO includes protective provisions in Part 2, Schedule 12 for the protection of operators of electronic communications code networks. These provisions provide adequate protection for euNetworks Fiber UK Limited's assets.  Accordingly, the Applicant considers that euNetworks Fiber UK Limited will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in section 138 of the PA 2008 are therefore satisfied.
<b>National Grid Electricity Transmission plc</b>	Sections 127 and 138 apply	The parties have reached agreement on the protective provisions and these have been included in the draft DCO at Deadline 4 (Part 3, Schedule 12). Parties have now



		<p>also largely agreed a confidential side agreement, and both parties expect this agreement to complete shortly after the close of the Examination. Upon completion of the agreement the Applicant will provide an update to the Secretary of State and it is anticipated NGET will then be in a position to withdraw its representation.</p> <p>The Applicant's position is that with the confidential side agreement in place, and in any event, with the protective provisions contained in Part 3, Schedule 12 of the dDCO, National Grid Electricity Transmission plc will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in sections 127 and 138 of the PA 2008 are therefore satisfied.</p>
<b>Network Rail Limited</b>	As the dDCO does not seek any powers with respect to land or assets owned or operated by Network Rail Limited, the tests in sections 127 and 138 of the PA 2008 are not applicable.	Parties have agreed there is very limited chance of interaction with Network Rail Limited's assets. The parties have entered into a Deed of Undertaking, and as a result Network Rail has withdrawn its representation. The deed ensures Network Rail Limited will not suffer serious detriment to the carrying on of its undertaking.
<b>Northern Gas Networks Limited</b>	Sections 127 and 138 apply	Article 28 of the draft DCO gives the undertaker certain powers in relation to compulsory acquisition and acquisition of rights in statutory undertakers within the Order Land. That article is subject to the protective provisions included at Schedule 12 of the draft DCO. Part 1 of Schedule 12 of the draft DCO includes provisions for the protection of electricity, gas, water and sewerage undertakers. The Applicant's position is that these provisions provide adequate protection for Northern Gas Networks Limited's assets. The Applicant is negotiating a private asset protection agreement with Northern Gas Networks

		<p>(and most recently provided comments to NGN on the agreement on 12 July 2023), however the Applicant does not understand NGN to be asking for any alternate protective provisions to be included in the DCO. It is not expected that the asset protection agreement will be completed before the end of the Examination and the Applicant will provide an update to the Secretary of State once that agreement is agreed.</p> <p>In any event, the Applicant considers that with the protective provisions contained in Part 1, Schedule 12 of the dDCO, Northern Gas Networks Limited will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in sections 127 and 138 of the PA 2008 are therefore satisfied.</p>
<b>Northern Powergrid (Yorkshire) plc</b>	<p>Section 138 applies. No representation has been made to the Examination about the Proposed Scheme, meaning section 127 does not apply.</p>	<p>The Applicant has reached agreement with Northern Powergrid on a confidential side agreement, and this has been signed by the Applicant and is currently with Northern Powergrid for signature. It is anticipated this agreement will complete shortly after the close of the Examination, and the Applicant will provide an update to the Secretary of State in this respect. Northern Powergrid has not requested that the Applicant include any alternate protective provisions in the dDCO.</p> <p>The Applicant considers that with the confidential side agreement in place, and in any event, with the protective provisions contained in Part 1, Schedule 12 of the dDCO, Northern Powergrid will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in section 138 of the PA 2008 are therefore satisfied.</p>
<b>Yorkshire Water Services Limited</b>	<p>Sections 127 and 138 apply</p>	<p>The Applicant has had discussions with Yorkshire Water Services Limited and as a result has made minor amendments to the</p>

		<p>protective provisions included in the dDCO at Part 1 of Schedule 12 to incorporate Yorkshire Water’s policy document.</p> <p>Yorkshire Water confirmed to the Applicant on 25 May 2023 that it was content with the amendments and no further concerns with respect to its apparatus have been raised. Accordingly, the Applicant considers that Yorkshire Water Services Limited will not suffer serious detriment to the carrying on of its undertaking, and the tests set out in sections 127 and 138 of the PA 2008 are satisfied.</p>
<b>National Highways Limited</b>	Sections 127 and 138 apply	<p>The Applicant has agreed protective provisions with National Highways which have been included in the dDCO at Deadline 10. National Highways has written to the Planning Inspectorate on 14 July 2023 to withdraw its objection. The tests set out in sections 127 and 138 of the PA 2008 are therefore considered to be satisfied and National Highways would not suffer any serious detriment to the strategic road network as a result of the Proposed Scheme.</p>
<b>National Grid Carbon Limited (NGCL)</b>	<p>NGCL do not yet hold apparatus, a right in apparatus or any land and generally do not yet have a ‘statutory undertaking’. As such they are neither a s 127 nor a s 138 party, and the relevant tests in that respect do not apply.</p>	<p>NGCL’s potential interest in the Proposed Scheme related to its position as promoter of the Humber Low Carbon Pipeline (HLCP), which is the onshore carbon pipeline expected to connect into the Proposed Scheme. NGCL was developing the HLCP project as part of the wider Northern Endurance Partnership commercial collaboration with a number of other commercial entities. In April 2023 NGCL confirmed a decision to leave the Northern Endurance Partnership (NEP) and cease to participate in the HLCP project in order for National Grid to focus on its existing portfolio of projects. NGCL is in commercial discussions with other NEP partners on the transfer of Humber onshore pipeline proposals (including HLCP),</p>

		<p>following which NGCL will therefore cease to be the promoter of the HLCP.</p> <p>The new arrangements for HLCP will not have been completed before the end of the Examination. This has therefore meant that the Applicant has not been able to negotiate protective provisions with NEP in place of NGCL.</p> <p>The Applicant does not consider protective provisions are required to be included in the dDCO for the protection of NGCL, given NGCL is expected to no longer have an interest in HLCP. This point is not agreed with NGCL.</p> <p>The Applicant's response at Deadline 9 to the ExA's Rule 17 request (REP9-026) confirmed that NEP have communicated that they envisage submitting an application for a DCO for HLCP in 2024. The change in the promoter of the onshore T&amp;S infrastructure (and the fact that that transfer will not be complete during the Examination of the Proposed Scheme) means that it will be simpler and more time effective for the Applicant to negotiate a meaningful set of reciprocal protective provisions with the new promoter (once known) based on that promoter's requirements and plan for development of the project.</p> <p>When the DCO for the HLCP comes forward, protective provisions can be progressed by the promoter of the scheme, and can be imposed on the Proposed Scheme via that DCO (there is precedent for modification of a development consent order by a subsequent development consent order in The Immingham Open Cycle Gas Turbine Order 2020 (which inserted protective provisions in The Able Marine Energy Park Development Consent Order 2014), as well as Millbrook Gas Fired Generating Station Order 2019 (which</p>
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		<p>inserted protective provisions in The Rookery South (Resource Recovery Facility) Order 2011). This approach has also been agreed between parties and proposed in the draft DCO for Net Zero Teesside, where it has been agreed between the Applicant and the undertaker of the York Potash Harbour Facilities Order 2016 that protective provisions can be inserted into the 2016 Order by the Net Zero Teesside Order (if made)). The Applicant therefore considers the HLCP DCO to be the appropriate mechanism by which to secure any required protective provisions.</p> <p>As is clear from the Applicant’s response at Deadline 9 to the ExA’s Rule 17 request (REP9-026), there are interdependencies between the Proposed Scheme and arrangements to be put in place for BECCS and T&amp;S infrastructure. The Applicant’s expectation is that much of what is sought to be included in the protective provisions by NGCL may well be covered by the developing rules and procedures relating to T&amp;S infrastructure. This is another reason why the Applicant considers the inclusion of protective provisions would be premature at this stage.</p> <p>Without prejudice to the Applicant’s position, should the Examining Authority and Secretary of State not agree with the Applicant that protective provisions are not required, the Applicant has provided a set of protective provisions that it considers would be preferable to include in any made Order for the Proposed Scheme rather than those submitted into the Examination by NGCL. These are included at Appendix A to this document. These protective provisions:</p> <ol style="list-style-type: none"> <li>1. Are not specific to NGCL or the HLCP, and instead provide protection for the “onshore carbon</li> </ol>
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		<p>pipeline operator” and the “onshore carbon pipeline”. Given developments during the course of the Examination (as referenced above) the purpose of this drafting is not to unnecessarily constrain the operation of any protective provisions. The purpose of any protective provisions is clearly to manage the interface between the Proposed Scheme and the onshore carbon pipeline connecting into it, which is why the protective provisions have been drafted in the way they have.</p> <p>2. The protective provisions are divided into sections:</p> <p>(a) <b>Section A</b> deals with the interaction between the onshore carbon pipeline and the Proposed Scheme, and provides oversight for the onshore carbon pipeline owner of the plans for Work No. 2 of the Proposed Scheme (given Work No. 2 is the area of the interface between the Proposed Scheme and the onshore carbon pipeline). This assumes Drax is the undertaker for Work No. 2. This section only deals with construction of the Proposed Scheme and so only has effect during that period.</p> <p>(b) <b>Section B</b> deals with the impact from the Proposed Scheme on the onshore carbon pipeline apparatus, once installed. This section therefore only takes effect once that apparatus has been installed and completed, and remains in effect thereafter. It relates to where Drax may need to do works under the Order</p>
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		<p>(other than Work No. 2) near carbon pipeline apparatus, and deals with removal of apparatus or approval for works near apparatus. This section assumes Drax is the undertaker for Work No. 2.</p> <p>(c) <b>Section C</b> replicates Section A, however it deals with the situation in which the onshore carbon pipeline operator is the “undertaker” for the purposes of Work No. 2 (i.e. the onshore carbon pipeline operator is constructing the carbon dioxide export connection work), and therefore gives Drax oversight over the details of Work No. 2 and how it connects into the rest of the Proposed Scheme. This section would have effect instead of Section A (to the extent the carbon pipeline operator is the undertaker for Work No. 2) from the date of the Order for the construction period of the Proposed Scheme.</p> <p>(d) <b>Section D</b> replicates Section B, however it deals with the situation in which the onshore carbon pipeline operator is the “undertaker” for the purposes of Work No. 2, and deals with the interaction with, and impact of, Work No. 2 on Drax’s apparatus. This section would have effect instead of Section B, and deals with removal of Drax apparatus and works near Drax apparatus as a result of Work No. 2.</p> <p>3. Paragraph 18 deals with payment of the onshore carbon pipeline operator’s expenses by the</p>
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		<p>undertaker, where incurred as a result of the Proposed Scheme. Paragraph 19 includes an indemnity given by the undertaker to the onshore carbon pipeline operator in respect of damage etc incurred by the onshore carbon pipeline operator as a result of the Proposed Scheme. These paragraphs are drafted as only being in effect until end of construction of the Proposed Scheme (i.e. commissioning of the first BECCS units) as it is expected that rules and procedures in relation to T&amp;S infrastructure will deal with the type of arrangements covered by these paragraphs during operation, and it would therefore pre-empt those rules to include provisions in the protective provisions in this respect (which is part of the reason the Applicant does not consider inclusion of protective provisions is appropriate at this time).</p> <p>4. Paragraphs 18 and 19 do not have effect where Sections C and D have effect (i.e. where the “undertaker” for Work No. 2 is the onshore carbon pipeline operator), and instead paragraphs 27 and 28 have effect. Those paragraphs deal with expenses incurred by Drax as a result of Work No. 2 of the Proposed Scheme and an indemnity given by the onshore carbon pipeline operator to Drax with respect to damage etc caused to Drax as a result of Work No. 2. These paragraphs deal with the interaction between Work No. 2 and Drax’s apparatus and operations, and would only have effect for the construction period of the Proposed Scheme, for the same</p>
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		reasons given with respect to paragraphs 18 and 19.
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# **APPENDIX A – DRAFT PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE ONSHORE CARBON PIPELINE OPERATOR**

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## PROTECTIVE PROVISIONS

## PART [\*]

## FOR THE PROTECTION OF THE ONSHORE CARBON PIPELINE OPERATOR

**Application**

1. For the protection of the onshore carbon pipeline operator and to manage the interaction with Drax apparatus the following provisions have effect, unless otherwise agreed in writing between the undertaker and the onshore carbon pipeline operator (with respect to Sections A and B of this Part [\*] of Schedule 12) and Drax Power Limited and the onshore carbon pipeline operator (with respect to Sections C and D of this Part [\*] of Schedule 12) .

2. The undertaker hereby agrees not to exercise its powers under this Order without fully complying with the provisions of this Part of this Schedule.

3. This Part [\*] of Schedule 12 will have effect as follows-

(1) Section A and paragraph 19 of Section B of this Part [\*] of Schedule 12 will have effect from the date this Order is made until the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

(2) Paragraph 18 of Section B of this Part [\*] of Schedule 12 will have effect from the date that the onshore carbon pipeline apparatus is installed and completed in accordance with an agreed schedule of onshore carbon pipeline apparatus between the undertaker and the onshore carbon pipeline operator until the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

(3) The remainder of Section B of this Part [\*] of Schedule 12 will have effect from the date that the onshore carbon pipeline apparatus is installed and completed in accordance with an agreed schedule of onshore carbon pipeline apparatus between the undertaker and the onshore carbon pipeline operator.

(4) Where the onshore carbon pipeline operator proceeds to carry out the carbon dioxide export connection work or any part of it as the “undertaker” pursuant to Article 6 (benefit of the Order) or 7 (consent to transfer benefit of the Order) of this Order-

- (a) Section A of this Part [\*] of Schedule 12 and paragraphs 18 and 19 of Section B of this Part [\*] of Schedule 12 will have no effect with respect to such work or such part of it, and instead Section C of this Part [\*] of Schedule 12 will have effect from the date this Order is made until the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning; and
- (b) Section B of this Part [\*] of Schedule 12 will have no effect with respect to such work or such part of it, and instead Section D of this Part [\*] of Schedule 12 will have effect from the date this Order is made.

**Interpretation**

4.—(1) In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means apparatus in the alternative to onshore carbon pipeline apparatus adequate to enable the onshore carbon pipeline operator to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No. 1E to the onshore carbon pipeline and comprising Work No.2;

“construction” includes execution, placing, installation, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

“Drax apparatus” means any plant or infrastructure, belonging to or maintained by Drax Power Limited together with any replacement apparatus and such other apparatus that becomes operational apparatus of Drax Power Limited and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Drax alternative apparatus” means apparatus in the alternative to Drax apparatus adequate to enable Drax Power Limited to operate and maintain its undertaking in a manner no less efficient than previously;

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“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“onshore carbon pipeline” means the onshore carbon dioxide transportation infrastructure into which the authorised development will connect;

“onshore carbon pipeline apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by the onshore carbon pipeline operator in connection with the onshore carbon pipeline whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by the onshore carbon pipeline operator;

“onshore carbon pipeline operator” means the party with responsibility for developing or operating the onshore carbon pipeline;

“onshore carbon pipeline site” means land on which any onshore carbon pipeline apparatus is situated;

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“specified work” means so much of any work or operation authorised by this Order (other than a carbon dioxide export connection work) as—

(a) will or may be situated over, or within 15 metres measured in any direction of any onshore carbon pipeline apparatus; and/or

(b) may in any way adversely affect any onshore carbon pipeline apparatus the removal of which has not been required by the undertaker under paragraph 14 or otherwise; and

“Work No. 2 specified work” means so much of the carbon dioxide export connection work as is carried out by the onshore carbon pipeline operator as the “undertaker” pursuant to Article 6 (benefit of the Order) or 7 (consent to transfer benefit of the Order) of this Order and which—

(a) will or may be situated over, or within 15 metres measured in any direction of any Drax apparatus; and/or

(b) may in any way adversely affect any Drax apparatus the removal of which has not been required by the onshore carbon pipeline operator under paragraph 32 or otherwise.

## SECTION A

### **Interaction with the onshore carbon pipeline**

5. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of construction and commissioning of the authorised development and the onshore carbon pipeline. For the purposes of this sub-paragraph, “reasonable endeavours” means—

(a) undertaking consultation with the onshore carbon pipeline operator on detailed design of the carbon dioxide export connection work and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the onshore carbon pipeline having regard to such information as the onshore carbon pipeline operator notifies to the undertaker;

(b) having regard to the proposed programme of works for the carbon pipeline as may be made available to the undertaker by the onshore carbon pipeline operator and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon dioxide export connection work and the onshore carbon pipeline;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the carbon dioxide export connection work; and

(d) keeping the onshore carbon pipeline operator informed on the programme of works for the carbon dioxide export connection work.

### **Carbon dioxide export connection work**

6. The undertaker must not except with the agreement of the onshore carbon pipeline operator carry out construction of Work No. 2, or any part of it.

7. Without limiting any other provision of this Order, where the onshore carbon pipeline operator proceeds to carry out Work No. 2 or any part of it, the onshore carbon pipeline operator and the undertaker must use their reasonable endeavours

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to facilitate the programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

**8.—**(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to the onshore carbon pipeline operator plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as the onshore carbon pipeline operator may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by the onshore carbon pipeline operator.

**9.—**(1) Any approval of the onshore carbon pipeline operator required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and

(c) may be given subject to such reasonable requirements as the onshore carbon pipeline operator may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the carbon pipeline or otherwise for the protection of onshore carbon pipeline apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested in accordance with sub-paragraph (c) the undertaker will be permitted to refer such matters to dispute resolution in accordance with paragraph 21.

(2) The onshore carbon pipeline operator must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans.

(3) If the onshore carbon pipeline operator requires further particulars, such particulars must be requested by the onshore carbon pipeline operator no later than 21 days from the submission of plans and thereafter the onshore carbon pipeline operator must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

**10.—**(1) The undertaker must give to the onshore carbon pipeline operator not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and the onshore carbon pipeline operator will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 8(2) the onshore carbon pipeline operator may by notice in writing identify the extent to which the carbon dioxide export connection work does not comply with the approved details and request the undertaker at the undertaker's own expense to carry out remedial works so as to comply with the requirements of paragraph 8(2) of this Part of this Schedule or such alternative works as may be agreed with the onshore carbon pipeline operator or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the onshore carbon pipeline operator may execute the works specified in the notice and any reasonable expenditure incurred by the onshore carbon pipeline operator in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the onshore carbon pipeline operator will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

## SECTION B

### **On street apparatus**

**11.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the onshore carbon pipeline operator are regulated by the provisions of Part 3 of the 1991 Act.

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## **Acquisition of land**

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any rights of the onshore carbon pipeline operator in relation to onshore carbon pipeline apparatus, otherwise than by agreement.

## **Protective works to buildings**

13. The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any onshore carbon pipeline apparatus or any onshore carbon pipeline site.

## **Removal of onshore carbon pipeline apparatus**

14.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any onshore carbon pipeline apparatus is placed or requires that any onshore carbon pipeline apparatus is relocated or diverted, that onshore carbon pipeline apparatus must not be removed under this Part of this Schedule, and any right of the onshore carbon pipeline operator to maintain that onshore carbon pipeline apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the onshore carbon pipeline operator in accordance with sub-paragraphs (2) to (4).

(2) If for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any onshore carbon pipeline apparatus placed in that land, the undertaker must give to the onshore carbon pipeline operator 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the onshore carbon pipeline operator reasonably needs to remove any onshore carbon pipeline apparatus) the undertaker must, subject to sub-paragraph (3), afford to the onshore carbon pipeline operator the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the onshore carbon pipeline operator must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for the onshore carbon pipeline operator to use any compulsory purchase powers available to it to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the onshore carbon pipeline operator and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The onshore carbon pipeline operator must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, and after the grant to the onshore carbon pipeline operator of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any onshore carbon pipeline apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## **Facilities and rights for alternative apparatus**

15.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the onshore carbon pipeline operator facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for onshore carbon pipeline apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the onshore carbon pipeline operator or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the onshore carbon pipeline operator than the facilities and rights enjoyed by it in respect of the onshore carbon pipeline apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the

arbitrator must make such provision for the payment of compensation by the undertaker to the onshore carbon pipeline operator as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Specified works plan approval**

**16.**—(1) Before beginning to construct any specified work, the undertaker must submit to the onshore carbon pipeline operator plans of the specified work and such further particulars available to it as the onshore carbon pipeline operator may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the onshore carbon pipeline operator, or determined under paragraph 21.

(3) Any approval of the onshore carbon pipeline operator required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the onshore carbon pipeline operator may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the onshore carbon pipeline or otherwise for the protection of onshore carbon pipeline apparatus.

(4) The onshore carbon pipeline operator must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by the onshore carbon pipeline operator for approval.

(5) Without limiting sub-paragraph (3), the requirements which the onshore carbon pipeline operator may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by the onshore carbon pipeline operator to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the onshore carbon pipeline or otherwise for the protection of onshore carbon pipeline apparatus.

**17.**—(1) Subject to sub-paragraph (5), any specified work, and all protective or additional works required by the onshore carbon pipeline operator under sub-paragraph 16(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the onshore carbon pipeline operator,

and the onshore carbon pipeline operator will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the onshore carbon pipeline operator not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by the onshore carbon pipeline operator is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the onshore carbon pipeline operator may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the onshore carbon pipeline operator in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the onshore carbon pipeline operator reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the onshore carbon pipeline operator may execute the works specified in the notice and any reasonable expenditure incurred by the onshore carbon pipeline operator in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the onshore carbon pipeline operator will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 21.

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## **Expenses and costs**

**18.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the onshore carbon pipeline operator all expenses reasonably and properly incurred by the onshore carbon pipeline operator in, or in connection with, the inspection, removal, alteration or protection of any onshore carbon pipeline apparatus or the construction of the carbon dioxide export connection work or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 15.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to the onshore carbon pipeline operator all reasonable costs, charges and expenses which the onshore carbon pipeline operator may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection work, the specified works or any protective or additional works required by the onshore carbon pipeline operator under this Part of this Schedule; and
- (c) in carrying out any of the surveys or tests by the onshore carbon pipeline operator which are reasonably required in connection with the construction of the carbon dioxide export connection work or any specified works.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any onshore carbon pipeline apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing onshore carbon pipeline apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing onshore carbon pipeline apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 21 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the onshore carbon pipeline operator by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing onshore carbon pipeline apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing onshore carbon pipeline apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(6) Any amount which apart from this sub-paragraph would be payable to the onshore carbon pipeline operator in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the onshore carbon pipeline operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**19.**—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction of any of the authorised development or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any onshore carbon pipeline apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to the onshore carbon pipeline operator, or there is any interruption in the supply of the service provided by the onshore carbon pipeline operator, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

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- (a) bear and pay the cost reasonably incurred by the onshore carbon pipeline operator in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and
- (b) make reasonable compensation to the onshore carbon pipeline operator for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) The onshore carbon pipeline operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 19 applies where it is within the onshore carbon pipeline operator's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the onshore carbon pipeline operator's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed in accordance with sub-paragraph (1).

(3) If as a result of the authorised development the onshore carbon pipeline operator's access to the onshore carbon pipeline, or to any onshore carbon pipeline site, is materially obstructed, the undertaker must provide such alternative means of access that will allow the onshore carbon pipeline operator to maintain onshore carbon pipeline apparatus or use onshore carbon pipeline apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by the onshore carbon pipeline operator on behalf of the undertaker or in accordance with a plan approved by the onshore carbon pipeline operator or in accordance with any requirement of the onshore carbon pipeline operator or under its supervision does not, subject to sub-paragraph (5), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the onshore carbon pipeline operator, its officers, servants, contractors or agents.

(6) The onshore carbon pipeline operator must give the undertaker reasonable notice of any third-party claim or demand under the provisions of sub-paragraph (1) and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(7) The total liability of the undertaker in respect of this paragraph 19 shall be limited to the sum of [XX] million pounds (£XX) for any one event or series of connected events.

## **Co-operation**

**20.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or the onshore carbon pipeline operator requires the removal of onshore carbon pipeline apparatus under paragraph 14 or the onshore carbon pipeline operator specifies requirements for the protection or alteration of apparatus under paragraph 14 the undertaker and the onshore carbon pipeline operator must each use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the onshore carbon pipeline.

## **Disputes**

**21.** Any dispute arising between the undertaker and the onshore carbon pipeline operator under this part of this Schedule will, if the parties agree, be determined by arbitration under article 41 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or the onshore carbon pipeline operator, after notice in writing by one to the other.

## **SECTION C**

### **Interaction with the carbon dioxide export connection work**

**22.** Without limiting any other provision of this Part of this Schedule, the onshore carbon pipeline operator and Drax Power Limited must use reasonable endeavours to avoid any conflict arising between the carrying out of construction and

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commissioning of the carbon dioxide export connection work and the remainder of the authorised development. For the purposes of this sub-paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with Drax Power Limited on detailed design of the carbon dioxide export connection work and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the remainder of the authorised development having regard to such information as Drax Power Limited notifies to the onshore carbon pipeline operator;
- (b) having regard to the proposed programme of works for the carbon dioxide export connection work and the programme of works for the remainder of the authorised development as may be made available to the onshore carbon pipeline operator by Drax Power Limited and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon dioxide export connection work and the remainder of the authorised development;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the carbon dioxide export connection work; and
- (d) keeping Drax Power Limited informed on the programme of works for the carbon dioxide export connection work.

### **Carbon dioxide export connection work**

**23.** The onshore carbon pipeline operator must not except with the agreement of Drax Power Limited carry out construction of Work No. 2, or any part of it.

**24.**—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the onshore carbon pipeline operator must submit to Drax Power Limited plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as Drax Power Limited may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by Drax Power Limited.

**25.**—(1) Any approval of Drax Power Limited required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as Drax Power Limited may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the remainder of the authorised development,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested in accordance with sub-paragraph (c) the onshore carbon pipeline operator will be permitted to refer such matters to dispute resolution in accordance with paragraph 37.

(2) Drax Power Limited must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans.

(3) If Drax Power Limited requires further particulars, such particulars must be requested by Drax Power Limited no later than 21 days from the submission of plans and thereafter Drax Power Limited must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

**26.**—(1) The onshore carbon pipeline operator must give to Drax Power Limited not less than 14 days’ notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and Drax Power Limited will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 8(2) Drax Power Limited may by notice in writing identify the extent to which the carbon dioxide export connection work does not comply with the approved details and request the onshore carbon pipeline operator at the onshore carbon pipeline operator’s own expense to carry out remedial works so as to comply with the requirements of paragraph 8(2) of this Part of this Schedule or such alternative works as may be agreed with Drax Power Limited or as otherwise may be agreed between the parties.

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(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the onshore carbon pipeline operator, the onshore carbon pipeline operator has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, Drax Power Limited may execute the works specified in the notice and any reasonable expenditure incurred by Drax Power Limited in so doing will be recoverable from the onshore carbon pipeline operator.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, Drax Power Limited will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 37.

## **Expenses and costs**

**27.**—(1) Subject to the following provisions of this paragraph, the onshore carbon pipeline operator must repay to Drax Power Limited all expenses reasonably and properly incurred by Drax Power Limited in, or in connection with, the inspection, removal, alteration or protection of any Drax apparatus, or the construction of the carbon dioxide export connection work or any Drax alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 33.

(2) Without prejudice to the generality of sub-paragraph (1), the onshore carbon pipeline operator must repay to Drax Power Limited all reasonable costs, charges and expenses which Drax Power Limited may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection work, the Work No. 2 specified works or any protective or additional works required by Drax Power Limited under this Part of this Schedule; and
- (c) in carrying out any of the surveys or tests by Drax Power Limited which are reasonably required in connection with the construction of the carbon dioxide export connection work or any Work No. 2 specified works.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any Drax apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the Drax alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing onshore carbon pipeline apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing onshore carbon pipeline apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the onshore carbon pipeline operator or, in default of agreement, is not determined by arbitration in accordance with paragraph 37 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Drax Power Limited by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the onshore carbon pipeline operator.

(5) For the purposes of sub-paragraph (4)—

- (c) an extension of apparatus to a length greater than the length of existing Drax apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing Drax apparatus; and
- (d) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(6) Any amount which apart from this sub-paragraph would be payable to Drax Power Limited in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Drax Power Limited any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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## **Indemnity**

**28.**—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the carbon dioxide export connection work or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any Drax apparatus or Drax alternative apparatus (other than Drax apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to Drax Power Limited, or there is any interruption in the generation or supply of any service or goods provided by Drax Power Limited, or the efficiency of that supply or generation is impaired in each case directly or in consequence of such construction works, the onshore carbon pipeline operator must—

- (a) bear and pay the cost reasonably incurred by Drax Power Limited in making good such damage or restoring the generation or supply or making good any impairment of the efficiency of that supply or generation; and
- (b) make reasonable compensation to Drax Power Limited for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) Drax Power Limited must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 28 applies where it is within the reasonable ability and control of Drax Power Limited to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the control of Drax Power Limited and if reasonably requested to do so by the onshore carbon pipeline operator, Drax Power Limited must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed in accordance with sub-paragraph (1).

(3) If as a result of the carbon dioxide export connection work the access of Drax Power Limited to the Drax apparatus is materially obstructed, the onshore carbon pipeline operator must provide such alternative means of access that will allow Drax Power Limited to maintain or use the Drax apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by Drax Power Limited on behalf of the onshore carbon pipeline operator or in accordance with a plan approved by Drax Power Limited or in accordance with any requirement of Drax Power Limited or under its supervision does not, subject to sub-paragraph (5), excuse the onshore carbon pipeline operator from liability under the provisions of sub-paragraph (1).

(5) Nothing in sub-paragraph (1) imposes any liability on the onshore carbon pipeline operator with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Drax Power Limited, its officers, servants, contractors or agents.

(6) Drax Power Limited must give the undertaker reasonable notice of any third-party claim or demand under the provisions of sub-paragraph (1) and no settlement or compromise of the claim or demand is to be made without the consent of the onshore carbon pipeline operator who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(7) The total liability of the onshore carbon pipeline operator in respect of this paragraph 28 shall be limited to the sum of [XX] million pounds ([£XX]) for any one event or series of connected events.

## **SECTION D**

### **On street apparatus**

**29.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the onshore carbon pipeline operator are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of land**

**30.** Regardless of any provision in this Order or anything shown on the land plans, the onshore carbon pipeline operator must not (a) appropriate or acquire or take temporary possession of any land of Drax Power Limited or Drax apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right of Drax Power Limited or Drax apparatus, otherwise than by agreement with Drax Power Limited.

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## **Protective works to buildings**

**31.** The onshore carbon pipeline operator, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any Drax apparatus.

## **Removal of Drax apparatus**

**32.—(1)** If, in the exercise of the powers conferred by this Order, the onshore carbon pipeline operator acquires any interest in any land in which any Drax apparatus is placed or requires that any Drax apparatus is relocated or diverted, that Drax apparatus must not be removed under this Part of this Schedule, and any right of Drax Power Limited to maintain that Drax apparatus in that land must not be extinguished, until Drax alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Drax Power Limited in accordance with sub-paragraphs (2) to (4).

(2) If for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the onshore carbon pipeline operator requires the removal of any Drax apparatus placed in that land, the onshore carbon pipeline operator must give to Drax Power Limited 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the Drax alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Drax Power Limited reasonably needs to remove any Drax apparatus) the onshore carbon pipeline operator must, subject to sub-paragraph (3), afford to Drax Power Limited the necessary facilities and rights for the construction of Drax alternative apparatus in other land of the onshore carbon pipeline operator and subsequently for the maintenance of that apparatus.

(3) If Drax alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the onshore carbon pipeline operator, or the onshore carbon pipeline operator is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the Drax alternative apparatus or part of such apparatus is to be constructed, Drax Power Limited must, on receipt of a written notice to that effect from the onshore carbon pipeline operator, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the Drax alternative apparatus is to be constructed save that this obligation must not extend to the requirement for Drax Power Limited to use any compulsory purchase powers available to it to this end unless it elects to so do.

(4) Any Drax alternative apparatus to be constructed in land of the onshore carbon pipeline operator under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the onshore carbon pipeline operator and Drax Power Limited or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) Drax Power Limited must, after the Drax alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, and after the grant to Drax Power Limited of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the Drax alternative apparatus and subsequently to remove any Drax apparatus required by the onshore carbon pipeline operator to be removed under the provisions of this Part of this Schedule.

## **Facilities and rights for Drax alternative apparatus**

**33.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the onshore carbon pipeline operator facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for onshore carbon pipeline apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the onshore carbon pipeline operator or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the onshore carbon pipeline operator than the facilities and rights enjoyed by it in respect of the onshore carbon pipeline apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the onshore carbon pipeline operator as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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## **Work No. 2 specified works plan approval**

**34.**—(1) Before beginning to construct any Work No. 2 specified work, the onshore carbon pipeline operator must submit to Drax Power Limited plans of the Work No. 2 specified work and such further particulars available to it as Drax Power Limited may within 28 days of receipt of the plans reasonably request.

(2) Any such Work No. 2 specified work must not be constructed except in accordance with such plans as may be approved in writing by Drax Power Limited, or determined under paragraph 37.

(3) Any approval of Drax Power Limited required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as Drax Power Limited may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the authorised development or otherwise for the protection of Drax apparatus.

(4) Drax Power Limited must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by Drax Power Limited for approval.

(5) Without limiting sub-paragraph (3), the requirements which Drax Power Limited may have under that paragraph include conditions requiring the onshore carbon pipeline operator, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the Work No. 2 specified works or other works as are reasonably considered by Drax Power Limited to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the authorised development or otherwise for the protection of Drax apparatus.

**35.**—(1) Subject to sub-paragraph (5), any Work No. 2 specified work, and all protective or additional works required by Drax Power Limited under sub-paragraph 32(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of Drax Power Limited,

and Drax Power Limited will be entitled by its officer to watch and inspect the construction of such works.

(2) The onshore carbon pipeline operator must give to Drax Power Limited not less than 14 days' notice in writing of its intention to commence construction of any Work No. 2 specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a Work No. 2 specified work or any protective or additional work required by Drax Power Limited is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Drax Power Limited may by notice in writing require the onshore carbon pipeline operator at the onshore carbon pipeline operator's own expense to comply with the requirements of this Part of this Schedule or (if the onshore carbon pipeline operator so elects and Drax Power Limited in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Drax Power Limited reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the onshore carbon pipeline operator, the onshore carbon pipeline operator has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, Drax Power Limited may execute the works specified in the notice and any reasonable expenditure incurred by Drax Power Limited in so doing will be recoverable from the onshore carbon pipeline operator.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, Drax Power Limited will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 37.

## **Co-operation**

**36.** Where in consequence of the proposed construction of any of the carbon dioxide export connection work, the onshore carbon pipeline operator or Drax Power Limited requires the removal of Drax apparatus under paragraph 32 or Drax Power Limited specifies requirements for the protection or alteration of apparatus under paragraph 32 the onshore carbon pipeline

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operator and Drax Power Limited must each use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development.

### **Disputes**

37. Any dispute arising between Drax Power Limited and the onshore carbon pipeline operator under this part of this Schedule will, if the parties agree, be determined by arbitration under article 41 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by Drax Power Limited or the onshore carbon pipeline operator, after notice in writing by one to the other.