



Mr Andrew Mead  
The Planning Inspectorate  
(by email only)

Your Ref: EN070001  
Our Ref: DCO/2013/00019

4 March 2015

Dear Mr Mead,

**PROPOSED YORKSHIRE AND HUMBER CARBON CAPTURE AND STORAGE (CCS)  
CROSS COUNTRY PIPELINE DEVELOPMENT CONSENT ORDER:  
REPRESENTATION TO EXAMINING AUTHORITY - DEADLINE IV**

The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area.

Please find below the MMO's written representation for your consideration under deadline IV of the examination process. Please note that the MMO reserves the right to make further comment on this application throughout the examination process based upon new information, responses from other interested parties and proposed monitoring or mitigation.

**Article 9 – Transfer of Benefit of Order**

As raised at the DCO Issue Specific Hearing on 29 January 2015 and Deadline III on 17 February 2015, the MMO holds reservations regarding the current drafting of Article 9 of the DCO, the transfer of benefit of Order. It is the MMO's contention that as the post-consent enforcement body for the deemed marine licence (DML), the potential transfer of any or all of the benefit of the DCO must not affect the MMO's ability to discharge its duties under the Marine and Coastal Access Act 2009. At present the DCO is worded as below:

- 9.—***(1) The undertaker may with the consent of the Secretary of State—*
- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or*
  - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.*
- (2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker include references to the transferee or the lessee.*

*(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by National Grid Carbon.*

If a DCO is granted, the MMO is responsible for enforcing, monitoring, varying, suspending, and revoking any DMLs as part of the DCO. Following discussions with the applicant the MMO is not satisfied that the wording the applicant has proposed would sufficiently protect the interests and the ability of the MMO to perform its statutory duties, for example the proposed wording would enable a variation to the DML to take place without the MMO being consulted. During other NSIP examinations the MMO has argued that:

- there is a single identified licence holder for a DML;
- any transfer of a DML for the licence holder to another single identifiable legal entity should be undertaken either by the MMO under section 72(7) of the 2009 Act; or
- where the transfer of benefit of the DML is to be undertaken in accordance with the transfer of benefit provisions in the main body of the DCO, as a single transfer of the whole benefit of the DML only from the licence holder (undertaker) to another single identified legal entity only on application to the Secretary of State, who will then consult the MMO prior to making a final determination.

The MMO is a statutory consultee to The Planning Inspectorate on NSIPs for its relevant expertise and knowledge in relation to the marine environment. We therefore believe that it is also entirely reasonable that the Secretary of State consults us over any prospective transfer of a DML following its consent. We do not believe that this imposes any additional burden on the Secretary of State, as supported by the inclusion of this provision in several recently consented DCOs, such as those for the Hornsea One and Dogger Bank Creyke Beck offshore wind farms. The comments of Lord Hunt of Kings Heath on behalf of the government of the day in the House of Lords debate on the Marine Bill may also be helpful in understanding our position:

“Those marine licences will operate as if the Marine Management Organisation had issued them. Importantly, the MMO will then be responsible for monitoring and enforcing them; it could also add conditions to deemed licences as new information came to light”. Hansard House.

In summary, the MMO and the applicant have not found common ground on this issue as previously hoped and we believe this issue is unlikely to be resolved prior to the close of the examination period.

If you require further information on the above, please contact the undersigned.

Yours sincerely,



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