

Viking CCS Pipeline

**9.54 Response to
National Gas
Transmissions Deadline
3 Submission**

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Applicant: Chrysaor Production (U.K.) Limited,
a Harbour Energy Company
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Planning Act 2008 (as amended)
The Infrastructure Planning (Applications: Prescribed Forms
and Procedure) Regulations 2009 - Regulation 5(2)(q)
Date: July 2024

Viking CCS Pipeline

Deadline 4 Submission:

Applicability of PA2008 S127 at former
Theddlethorpe Gas Terminal site



1 INTRODUCTION

- 1.1 This document has been prepared on behalf of Chrysaor Production (U.K.) Limited ('the Applicant'). It relates to the application ('the Application') for a Development Consent Order (DCO) that has been submitted to the Secretary of State for Energy Security & Net Zero under Section 37 of the Planning Act 2008 (the 'PA2008'). The Application relates to the Viking CCS Pipeline that will transport captured carbon dioxide from Immingham to the Theddlethorpe Facility, including a pipeline crossover to the existing Lincolnshire Offshore Gas Gathering System (LOGGS) offshore pipeline to Mean Low Water Springs (the 'Proposed Development').
- 1.2 This document provides the Applicant's response to Action Point 7 arising from Compulsory Acquisition Hearing 2 [EV7-008]: namely, the Applicant's response to the submissions made by National Gas Transmission plc ('NGT') regarding the application of Section 127 of the PA2008 to the former Theddlethorpe Gas Terminal site (the 'TGT site') [REP2-039].

2 STATUTORY PROVISIONS

- 2.1 Section 127 of the PA 2008 deals with the compulsory acquisition of statutory undertakers' land. Section 127(1) provides that Section 127 applies in relation to land if:
- (a) the land has been acquired by statutory undertakers for the purposes of their undertaking;
 - (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and
 - (c) as a result of the representation the Secretary of State is satisfied that—
 - (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking; or
 - (ii) an interest in the land is held for those purposes.
- 2.2 Section 127 regulates the circumstances in which an order granting development consent may include provision for the compulsory acquisition of statutory undertakers' land. It does not, however, restrict the acquisition of such land, or interests in or rights over the land, through voluntary agreement with the statutory undertaker in question.
- 2.3 As set out in Section 127(1)(b), the provisions of this section are only engaged where a representation has been made by a statutory undertaker before the completion of the examination, and such representation has not been withdrawn.
- 2.4 The Applicant expects to reach agreement with NGT shortly, pursuant to which it shall acquire all necessary interests in and rights over the TGT site for the purposes of the Proposed Development. Moreover, it is anticipated that, once an agreement has been entered into between NGT and the Applicant, NGT shall withdraw their representation in respect of the Application.
- 2.5 The provisions of Section 127 would not be engaged in relation to the TGT site if NGT withdraws its objection. The Examining Authority and Secretary of State would not be

required to have regard to it. Indeed, it is respectfully submitted that to do so would be to have regard to an irrelevant consideration,¹ giving rise to an error of law.

3 TGT SITE AS 'OPERATIONAL LAND'

3.1 The Applicant does not dispute that NGT is a statutory undertaker for the purposes of Section 127 more generally. Rather, the Applicant and NGT disagree simply as to whether the TGT site is 'operational land' for the purposes of Section 127(1)(c).

3.2 It is accepted that, at the point at which the TGT site was in operation as a gas processing facility, the land was used for the purposes of carrying on NGT's statutory undertaking. However, as the Applicant has noted at length in its earlier Position Statement in relation to the TGT site [REP1-051], the land is no longer being used for the processing or transportation of gas, with the gas processing infrastructure and buildings having now been demolished.

3.3 The Applicant submits that, as the TGT site is not currently used for the purposes carrying on NGT's statutory undertaking, it cannot meet the requirements of Section 127(1)(c)(i). Indeed, that position does not appear to be disputed by NGT. In order to constitute 'operational land' for the purposes of Section 127, the TGT site must therefore satisfy the requirements of Section 127(1)(c)(ii).

3.4 Section 127(1)(c)(ii) requires that, rather than using the TGT site for the purposes of the carrying on of their undertaking, NGT hold an interest in the land "*for those purposes*" (emphasis added). The clear and unambiguous meaning of this wording is that, for land to constitute 'operational land', the interest must be held for the purposes of carrying on that statutory undertakers' undertaking, as opposed to any undertaking more broadly.

3.5 Such an interpretation is consistent with case law concerning statutory undertakers' land, which notes that land will be held for such purposes where it is land that "*they intend to use in the future for the purpose of their own undertaking*".²

4 NGT'S UNDERTAKING

4.1 NGT is the holder of a gas transporter licence granted or treated as granted under Section 7 of the Gas Act 1986. The purpose of such a licence is to authorise the gas transporter to convey gas through pipes to any premises within the area authorised in the licence, and to convey gas through pipes to any pipeline system operated by another gas transporter or to another pipeline system specified in the licence.³

4.2 The general powers and duties of a gas transporter are to develop and maintain an efficient and economical pipeline system for the conveyance of gas, and to comply with any reasonable request to connect into that system and convey gas to any premises, or to connect to that system a pipeline operated by another authorised transporter.⁴

4.3 NGT have advised that they intend to develop the TGT site in the future for use as an "energy park", with the claimed intention being that this will host:

"...new low or zero carbon energy technologies, which may include hydrogen production and storage, battery storage, carbon capture, electricity generation and distribution, and associated activities such as desalination and biodiversity net gain"

4.4 NGT have also, as they note in their submissions, been negotiating with third parties for the grant of options for the development of the TGT site as an energy park.

¹ The relevance of Section 127 would be a question of law, rather than one of planning judgement for the Examining Authority and/or Secretary of State: *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759

² *R v Minister of Fuel and Power, ex parte Warwickshire County Council* [1957] 1 WLR 861 at 864

³ Gas Act 1986, Section 7(2)

⁴ 1986 Act, Section 9(1)

- 4.5 Whilst such uses may fall within the scope of a statutory undertaking – in particular, that of a holder of a generation licence under Section 6 of the Electricity Act 1989 – they are quite clearly separate to and distinct from NGT's own undertaking as a gas transporter.
- 4.6 As noted above, NGT's interest in the TGT site must be held for the purposes of carrying on their statutory undertaking, not simply another development activity or undertaking. NGT's own submissions as to their intention to redevelop the site for use as an energy park would seem to indicate that it is in fact surplus land, which is no longer required or held for the purposes of their undertaking as a gas transporter.
- 4.7 As the TGT site is not used for the purposes of carrying on NGT's undertaking, and NGT do not hold an interest in the land for those purposes, the Applicant submits that the TGT site does not constitute 'operational land' for the purposes of Section 127(1)(c), and that Section 127 is not engaged in relation to the TGT site.
- 4.8 In any event, for the reasons noted in section 2 above, the Applicant considers that the point will be moot when NGT withdraws its relevant representation.