

Our Ref: RADA/209088/00096

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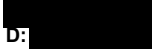

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18 December 2024

Application by H2Teesside Limited (the Applicant) for the H2 Teesside Project

Planning Inspectorate Reference: EN070009

Air Products (BR) Limited, Air Products PLC, Air Products Renewable Energy Limited (Interested Party Reference Number: 20049380)

Deadline 5 submission responding to Examining Authority's (ExA) Second Written Questions (WQ2)

1 INTRODUCTION

- 1.1 This submission is made on behalf of Air Products PLC, Air Products (BR) Limited, and Air Products Renewable Energy Limited (collectively referred to as **Air Products**), in respect of the proposed H2Teesside project (**H2Teesside**) submitted by the Applicant to the Planning Inspectorate which was Accepted for Examination on 22 April 2024.
- 1.2 Air Products is an affected person in respect of existing infrastructure within the current Order Limits including an oxygen pipeline and a nitrogen pipeline (that Air Products operates and maintains) together with its interest in the Tees Valley 1 and Tees Valley 2 sites.
- 1.3 Air Products made a Relevant Representation [**RR-006**] and Written Representation [**REP2-073**] on this Application seeking to protect its existing infrastructure and assets within Order Limits. Air Products supports the Project subject to its concerns relating to its assets in the area being fully addressed.
- 1.4 By way of update, since Air Products' Written Representation was submitted, we have received a copy of the draft protective provisions and an asset protection agreement from the Applicant, provided comments and attended a call with the Applicant and its solicitor to discuss the documents.

2 WQ2 AND UPDATE ON PROTECTIVE PROVISIONS

- 2.1 WQ2.9.11 asks affected parties seeking protective provisions whether they are satisfied with the protective provisions included within the draft DCO [**REP4-004**] to date and whether any other side agreement is required. WQ2.9.12 asks affected parties who haven't already done so, to submit a copy of their preferred protective provisions to the ExA for consideration.

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- 2.2 The proposed form of protective provisions currently being negotiated with the Applicant differs from the third party template currently appended to the face the DCO; this reflects the form of other protective provisions Air Products has achieved in relation to other projects in the locality. There are broadly three points under discussion:
- 2.2.1 The Air Products entities named on the protective provisions. The three abovenamed Air Products entities are named in the protective provisions because each holds interests and apparatus in the area that could be impacted by the powers granted by the DCO;
 - 2.2.2 Cost exposure. Air Products' position is that any costs incurred, including consequential loss, as a result of the undertaker exercising its DCO powers need to be covered in full and on an indemnity basis by the Applicant; and
 - 2.2.3 Benefit of the provisions for Air Products' tenants. There are some assets located in and around the Tees Valley 1 and 2 sites that are subject to historic agreement with Lighthouse Green Fuels (**LGF**). LGF, Air Products and the Applicant are working together to agree a mechanism to ensure that where LGF has an interest, by virtue of existing commercial agreements, they have the benefit of the protective provisions in respect of those assets – this approach will require further side agreements between the parties which are also under discussion.
- 2.3 Given the positive progress made to date on the protective provisions, and the nature of the matters outstanding, Air Products is not yet in a position to share its preferred form of protective provisions as it seeks to further engage with the Applicant and LGF over the coming weeks. In the event that agreement is not reached on those matters before Deadline 6 (8 January 2025), it is Air Products intention to submit its preferred form of protective provisions to the ExA at that deadline.
- 2.4 Notwithstanding the matters still under discussion, Air Products is confident that these can be resolved prior to the close of Examination and looks forward to continued engagement with the Applicant in this regard. Once acceptable provisions have been agreed with the Applicant, Air Products will be in a position to withdraw its objection to the Proposed Development, however, until agreement is reached, Air Products will maintain its interest in the Examination and reserves its position with regard to any matters arising from submissions made during the Examination.

3 **UPCOMING HEARINGS**

- 3.1 Please note that Air Products does not intend attending the hearings set down in January 2025, however, it will maintain a watching brief on matters and to the extent anything arises at either the Compulsory Acquisition Hearing 2 or the Issue Specific Hearings, requiring input by Air Products, it will provide written comment to the ExA at Deadline 6A on 22 January 2025.

Yours faithfully

Charles Russell Speechlys LLP

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