

Our Ref: RADA/209088/00096

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8 January 2025

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 5a submission regarding protective provisions

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.

2 PROTECTIVE PROVISIONS & FURTHER SIDE AGREEMENTS

- 2.1 Air Products responded to the Examining Authority's (**ExA**) second written questions at Deadline 5 ([**REP5-068**]) providing an update as to negotiations with the Applicant in relation to the protective provisions and asset protection agreement sought.
- 2.2 The principle of Air Products benefiting from protective provisions on the face of the Development Consent Order (**DCO**) is agreed with the Applicant, and the Applicant's updated draft DCO submitted at Deadline 5 ([**REP5-006**]) now includes a form of protective provisions benefiting Air Products.

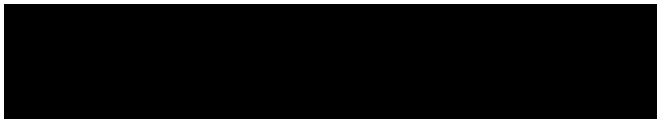
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- 2.3 While positive engagement has continued between Air Products and the Applicant, the final form of protective provisions remain to be agreed with a number of matters still under discussion (as indicated in Air Products' Deadline 5 submission ([REP5-068])). Therefore, Air Products is submitting with this representation its preferred set of protective provisions to be placed on the face of the DCO (clean and comparison versions at Appendix 1 and Appendix 2 of this representation respectively).
- 2.4 Further explanation in respect of those key areas where Air Products' preferred provisions differ from those in the Applicant's Deadline 5 draft DCO ([REP5-006]) is as follows:
- 2.4.1 **Definition of Air Products** – the protective provisions are made in favour of Air Products PLC, Air Products (BR) Limited, and Air Products Renewable Energy Limited, being the entities that own or operate apparatus within the Order land (as set out in the Book of Reference ([REP5-002])) and therefore must benefit from the protective provisions. Successors are included to cover off further Air Products entities utilising the apparatus in the future. Air Products also holds certain apparatus for the benefit of its tenants.
- 2.4.2 **No acquisition etc. except by agreement (paragraph 5)** – Air Products supports the project and is content with works being undertaken subject to satisfactory protective provisions being included in the DCO; as such any acquisition of apparatus would need to be on a commercial basis and Air Products would envisage any such agreement happening through the matrix of the agreed set of protective provisions.
- 2.4.3 **Removal of apparatus (paragraph 6):**
- (a) paragraph 6(2) – explicit reference to those facilities and rights at the end of the paragraph which are required to enable Air Products to perform its functions and satisfy its obligations to its customers for clarity.
 - (b) paragraph 6(8) – this has been included as it would benefit both parties to have a specific methodology to follow when the project works interact with the apparatus to minimise the risk of interference and disputes.
 - (c) paragraph 6(9) – this has been included as Air Products cannot risk being unable to supply its customers owing to interruption caused by the project. There is a specific carve out of liability for the undertaker for where such interruption is caused by Air Products.
- 2.4.4 **Expenses and costs (paragraph 9)** – Air Products derives no benefit from the project and therefore cannot be exposed to any costs or losses as a result of the project; the amendments to this paragraph are reasonable and reflect its position set out in REP5-068 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.
- 2.5 The attached protective provisions ensure that Air Products can continue to operate and develop its assets and undertake its day to day business without interruption, alongside the development and operation of the H2Teesside Project.
- 2.6 As to further side agreements required, an asset protection agreement with the Applicant has been sought and this is under discussion. Additionally, a further side agreement may be required in relation to the operation of the protective provisions where the affected asset is one in which Lighthouse Green Fuels also has an interest arising out of existing commercial agreements. The parties' solicitors are

engaged on the matter and the parties are confident this will be agreed prior to the close of the Examination.

- 2.7 Air Products considers the differences between the parties' preferred protective provisions are capable of being resolved before the end of the Examination and looks forward to further 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 maintains its position that the attached protective provisions should be placed on the face of the DCO.
- 2.8 Air Products reserves its position with regard to any matters arising from submissions made during the Examination including the Compulsory Acquisition Hearing 2 on 13 January.

Yours faithfully



Charles Russell Speechlys LLP

APPENDIX 1 – AIR PRODUCTS’ PREFERRED PROTECTIVE PROVISIONS (CLEAN)

**APPENDIX 2 – AIR PRODUCTS’ PREFERRED PROTECTIVE PROVISIONS (COMPARISON WITH
VERSION APPENDED TO DRAFT DCO AT DEADLINE 5)**