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Sir Geoffrey Clifton-Brown MP
Chair of the Committee of Public Accounts
House of Commons
London
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14 January 2025

Dear Sir Geoffrey,

Re: Contingent liabilities on Carbon Capture projects – following the Committee’s inquiry on 12 December 2024

Thank you for your letter of 19 December. This response provides more detail on the contingent liabilities associated with the ongoing judicial review regarding the East Coast Cluster (Q61); and it sets out best estimates for the length of the CCUS Track-1 contingent liabilities (Q62).

The judicial review regarding the joint Net Zero Teesside (NZN) / Northern Endurance Partnership (NEP) Development Consent Order (DCO) was dismissed on all grounds by the High Court in August.¹ Mrs Justice Lieven also rejected permission to appeal. The Court of Appeal granted permission to appeal in September and a hearing has been listed for 4-5 March.

If we had deferred signing contracts until after the Court of Appeal’s decision, this would have resulted in material additional costs because supply chain bids would have expired and required renegotiation. It would also have delayed project benefits.

NEP/NZN lenders would not have invested in the programme with this ongoing legal challenge due to their risk exposure. Accordingly, the contracts - Discontinuation Agreement and Dispatchable Power Agreement - make provision allowing NEP and NZN (respectively) to bring a claim for compensation in the event that there is a change in law which results in the DCO ceasing to be in full force and effect (e.g. should it be quashed). The actual amount of compensation that could be payable would depend on the timing of the relevant judgment, the progress of construction of the projects up to that point, and the nature of the judgment.

HMG’s reasonable worst-case scenario is an adverse Supreme Court ruling by April 2026, potentially exposing it to up to £2bn for NZN and £1.7bn for NEP. In a highly unlikely scenario of prolonged court proceedings, with project developers maintaining current schedules and spending, maximum exposure was assessed to be £6bn. This compensation is considered appropriate to avoid further subsidy increases and prevent delays in carbon abatement and job creation.

¹ [Approved Judgment 14 August 2024 - Dr Andrew Boswell, R \(on the application of\) v Secretary of State for Energy Security and Net Zero](#). Mrs Justice Lieven dismissed all grounds and concluded that, “The Claimant may disagree with the analysis and the weight given to different factors, but the reasoning behind the conclusions are both clear and lawful” (Para 78).

The liabilities associated with DCO compensation are covered by the set of contingent liabilities communicated to Parliament on 13 November 2024². NEP compensation is covered by 'Stranded Asset (discontinuation)' and NZT discontinuation is covered by 'The Discontinuation of Capture Project Contracts', as set out below. These liabilities also cover other eventualities; they are not limited to DCO compensation. It should also be noted that, in the case of NEP, HMG would have the right to transfer NEP assets to a GovCo, but this possibility is not reflected in the figures below. For NZT, any proceeds from asset sales would reduce the compensation. For this assessment, it is assumed that decommissioning costs and scrap values cancel each other out. In practice, the actual net effect of these two payment components could be slightly positive or negative but is expected to be much smaller than the main termination costs (primarily the project's development and capital expenditure).

	Contingent Liability	Maximum Exposure (£m) across both Track-1 Clusters	Reasonable worst-case (£m) across both Track-1 Clusters	Estimated length of liability (years)
1	The Supplementary Compensation Agreement	9,034	400	45
2	The Revenue Support Agreement	9,804	5,739	25
3	Stranded Asset (discontinuation)	9,715	5,739	45
4	Decommissioning Shortfall	590	100-333	25
5	The Discontinuation of Capture Project contracts	5,302	2,055	15

You should also note that equity holders (including bp as operator of both projects) have significant exposure in case of the relevant DCO being quashed. On the Transport & Storage (T&S) side, equity is exposed to supply chain breakage costs and decommissioning shortfall costs and on the NZT side to financing costs (including interest accrued over the construction period but excluding finance break costs which are compensated under the DPA). This helps ensure that HMG and equity interests are aligned to minimise the likelihood of this risk materialising. Further, the impact of the relevant DCO being quashed at the Court of Appeal is mitigated by a contractual 4-month deferral period, which would allow parties to find an alternative way forward (which could for example allow for T&S offshore construction to continue if this was deemed VfM).

DCO challenges such as these are not unique to CCUS. The significant impact of DCO challenges on Nationally Significant Infrastructure Projects (NSIPs) prompted an independent review of the issue, led by Lord Banner KC. He found the concern that unmeritorious DCO challenges are causing significant undue delay to the delivery of NSIPs, with consequent detriment to the public interest, to be well-founded in significant respects.³ The review makes several recommendations to reduce the impact for future projects, including possibly raising the permission threshold for judicial review claims challenging DCOs. This work is being led by MHCLG and the Ministry of Justice, who conducted a Call For Evidence on Lord Banner's

² WMS 13 November 2024, [Carbon Capture, Usage and Storage Track 1 - Contingent Liabilities](#)

³ Para 4, [Lord Banner KC \(2024\). Independent review into legal challenges against Nationally Significant Infrastructure Projects](#). 5 of the 35 cases examined were brought by the joint NEP/NZT DCO Claimant.

recommendations at the end of last year. The responses are currently being reviewed, with a view to taking powers as necessary in the Planning and Infrastructure Bill being introduced this year. The aim of Government is to strike the right balance between reducing delays to infrastructure projects through over-lengthy and unwieldy judicial review processes and maintaining access to justice in line with our domestic and international obligations.

At the hearing, the Committee also asked for best estimates of the length of the CCUS Track-1 Contingent Liabilities (Q62). I have set these out below.

T&S Supplemental Compensation Agreement would be available to provide support for T&SCo to remediate a leakage event, as well as enabling the management of leakage risks more broadly at the geological store during operations and the post closure period.

- This Contingent Liability does not have a fixed end date. It is expected to last through operations and during the post closure period until the North Sea Transition Authority is satisfied that the CO₂ is completely and permanently contained, and the T&S Company's (T&SCo) liabilities are handed back to the State.
- Our best estimate of the maximum duration of this Contingent Liability is 45 years from the Commencement of Operations Date. This includes an assumed 25 years of operations and a 20-year period of Post Closure. The assumed period of post closure aligns with obligations of the operator in The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011
- Government exposure is expected to decrease over time as commercial insurers become more comfortable with the 'first of a kind' risks and the depth of the market increases. Furthermore, the extent of any compensation for a leak of CO₂ is capped, on a per event basis, by reference to financial limits agreed between the T&SCo and Government. In the event of such a leak, only a fraction of the entire amount of CO₂ stored over the asset's lifetime would likely be released.

T&S Revenue Support Agreement addresses demand-risks by providing for payments to T&SCos if its allowed revenue is not covered by user fees.

- This Contingent Liability does not have a fixed end date. The liabilities end on the earlier of (1) revocation of the economic licence by Ofgem; (2) on expiry of the asset life of the approved T&S Network; or (3) the date HMG serves a Discontinuation Notice on the T&SCo under the Discontinuation Agreement.
- The life of the RSA in the first instance is the depreciation life of the T&SCo assets, which is 25 years. The RSA does not automatically apply to material expansions of the network. Any changes to the network that would (1) result in an extension of the asset life of the approved T&S Network that also result in an extension of the period of application of Allowed revenue; (2) result in an increase to the Regulated Asset Value over £50m or (3) result in a new store and/or increase in the flow rate and/or capacity permitted by a storage permit at an existing store, need HMG approval, allowing the SoS the opportunity to renegotiate RSA terms with T&SCo.
- In general, allowed revenue is expected to reduce over time as depreciation (which is a building block of allowed revenue) is paid.

T&S Discontinuation Agreement (Stranded Asset) provides a right for the SoS to discontinue support to the T&SCos and entitles investors to be compensated for their investment.

- This Contingent Liability does not have a fixed end date. The liabilities end on the expiry of the Discontinuation Agreement which is the later of the expiry of the Supplemental Compensation Agreement and the expiry of the Revenue Support Agreement.
- In general, once T&SCos are operational, discontinuation compensation payable is expected reduce over time as the Regulated Asset Value depreciates.

T&S Decommissioning Shortfall Agreement covers potential decommissioning fund shortfall which might arise if decommissioning is required before the fund has been fully built-up.

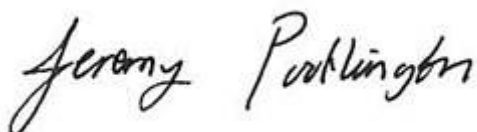
- This Contingent Liability does not have a fixed end date. The liabilities end on expiry of the asset life of the approved T&S Network, or the date HMG services a Discontinuation Notice on T&SCo under the Discontinuation Agreement.
- This Contingent Liability eliminates the need to fund and hold financial security upfront for decommissioning shortfall, which would crystallise the costs and impacts of the security for Users/HMG/Levy Payers (as HMG/Levy Payers will pay User charges for the first 15 years).
- The Contingent Liability varies over time as the project progresses. In particular, once the T&SCo are operational, the risk of decommissioning shortfall is expected to reduce over time and declines in proportion to the Fund accruing.

The Discontinuation of Capture Project Contracts allows for payment of compensation to capture projects for specified costs and losses due to a qualifying change in law or prolonged CO₂ transport and storage unavailability.

- This Contingent Liability expires at the end of the business model contract, which is up to 15 years from the date that the capture project becomes operational.
- The exposure of the Contingent Liability reduces over time as the termination compensation amount decreases throughout the duration of the contract, due to debt repayment and equity capital recovery.

I have copied this letter to the Chair of the Energy and Net Zero Select Committee and the Comptroller and Auditor General.

Yours sincerely,

A handwritten signature in black ink that reads "Jeremy Pocklington". The signature is written in a cursive, slightly slanted style.

Jeremy Pocklington