

From: [REDACTED]
To: [Immingham OCGT](#)
Subject: VPI Immingham OCGT – EN010097 - deadline 6a response on behalf of Phillips 66 [BURGES-WORK.FID9679692]
Date: 23 January 2020 11:32:29
Attachments: [REDACTED]

Dear Sirs

Please find attached deadline 6a submissions on behalf of Phillips 66.

Kind regards

Maelor

Maelor James
Solicitor
[Borges Salmon LLP](#)



Legal Team Assistant: Amber Potts
T: +44 (0) 117 307 6203

www.borges-salmon.com

**Borges
Salmon**



This email (and any attachment) is intended solely for the addressee, is confidential and may be legally privileged. If you have received this email in error, please send it back to us immediately and delete it without reading, copying or disseminating it.

This email is being sent to you on behalf of one or more of the following entities with registered offices at One Glass Wharf, Bristol, BS2 0ZX, all of which (apart from Borges Salmon Company Limited) are authorised and regulated by the Solicitors Regulation Authority: Borges Salmon LLP, a limited liability partnership registered in England and Wales (LLP number OC307212); Borges Salmon Company Limited, a company registered in England and Wales (number 07556770); BS Pensions Trustees Limited, a company registered in England and Wales (number 2682277); and/or on behalf of Borges Salmon (Northern Ireland) Limited, a company registered in Northern Ireland (number NI611307)

which is authorised and regulated by the Law Society of Northern Ireland and with a registered office at Forsyth House, Cromac Square, Belfast, Northern Ireland, BT2 8LA. Burges Salmon LLP is also regulated by the Law Society of Scotland.

A list of the members and directors of the above entities may be inspected at the relevant registered office and also at Burges Salmon LLP, One Glass Wharf, Bristol, BS2 0ZX Tel: +44 (0)117 939 2000 Fax:+44 (0)117 902 4400 <https://www.burges-salmon.com>. Further information about Burges Salmon entities, including details of their regulators, is set out in the “Who we are” section of the Burges Salmon website at <https://www.burges-salmon.com>.

For information about how we handle any personal data we collect about you, please see our Privacy Policy on the website <https://www.burges-salmon.com/privacy-policy/>.

1 INTRODUCTION

- 1.1 These submissions comprise the case of Phillips 66 Limited ("**P66**") to the Examining Authority ("**ExA**") in respect of VPI Immingham B's application for the VPI Immingham OCGT DCO, reference EN010097, at Deadline 6a on 23 January 2020.
- 1.2 In his Rule 17 letter of 9 January 2020 the Examining Authority requested all Statutory Undertakers with outstanding objections to compulsory acquisition to submit their cases on the tests in sections 127 and 138 of the Planning Act 2008 by the new D6a. Whilst P66 is not a Statutory Undertaker, it has been treated as one throughout the course of the Examination¹ and it has therefore understood the Rule 17 letter to indicate that it should also submit its case on the Applicant's proposal to compulsorily acquire its land. In this case P66's comments comprise its case on whether or not the Applicant has shown that there is a compelling case in the public interest for the compulsory acquisition of P66's land.
- 1.3 All terms used within this document are as defined in the Applicant's Application Documents, and P66's previous submissions, unless otherwise stated.

2 P66'S OBJECTION TO COMPULSORY ACQUISITION

- 2.1 P66's case is that the Applicant has failed to demonstrate that there is a compelling case in the public interest for the compulsory acquisition of P66's land. Accordingly any provisions of the dDCO which would authorise compulsory acquisition ought to be modified to prevent such acquisition.
- 2.2 P66 does not object to the grant of DCO per se. However, if the ExA removes the powers of compulsory acquisition over P66's land, it will need to consider whether the Applicant is able to demonstrate a reasonable prospect of its scheme being delivered.
- 2.3 Appendix One contains drafting amendments to the dDCO which the SoS ought to consider in the event he or she is minded to grant the dDCO, but remove powers of compulsory acquisition of P66's land.

3 "NEW" PROTECTIVE PROVISIONS – CREATING NEW RIGHTS IN THE EXISTING GAS PIPELINE SITE (PLOTS 33, 39 TO 40, 42 TO 58) AND EXISTING VPI CHP SITE (PLOTS 7 TO 16, 18 TO 32, 34 TO 38)

- 3.1 These are the protective provisions offered by the Applicant to overcome P66's objection to the compulsory acquisition of unfettered rights over the HOR. It is these "new" protective provisions which would control those rights sought by the Applicant.
- 3.2 P66's case is that the rights sought by the Applicant over:
- (a) the Existing Pipeline Site (Plots 33, 39 to 40 and 42 to 58); and
 - (b) the Existing VPI CHP Site (Plots 7 to 16, 18 to 32 and 34 to 38),
- are not justified, and do not meet the test of a compelling case in the public interest under s.122 of the Act.
- 3.3 However, in the event the SoS is minded to grant those rights to the Applicant, he or she must consider when doing so what form appropriate protective provisions ought to be in to regulate those rights.

¹ See for example paragraphs 9.3.1 and 9.3.3 of the Applicant's Statement of Reasons [APP-008]

- 3.4 On the date of these submissions the Applicant has not consolidated its drafting of these “new” protective provisions. The latest version of its protective provisions can be found at paragraphs 51 to 82 of Part 4 of Schedule 9 to the dDCO [REP5-003]. But to those must now also be added the provisions offered by the Applicant at D6; to overcome objections made by P66 in its Relevant Representation. Those latest provisions are numbered 1 to 20 and appear as Appendix 2 to the Applicant’s D6 submissions in response to P66’s D5 submissions. The drafting appears at page 38 of the pdf of [REP6-006].
- 3.5 P66 has consolidated those sets of protective provisions, and provides appended to these submissions:
- (a) Appendix Two comprises a redline comparison of P66’s proposed protective provisions against the baseline drafting offered by the Applicant to date (summarised in paragraph 4.4 above); and
 - (b) Appendix Three comprises a clean version of those P66 proposed protective provisions.
- 3.6 This drafting offered by P66 should not be construed as agreement to the “new” protective provisions. P66 remains vigorously opposed to the compulsory acquisition of rights over its land. However, if the SoS is minded to grant the dDCO, he or she must be satisfied that the rights it grants are subject to the minimum necessary safeguards over P66’s land.
- 3.7 The drafting contained in the appendices to these submissions is P66’s best attempt at preparing those minimum necessary safeguards. However, for the reasons previously provided by P66 in its submissions expressing significant concerns inter alia about:
- (a) The lawfulness of seeking to recreate controls which would normally be included in a private treaty lease within protective provisions; and
 - (b) The practical enforcement of these provisions which the Applicant seeks to impose on P66 on a compulsory, unilateral, basis.

P66 submits even this drafting is not adequate to allow the rights of compulsory sought by the Applicant to be confirmed.

4 DETAILED COMMENTS ON THE “NEW” PROTECTIVE PROVISIONS

- 4.1 The rationale for the drafting amendments suggested by P66 (shown in Appendix Two) are provided in detail in its D6 submissions, and are not repeated here.
- 4.2 One further drafting change been made in the preparation of these submissions is the deletion of proposed paragraph 68, which sought to impose constraints on P66’s use of its land beyond those which the Applicant has expressly indicated are to be acquired in Schedule 6 to the dDCO. To the extent the Applicant seeks to prevent P66 (for example) erecting buildings or structures in certain locations within its land within the HOR, it ought to have sought those restrictions in the form of rights it seeks to acquire by compulsion. That the Applicant seeks to impose these as additional restrictions in these protective provisions is further evidence of the inappropriateness of the Applicant’s proposed use of protective provisions.

5 “OLD” PROTECTIVE PROVISIONS – HYDROCARBON PIPELINES CROSSING (PLOT 17)

- 5.1 P66 and the Applicant have agreed the terms of the protective provisions which ought to be included in the dDCO for the protection of 3 hydrocarbon pipelines operated by P66 within the Order Limits and over which the Applicant proposes crossing works for the service connections (gas, electricity, and other utilities) of its proposed OCGT plant. Those pipelines are situated within plot 17 of the Land Plans.

- 5.2 These have been referred to as the “old” protective provisions. They are contained at paragraphs 36 to 50 of Part 4 of Schedule 9 to the dDCO [REP5-003].
- 5.3 Some minor drafting amendments are suggested to refine the operation of these provisions:
- (a) The definition of “affected asset” has been amended to ensure all possible works which may affect P66 assets are covered by the provisions.
 - (b) The timings for P66 responses at paragraphs 36 and 39 have been extended. Having consulted with P66’s technical operations teams the timings proposed would not have been practicable, and these extended periods are therefore now suggested. These same periods are also suggested for paragraphs 54 and 57 which provide for a similar mechanism.
 - (c) Following consultation with P66’s technical operations team it was considered that the separation distance of the authorised development and the existing hydrocarbon pipelines was best addressed when the work details are proposed by the Applicant. Paragraph 42 has therefore been deleted.

Burges Salmon LLP on behalf of **Phillips 66 Limited**

23 January 2020

Amendments to the dDCO to remove compulsory powers of acquisition over P66 land

Additions to the existing drafting of the dDCO are shown underlined.

1 In Article 2:

"“P66” means Phillips 66 Limited (Company number 00529086) or a successor in title to any interest in land owned by P66 on the date of this Order.

[Article 2 continues as at present]"

2 In Article 21:

"21. (1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new class of rights and impose the restrictions as described in Table 6 of Schedule 6 (land in which only new rights etc. may be acquired), subject to the terms of Schedule 6.

[Article 21 continues as at present]"

3 In article 22:

"[Article 22(1) to (9) remain drafted as at present]"

(10) Nothing in paragraphs (1) to (4) of this article applies so as to extinguish, suspend or make unenforceable a private right or restriction over land where the person in or to whom the right or restriction in question is vested, belongs, or benefits is P66."

4 In Schedule 6:

"SCHEDULE 6

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1(1) The powers in article 21 have effect in relation to all interests in the relevant parts of the Order land other than any interest in land owned by P66

Table 5 *[Schedule 6 continues as at present]"*

Appendix Two



PART 4
FOR THE PROTECTION OF PHILLIPS 66 LIMITED

Benefit of protective provisions

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

Interpretation

35. In this Part of this Schedule—

“applicable legislation” means European Union directives and regulations, statutes, regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law relating to:

- (a) the use of or any activity on the pipeline corridor; or
- (b) any process, conduct or activity (including without limit treatment, transport, storage, disposal or re) involving any hazardous material on under above in or about the pipeline corridor; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the pipeline corridor; or
- (d) the exercise of the specified rights; or
- (e) otherwise the protection of the environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

“affected assets” means apparatus owned or operated by P66 on or above ground which ~~would~~ with the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a)
- (d)),as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“CHP land” means the land on which the VPI Immingham CHP power station is sited as at the date of this Order, at Rosper Road, near Immingham;

“construction access plan” means a plan identifying how access will be maintained to the pipelines and the protected crossings during the proposed construction or maintenance work including—

- (a) any restrictions on general access by P66, including the timing of restrictions;

(a) 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305. []

- (b) details of how the needs and requirements of P66 have been taken into account in preparing the plan;
- (c) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for P66; and (d) details of how reasonable access with or without vehicles will be retained or an alternative provided for P66 to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“contamination” means any contamination ~~of the HOR land~~ by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991; “damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“decision” means the decision of the relevant local planning authority (or of an inspector appointed by the Secretary of State to decide an appeal lodged against the local planning authority's decision) to grant or refuse (as the case may be) the P66 planning permission;

“described land” means any land owned by or acquired by P66 as lies within the limits of lateral deviation authorised by a P66 planning permission;

“development” has the meaning given to it by section 55 of the Town and Country Planning Act 1990; “development plan” means the development plan or a local plan operative in respect of any part of the described land following adoption of it by the local planning authority;

“diversion route” means the route to be agreed or determined in accordance with paragraph [4797](#) of this Part of this Schedule;

“engineer” means an engineer appointed by P66 for the purposes of this Order;

“existing gas pipeline” means that part of the existing underground gas pipeline within the Order Limits which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;

“good industry practice” means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced operator of the relevant apparatus or infrastructure in the United Kingdom;

“hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;

“HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

~~“HOR land” means such land as from time to time forms part of HOR;~~

“P66” means Phillips 66 Limited (Company number 00529086) ~~and or a successor in title to any interest in land owned by P66 on the date of this Order including any~~ subsequent ~~owners~~owner of the pipelines;

“P66 address” means [TBC];

“P66 email” means [TBC];

“P66 land” means any interest in land owned by P66 on the date of this Order and within the Order Limits;

“P66 planning permission” means a planning permission within the meaning of Section 336 of the 1990 Act;

“pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;

“pipeline corridor” means the corridor ~~shown coloured~~ within which the undertaker acquires any specified rights;

“planning application” means an application for a P66 planning permission;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant plan provision” means a policy or provision contained in a development plan restricting development or to the effect that no development may be carried out in some part of the described land where either (i) the policy or provision is included for any reason related to the position of the VPI apparatus; or (ii) the decision to apply the policy or provision to that part of the described land was made for any reason related to the position of the VPI apparatus;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines;

“scheme of works” means such works designed to investigate, rectify, remove and/or treat and render harmless contamination and its effects including making good any damage caused in so doing;

“specified asset” means any asset owned and operated by P66 and forming part of the HOR which would be physically affected by the specified works;

“specified rights” means the rights as may be acquired by the undertaker in any ~~part of the HOR~~P66 land pursuant to the powers in Part 5 of this Order;

“specified work” mean any work carried out ~~on land which may have an effect on the operation, maintenance, abandonment of or access to any part of~~pursuant to the HOR specified rights;

“VPI apparatus” means gas pipes, water pipes, electricity cables and other conducting media and associated supports, gantries, bridges, ladders, steps, gantries, walkways, cables, poles and stays, security cameras and ancillary equipment necessary for conducting steam, heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities for the transport of all or any utilities;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the location of any pipelines affected by the oversailing provisions in paragraph 42, including details of the proposed clearance;
- (c) details of the undertaker and their principal contractors’ management of change procedures;
- (d) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (e) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (f) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (g) details of the emergency response plan as prepared in consultation with local emergency services and P66;

- (h) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;
- (i) (i) any further particulars provided in accordance with paragraph 36(3) or 55(~~2~~1);
- (j) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (k) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

Authorisation of works details affecting pipelines or protected crossings

36.—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 ~~in accordance with paragraph 84.66.~~

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1), whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within ~~45~~90 days from the receipt of the works details under sub-paragraph (2), reasonably require.

37. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).

38.—(1) Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under paragraph 38(1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

39.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within ~~45~~90 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or
- (b) authorisation has not been given within ~~30~~60 days of receipt by P66 of the further particulars supplied under paragraph 36(3), approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions, the undertaker may refer the matter to an expert for determination under paragraph 83.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 83.

Notice of works

40. The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about relevant works

41. Before carrying out a relevant work the undertaker must—

- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

~~42. A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset unless otherwise agreed with P66.~~

Monitoring for damage to pipelines

~~42.43.~~—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where an P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

~~43.44.~~—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

~~44.45.~~—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40; or
- (b) determined by the expert following a determination under paragraph 55 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Restriction on exercising powers

~~45.46.~~ The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

Insurance

~~46.47.~~—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 49 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph ~~83.101.~~, and evidence of that insurance must be provided on request to P66.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph ~~55.101.~~

~~47.48.~~ If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 47—

- (a) P66 may refer the matter to an expert for determination under paragraph ~~83.101.~~; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph ~~83.101.~~ is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

~~48.49.~~—(1) The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 43; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 47, including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development, and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

(5) In the assessment of any sums payable to P66 under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, P66 if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

49.50. The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

50.51. The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

51.52. The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

52.53. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

53.54. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

Exercise of the specified rights

~~54.55.~~—(1) Before commencing any part of a specified work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1), whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within ~~45~~90 days from the receipt of the works details under sub-paragraph (2), reasonably require.

~~55.56.~~—(1) No part of a specified work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that specified work under paragraph 55 have been authorised by P66; or
- (b) the works details supplied in respect of that specified work under paragraph 55 have been authorised by an expert under paragraph 58(3) or
- (c) authorisation is deemed to have been given in accordance with paragraph (1).

~~56.57.~~—(1) Any authorisation by P66 required under paragraph 56(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the specified asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the specified asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the specified asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HOR it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the HOR.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 56 and any conditions imposed on the authorisation under subparagraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 58(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 58(3).

~~57.58.~~—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 55(1) within ~~45~~90 days of receipt by P66 under paragraph 55(2) and no further particulars have been requested under paragraph 55(3); or
- (b) authorisation has not been given within ~~30~~60 days of receipt by P66 of the further particulars supplied under paragraph 55(3), approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 57(1); or

- (b) the undertaker considers that P66 has given its authorisation under paragraph 57(1) subject to unreasonable conditions, the undertaker may refer the matter to an expert for determination under paragraph 83.

(3) Where the matter is referred to an expert under sub-paragraph (2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 57(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under sub-paragraph (2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 83.

~~58.59.~~—(1) In the exercise of the specified rights the undertaker must:

- (a) take all reasonable and proper precautions to ensure that damage to property located on ~~the HOR~~any P66 land is minimised or avoided so far as reasonably practicable including to any structures in, on or under that land or to any drains or other conducting media on or under it;
- (b) cause the least practicable disturbance to or interference with the business and operations of P66;
- (c) ensure that all maintenance work is carried out under the supervision of an engineer acting on behalf of the undertaker who will appoint a local representative to supervise the execution of the works and to maintain contact with P66;
- (d) provide P66 with the name, address and telephone number of the person appointed under sub-paragraph (c); and
- (e) accept responsibility for the actions and omissions of its contractors and of their subcontractors and of all persons employed in connection with works, except for actions carried out or omissions directed expressly at the request of P66.

~~59.60.~~ The undertaker must with all practicable speed reinstate and put any part of ~~the HOR~~any P66 land opened or broken up in the exercise of the specified rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up.

~~60.61.~~ The undertaker must following a written request by P66 replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights, except where in the reasonable opinion of the undertaker they may cause damage to the VPI apparatus.

~~61.62.~~ The undertaker must keep the VPI apparatus in good and substantial repair and condition in accordance with good industry practice.

~~62.63.~~ In exercising the specified rights the undertaker must at its own cost comply with all applicable legislation.

~~63.64.~~ The undertaker must as soon as reasonably practicable following a written request from P66 provide written information in relation to the VPI apparatus, the pipeline corridor, compliance with applicable legislation, or the exercise of the specified rights or any activity incidental thereto, in each case as P66 may reasonably require.

~~64.65.~~ The undertaker must indemnify P66 against losses incurred or sustained directly as a consequence of or in connection with any breach of any of obligations on the part of the undertaker in this Part of this Schedule or any act or omission of the undertaker, its employees, contractors or agents or any person acting expressly or impliedly with the undertaker's authority or permission including all costs and expenses incurred by P66 in connection with any steps it may take to remedy any breach by the undertaker under this Part of this Schedule.

~~65.66.~~ The undertaker must permit P66 and its agents, contractors and workmen and others authorised by P66 with all necessary plant, machinery and equipment at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter the pipeline corridor for such period as is reasonably necessary to examine the pipeline corridor;

~~66.67.~~ P66 must take all reasonable and proper precautions to ensure that in undertaking any examination pursuant to paragraph 66 any damage to the VPI apparatus is avoided or minimised.

~~68.—P66 must:-~~

- ~~(a) not erect construct or place any building or structure, carry out any excavation or plant or suffer to be planted or otherwise permit to subsist any trees on the pipeline corridor without the written consent of the undertaker.~~
- ~~(b) not materially raise or lower the existing level of the surface of the pipeline corridor without the written consent of the undertaker.~~
- ~~(c) not undermine or damage the VPI apparatus, the pipeline corridor or take such other action as may interfere with the use and free flow and passage of the relevant media through the VPI apparatus or to do anything which would reasonably foreseeably inhibit or prevent the undertaker from complying with this Part of this Schedule.~~
- ~~(d) on all occasions when P66 may suffer any loss or anticipate or receive any third party claim against it resulting from any action by the undertaker or in any way arising out of the existence of the VPI apparatus P66 will use all reasonable endeavours to mitigate its losses. (e) — have due regard in the light of information made available in writing by the undertaker and to the safety and integrity of the VPI apparatus in carrying out operations on the HOR land.~~

~~67.69.~~ The undertaker must take all reasonable precautions to ensure that other than authorised discharges no hazardous material leaks, spills or escapes are discharged from the VPI apparatus and that no contamination will occur as a result of the use by the undertaker of the pipeline corridor or the exercise of its specified rights.

~~68.70.—~~ The undertaker must indemnify and keep P66 indemnified from and against all losses incurred in respect of any contamination in or on the pipeline corridor or which escapes or migrates from the pipeline corridor to ~~the HOR~~ any adjoining land which relates to the exercise of the specified rights.

~~(2) The undertaker is not liable under sub-paragraph (1) in respect of any contamination unless P66 gives written notice to the undertaker providing reasonable particulars of the basis of its claim including an estimate of the amount of such claim.—~~

~~(3) P66 must give written notice under sub-paragraph (3) as soon as reasonably practicable and in any case within seven days of becoming aware of any contamination.—~~

~~69.71.—~~(1) If during the exercise of the specified rights it appears to the undertaker that there is contamination in or on the pipeline corridor the undertaker must give written notice of such contamination to P66.

(2) On receipt of such written notice under sub-paragraph (1) the undertaker and P66 may jointly instruct environmental consultants in terms agreed between the parties to produce and implement a scheme of works.

~~70.72.~~ P66 must use its reasonable endeavours to comply at the cost of the undertaker and (save in the case of emergency) upon notice with all reasonable written requests of the undertaker in relation to the use of the pipeline corridor that are requested for the safety and protection of the VPI apparatus.

~~71.73.—~~(1) Subject to sub-paragraph (2) P66 must not make any admission of liability to a third party making or bringing a claim, demand or proceedings or settle or compromise it without the consent in writing of the undertaker, such consent not be unreasonably withheld or delayed.

(2) Sub-paragraph (1) does not apply to the extent that such conduct is contrary to what is required by law or by any authority or compliance with the sub-paragraph would have an adverse effect on the liabilities or goodwill of P66.

(3) The undertaker is entitled, with the consent of P66 (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a

materially adverse effect on the liabilities or goodwill of P66), to negotiate a settlement of any claim, demand or proceedings against P66 and to conduct on behalf of P66 any litigation which may arise in respect of the claim, demand or proceedings.

~~74. The undertaker is not required to comply with this Part of this Schedule in a case of emergency but in that case it must give to P66 notice as soon as is reasonably practicable of the emergency and must comply with this Part of this Schedule in so far as is reasonably practicable in the circumstances.~~

~~72.75.~~ Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.

~~73.76.~~ Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.

~~74.77.~~ Where timber is cut and disposed of by the undertaker pursuant to paragraph ~~[2]~~74 the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.

~~75.78.~~ Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.

~~76.79.~~ All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).

~~77.80.~~ In exercising the specified rights, and if reasonably required by P66:

- (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
- (b) all trenches dug during a specified work will be backfilled as soon as practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
- (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
- (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
- (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as practicable;
- (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
- (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

~~78.81.~~ Where the undertaker is to relay or move any length of gas pipeline it will be laid to contour at a depth of not less than 1.1 metres from the ground surface to the top of the pipeline and where this depth cannot reasonably be achieved by the undertaker it will give written details of this to P66.

~~79.82.~~ Wherever the exercise of the specified rights may reasonably require it, temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the pipeline trench will be of proper design and sound construction and will be

securely placed to the reasonable satisfaction of P66 and in accordance with good industry practice.

80.83. Where the gas pipeline crosses below a ditch or stream it will be protected by a concrete slab and the pipe will be located at such a depth so as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the exercise of the specified rights will be maintained in effective condition during works by the undertaker and restored to as good a condition as before the commencement of the works.

81.84. With the assistance of P66 in locating water supplies, the undertaker will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during the exercise of the specified rights, failing which the undertaker will make good all damage caused to the reasonable satisfaction of P66 or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn without the written consent of P66. The undertaker will take all reasonable practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the exercise of the specified rights, the undertaker will pay compensation to P66 in respect of any costs, claims, damage or expenses arising.

82.85. Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with paragraph ~~83~~101.

83.86. The installation of marker posts or cathodic protection marker posts will wherever reasonably practicable be sited by agreement between the undertaker and P66. As far as is reasonably practicable marker posts will be sited in or adjacent to hedges or fences. If P66 so requires, marker posts will be placed on both sides of fences or hedges. All marker posts will be properly maintained and the undertaker will take all reasonable steps to ensure that marker posts remain visible at all times.

84.87.—(1) The undertaker must ensure that the existing gas pipeline is cathodically protected against corrosion and any buildings and structures within HOR likely to be affected will be suitably protected provided reasonable facilities are given by P66 for this to be done.

(2) Sub-paragraph (1) does not require the undertaker to do anything in respect of pipes, cables or like apparatus or any building or structure laid or constructed after the existing gas pipeline was first laid.

85.88. During the course of the exercise of the specified rights, the undertaker must regard fossils, coins or other articles of value which are discovered as being the property of P66 and will acknowledge that P66 will not be deemed to have surrendered (whether to the undertaker or its contractors) any right to any reward under the Treasure Act 1996. The undertaker will make all reasonable efforts to comply with the reasonable requirements of P66 with respect to such objects (and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

86.89. In exercising the specified rights, the undertaker must provide specific instructions to contractor to notify them that the contractors workers cannot trespass outside the working area or any access to it.

87.90. In the event that the undertaker decides to abandon the whole or any part of the existing gas pipeline through HOR, the undertaker must purge the relevant part of the existing gas pipeline

and otherwise render it permanently safe and harmless, and must provide reasonable details of the works ~~undertaker~~undertaken to P66.

~~88.91.~~ The undertaker must not permit caravans or huts to be brought on to ~~HOR land~~the pipeline corridor for sleeping accommodation and will ensure that all workmen leave the ~~HOR land~~pipeline corridor at the conclusion of their duties each day.

~~89.92.~~ A specified work will normally cease at or before dusk but in the event of work continuing beyond dusk P66 will be notified in writing in advance.

~~90.93.~~ The undertaker will not light fires on the ~~HOR land~~pipeline corridor without the consent of P66.

~~91.94.~~ Whenever the undertaker intends to use explosives in connection with the exercise of the specified rights, reasonable notice of such intention must be given to P66 of the working area including notice of the timing of blasting operations.

Diversion Provisions

~~92.95. In the following provisions of this Part of this Schedule the described land excludes the CHP land unless and until P66 has permanent occupational control of the CHP land. 96.~~ If P66 wishes to carry out any development of the described land it must— (1) supply to the undertaker full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the undertaker reasonably informed in writing of the progress of the planning application; and (2) have due regard to any reasonable proposals of the undertaker for the purpose of safeguarding the VPI apparatus and minimising the interference to the VPI apparatus and its use; and (3) use its reasonable endeavours with the assistance (if requested) of the undertaker (whose assistance is to be at no cost to P66) to arrange the development so as to avoid the diversion of the VPI apparatus, and must consult with the undertaker and have due regard to the undertaker's comments and representations.

~~93.97.~~ P66 must submit a copy to the undertaker of any P66 planning permission for development in on over or under the described land within a period of 28 days of receipt of the decision.

~~94.98.~~—(1) If following consultation under paragraph ~~76~~93—

- (a) P66 planning permission is granted but the development is prevented for any reason relating to the presence or position of the VPI apparatus or by such P66 planning permission being made subject to a condition which prevents the development for any reason related to the position of the VPI apparatus or renders it unviable; or
- (b) planning permission for the development is refused for any reason related to the position of the VPI apparatus or the existence or effect of a relevant plan provision;

then P66 must give written notice to the undertaker.

(2) Any notice given pursuant to sub-paragraph (1) must state whether P66:

- (a) intends to submit a further planning application, planning appeal or other representation to the relevant planning authority which seeks to address the reason that is preventing the development or rendering it unviable or that has otherwise resulted in the refusal of planning permission (insofar as such reason relates to the position of the VPI apparatus); or
- (b) requires the diversion of the VPI apparatus or part of the VPI apparatus.

(3) Where P66 give written notice that it intends to submit a further planning application, planning appeal or other submission to the relevant planning authority: (a) the undertaker must use reasonable endeavours to assist P66 so far as matters relate to the VPI apparatus; and (b) P66 must comply with the requirements under paragraph ~~43~~93.

(4) Any diversion of the VPI apparatus pursuant to sub-paragraph (1)(b) must be only the extent of diversion that is required in order to ensure that the development notified by P66 to the undertaker pursuant to paragraph 7693 is not prevented.

(5) Following receipt of the notice under sub-paragraph (1)(b) the undertaker must confirm in writing to P66 within three months of the date of receipt of the notice whether it will either:

- (a) carry out such works to the VPI apparatus as may be necessary so that the position of the VPI apparatus does not materially affect the development; or
- (b) divert the VPI apparatus or part of it along the diversion route.

~~95.99.~~—(1) If P66 obtains a P66 planning permission for the development but does not give notice in accordance with paragraph 7894 it must nevertheless notify the undertaker that a P66 planning permission has been obtained and provide a copy of it to the undertaker.

(2) If following receipt of the notice under sub-paragraph (1) the undertaker is of the reasonable opinion that the development would be likely to cause damage to the VPI apparatus or any interference with the exercise of the specified rights it may at its sole cost and expense divert the VPI apparatus or part thereof along the diversion route or carry out any such works as are described in [sub paragraph 78-95\(5\)\(a\)](#).

(3) Where the undertaker elects to carry out works under sub-paragraph (2) it is not required to implement any such works before the expiry of the period of six months from the date of the notice under sub-paragraph (1).

~~96.100.~~ The diversion route must be within the described land and must be agreed between P66 and the undertaker.

~~97.101.~~ If the VPI apparatus is to be diverted under any paragraph of this Part then P66 must grant the necessary rights to the undertaker to carry out the diversion, and to maintain and use the relevant diverted VPI apparatus.

[98.](#)[In the event that the undertaker has not performed the action it has elected to carry out pursuant to paragraph 95\(5\) by the expiry of the period of twelve months from the date of that notice then the undertaker shall be required to immediately remove the existing gas pipeline from the pipeline corridor.](#)

~~99.102.~~ If there is a dispute about the diversion route or the rights to be granted pursuant to paragraph 80 then either party may refer the matter to an expert for determination under paragraph 83 of this Part of this Schedule.

Expert determination

~~100.103.~~—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
 - (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
 - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
 - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
 - (c) the nature of the power sought to be exercised by the undertaker;
 - (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
 - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
 - (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
 - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
 - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
 - (i) the constructability notes; and
 - (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Service of Notices

~~101.104.~~ A notice or other document required or authorised to be served on P66 under this Part of the Schedule must be served— (a) by post to the P66 address; and (b) by electronic transmission to the P66 email; or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

Document comparison by Workshare Compare on 23 January 2020 09:33:12

Input:	
Document 1 ID	interwovenSite://DMS.BURGESS-SALMON.COM/WORK/35999787/1
Description	#35999787v1<WORK> - D (BS) protective provisions - D5 DCO drafting
Document 2 ID	interwovenSite://DMS.BURGESS-SALMON.COM/WORK/35999787/2
Description	#35999787v2<WORK> - D (BS) protective provisions - D6a P66 DCO protective provisions
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	Moved from
	<u>Moved to</u>
	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	107
Deletions	114
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	221

Appendix Three



PART 4
FOR THE PROTECTION OF PHILLIPS 66 LIMITED

Benefit of protective provisions

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

Interpretation

35. In this Part of this Schedule—

“applicable legislation” means European Union directives and regulations, statutes, regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law relating to:

- (a) the use of or any activity on the pipeline corridor; or
- (b) any process, conduct or activity (including without limit treatment, transport, storage, disposal or re) involving any hazardous material on under above in or about the pipeline corridor; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the pipeline corridor; or
- (d) the exercise of the specified rights; or
- (e) otherwise the protection of the environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

“affected assets” means apparatus owned or operated by P66 on or above ground which with the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“CHP land” means the land on which the VPI Immingham CHP power station is sited as at the date of this Order, at Rosper Road, near Immingham;

“construction access plan” means a plan identifying how access will be maintained to the pipelines and the protected crossings during the proposed construction or maintenance work including—

- (a) any restrictions on general access by P66, including the timing of restrictions;

(a) 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305.

- (b) details of how the needs and requirements of P66 have been taken into account in preparing the plan;
- (c) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for P66; and (d) details of how reasonable access with or without vehicles will be retained or an alternative provided for P66 to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“contamination” means any contamination by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991; “damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“decision” means the decision of the relevant local planning authority (or of an inspector appointed by the Secretary of State to decide an appeal lodged against the local planning authority's decision) to grant or refuse (as the case may be) the P66 planning permission;

“described land” means any land owned by or acquired by P66 as lies within the limits of lateral deviation authorised by a P66 planning permission;

“development” has the meaning given to it by section 55 of the Town and Country Planning Act 1990; “development plan” means the development plan or a local plan operative in respect of any part of the described land following adoption of it by the local planning authority;

“diversion route” means the route to be agreed or determined in accordance with paragraph 97 of this Part of this Schedule;

“engineer” means an engineer appointed by P66 for the purposes of this Order;

“existing gas pipeline” means that part of the existing underground gas pipeline within the Order Limits which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;

“good industry practice” means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced operator of the relevant apparatus or infrastructure in the United Kingdom;

“hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;

“HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

“P66” means Phillips 66 Limited (Company number 00529086) or a successor in title to any interest in land owned by P66 on the date of this Order including any subsequent owner of the pipelines;

“P66 address” means [TBC];

“P66 email” means [TBC];

“P66 land” means any interest in land owned by P66 on the date of this Order and within the Order Limits;

“P66 planning permission” means a planning permission within the meaning of Section 336 of the 1990 Act;

“pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose

hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;

“pipeline corridor” means the corridor within which the undertaker acquires any specified rights;

“planning application” means an application for a P66 planning permission;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant plan provision” means a policy or provision contained in a development plan restricting development or to the effect that no development may be carried out in some part of the described land where either (i) the policy or provision is included for any reason related to the position of the VPI apparatus; or (ii) the decision to apply the policy or provision to that part of the described land was made for any reason related to the position of the VPI apparatus;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines;

“scheme of works” means such works designed to investigate, rectify, remove and/or treat and render harmless contamination and its effects including making good any damage caused in so doing;

“specified asset” means any asset owned and operated by P66 and forming part of the HOR which would be physically affected by the specified works;

“specified rights” means the rights as may be acquired by the undertaker in any P66 land pursuant to the powers in Part 5 of this Order;

“specified work” mean any work carried out pursuant to the specified rights;

“VPI apparatus” means gas pipes, water pipes, electricity cables and other conducting media and associated supports, gantries, bridges, ladders, steps, gantries, walkways, cables, poles and stays, security cameras and ancillary equipment necessary for conducting steam, heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities for the transport of all or any utilities;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the location of any pipelines affected by the oversailing provisions in paragraph 42, including details of the proposed clearance;
- (c) details of the undertaker and their principal contractors’ management of change procedures;
- (d) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (e) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (f) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (g) details of the emergency response plan as prepared in consultation with local emergency services and P66;
- (h) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;
- (i) (i) any further particulars provided in accordance with paragraph 36(3) or 55(1);

- (j) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (k) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

Authorisation of works details affecting pipelines or protected crossings

36.—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1), whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 90 days from the receipt of the works details under sub-paragraph (2), reasonably require.

37. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).

38.—(1) Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under paragraph 38(1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

39.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within 90 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or

- (b) authorisation has not been given within 60 days of receipt by P66 of the further particulars supplied under paragraph 36(3), approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions, the undertaker may refer the matter to an expert for determination under paragraph 83.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 83.

Notice of works

40. The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about relevant works

41. Before carrying out a relevant work the undertaker must—

- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

Monitoring for damage to pipelines

42.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined

by arbitration to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where an P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

43.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

44.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40; or
- (b) determined by the expert following a determination under paragraph 55 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Restriction on exercising powers

45. The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

Insurance

46.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 49 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 101, and evidence of that insurance must be provided on request to P66.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 101.

47. If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 47—

- (a) P66 may refer the matter to an expert for determination under paragraph 101; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 101 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

48.—(1) The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 43; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 47, including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development, and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

(5) In the assessment of any sums payable to P66 under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, P66 if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

49. The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

50. The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

51. The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

52. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

53. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

Exercise of the specified rights

54.—(1) Before commencing any part of a specified work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1), whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 90 days from the receipt of the works details under sub-paragraph (2), reasonably require.

55.—(1) No part of a specified work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that specified work under paragraph 55 have been authorised by P66; or

- (b) the works details supplied in respect of that specified work under paragraph 55 have been authorised by an expert under paragraph 58(3) or
- (c) authorisation is deemed to have been given in accordance with paragraph (1).

56.—(1) Any authorisation by P66 required under paragraph 56(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the specified asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the specified asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the specified asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HOR it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the HOR.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 56 and any conditions imposed on the authorisation under subparagraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 58(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 58(3).

57.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 55(1) within 90 days of receipt by P66 under paragraph 55(2) and no further particulars have been requested under paragraph 55(3); or
- (b) authorisation has not been given within 60 days of receipt by P66 of the further particulars supplied under paragraph 55(3), approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 57(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 57(1) subject to unreasonable conditions, the undertaker may refer the matter to an expert for determination under paragraph 83.

(3) Where the matter is referred to an expert under sub-paragraph (2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 57(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under sub-paragraph (2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 83.

58.—(1) In the exercise of the specified rights the undertaker must:

- (a) take all reasonable and proper precautions to ensure that damage to property located on any P66 land is minimised or avoided so far as reasonably practicable including to any structures in, on or under that land or to any drains or other conducting media on or under it;
- (b) cause the least practicable disturbance to or interference with the business and operations of P66;

- (c) ensure that all maintenance work is carried out under the supervision of an engineer acting on behalf of the undertaker who will appoint a local representative to supervise the execution of the works and to maintain contact with P66;
- (d) provide P66 with the name, address and telephone number of the person appointed under sub-paragraph (c); and
- (e) accept responsibility for the actions and omissions of its contractors and of their subcontractors and of all persons employed in connection with works, except for actions carried out or omissions directed expressly at the request of P66.

59. The undertaker must with all practicable speed reinstate and put any part of any P66 land opened or broken up in the exercise of the specified rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up.

60. The undertaker must following a written request by P66 replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights, except where in the reasonable opinion of the undertaker they may cause damage to the VPI apparatus.

61. The undertaker must keep the VPI apparatus in good and substantial repair and condition in accordance with good industry practice.

62. In exercising the specified rights the undertaker must at its own cost comply with all applicable legislation.

63. The undertaker must as soon as reasonably practicable following a written request from P66 provide written information in relation to the VPI apparatus, the pipeline corridor, compliance with applicable legislation, or the exercise of the specified rights or any activity incidental thereto, in each case as P66 may reasonably require.

64. The undertaker must indemnify P66 against losses incurred or sustained directly as a consequence of or in connection with any breach of any of obligations on the part of the undertaker in this Part of this Schedule or any act or omission of the undertaker, its employees, contractors or agents or any person acting expressly or impliedly with the undertaker's authority or permission including all costs and expenses incurred by P66 in connection with any steps it may take to remedy any breach by the undertaker under this Part of this Schedule.

65. The undertaker must permit P66 and its agents, contractors and workmen and others authorised by P66 with all necessary plant, machinery and equipment at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter the pipeline corridor for such period as is reasonably necessary to examine the pipeline corridor;

66. P66 must take all reasonable and proper precautions to ensure that in undertaking any examination pursuant to paragraph 66 any damage to the VPI apparatus is avoided or minimised. .

67. The undertaker must take all reasonable precautions to ensure that other than authorised discharges no hazardous material leaks, spills or escapes are discharged from the VPI apparatus and that no contamination will occur as a result of the use by the undertaker of the pipeline corridor or the exercise of its specified rights.

68. The undertaker must indemnify and keep P66 indemnified from and against all losses incurred in respect of any contamination in or on the pipeline corridor or which escapes or migrates from the pipeline corridor to any adjoining land which relates to the exercise of the specified rights.

69.—(1) If during the exercise of the specified rights it appears to the undertaker that there is contamination in or on the pipeline corridor the undertaker must give written notice of such contamination to P66.

(2) On receipt of such written notice under sub-paragraph (1) the undertaker and P66 may jointly instruct environmental consultants in terms agreed between the parties to produce and implement a scheme of works.

70. P66 must use its reasonable endeavours to comply at the cost of the undertaker and (save in the case of emergency) upon notice with all reasonable written requests of the undertaker in relation to the use of the pipeline corridor that are requested for the safety and protection of the VPI apparatus.

71.—(1) Subject to sub-paragraph (2) P66 must not make any admission of liability to a third party making or bringing a claim, demand or proceedings or settle or compromise it without the consent in writing of the undertaker, such consent not be unreasonably withheld or delayed.

(2) Sub-paragraph (1) does not apply to the extent that such conduct is contrary to what is required by law or by any authority or compliance with the sub-paragraph would have an adverse effect on the liabilities or goodwill of P66.

(3) The undertaker is entitled, with the consent of P66 (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a materially adverse effect on the liabilities or goodwill of P66), to negotiate a settlement of any claim, demand or proceedings against P66 and to conduct on behalf of P66 any litigation which may arise in respect of the claim, demand or proceedings.

72. Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.

73. Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.

74. Where timber is cut and disposed of by the undertaker pursuant to paragraph 74 the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.

75. Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.

76. All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).

77. In exercising the specified rights, and if reasonably required by P66:

- (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
- (b) all trenches dug during a specified work will be backfilled as soon as practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
- (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
- (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
- (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as practicable;
- (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
- (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

78. Where the undertaker is to relay or move any length of gas pipeline it will be laid to contour at a depth of not less than 1.1 metres from the ground surface to the top of the pipeline and where this depth cannot reasonably be achieved by the undertaker it will give written details of this to P66.

79. Wherever the exercise of the specified rights may reasonably require it, temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the pipeline trench will be of proper design and sound construction and will be securely placed to the reasonable satisfaction of P66 and in accordance with good industry practice.

80. Where the gas pipeline crosses below a ditch or stream it will be protected by a concrete slab and the pipe will be located at such a depth so as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the exercise of the specified rights will be maintained in effective condition during works by the undertaker and restored to as good a condition as before the commencement of the works.

81. With the assistance of P66 in locating water supplies, the undertaker will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during the exercise of the specified rights, failing which the undertaker will make good all damage caused to the reasonable satisfaction of P66 or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn without the written consent of P66. The undertaker will take all reasonable practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the exercise of the specified rights, the undertaker will pay compensation to P66 in respect of any costs, claims, damage or expenses arising.

82. Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with paragraph 101.

83. The installation of marker posts or cathodic protection marker posts will wherever reasonably practicable be sited by agreement between the undertaker and P66. As far as is reasonably practicable marker posts will be sited in or adjacent to hedges or fences. If P66 so requires, marker posts will be placed on both sides of fences or hedges. All marker posts will be properly maintained and the undertaker will take all reasonable steps to ensure that marker posts remain visible at all times.

84.—(1) The undertaker must ensure that the existing gas pipeline is cathodically protected against corrosion and any buildings and structures within HOR likely to be affected will be suitably protected provided reasonable facilities are given by P66 for this to be done.

(2) Sub-paragraph (1) does not require the undertaker to do anything in respect of pipes, cables or like apparatus or any building or structure laid or constructed after the existing gas pipeline was first laid.

85. During the course of the exercise of the specified rights, the undertaker must regard fossils, coins or other articles of value which are discovered as being the property of P66 and will acknowledge that P66 will not be deemed to have surrendered (whether to the undertaker or its contractors) any right to any reward under the Treasure Act 1996. The undertaker will make all reasonable efforts to comply with the reasonable requirements of P66 with respect to such objects (and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

86. In exercising the specified rights, the undertaker must provide specific instructions to contractor to notify them that the contractors workers cannot trespass outside the working area or any access to it.

87. In the event that the undertaker decides to abandon the whole or any part of the existing gas pipeline through HOR, the undertaker must purge the relevant part of the existing gas pipeline and otherwise render it permanently safe and harmless, and must provide reasonable details of the works undertaken to P66.

88. The undertaker must not permit caravans or huts to be brought on to the pipeline corridor for sleeping accommodation and will ensure that all workmen leave the pipeline corridor at the conclusion of their duties each day.

89. A specified work will normally cease at or before dusk but in the event of work continuing beyond dusk P66 will be notified in writing in advance.

90. The undertaker will not light fires on the pipeline corridor without the consent of P66.

91. Whenever the undertaker intends to use explosives in connection with the exercise of the specified rights, reasonable notice of such intention must be given to P66 of the working area including notice of the timing of blasting operations.

Diversion Provisions

92. If P66 wishes to carry out any development of the described land it must— (1) supply to the undertaker full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the undertaker reasonably informed in writing of the progress of the planning application; and (2) have due regard to any reasonable proposals of the undertaker for the purpose of safeguarding the VPI apparatus and minimising the interference to the VPI apparatus and its use; and (3) use its reasonable endeavours with the assistance (if requested) of the undertaker (whose assistance is to be at no cost to P66) to arrange the development so as to avoid the diversion of the VPI apparatus, and must consult with the undertaker and have due regard to the undertaker's comments and representations.

93. P66 must submit a copy to the undertaker of any P66 planning permission for development in on over or under the described land within a period of 28 days of receipt of the decision.

94.—(1) If following consultation under paragraph 93—

- (a) P66 planning permission is granted but the development is prevented for any reason relating to the presence or position of the VPI apparatus or by such P66 planning permission being made subject to a condition which prevents the development for any reason related to the position of the VPI apparatus or renders it unviable; or
- (b) planning permission for the development is refused for any reason related to the position of the VPI apparatus or the existence or effect of a relevant plan provision;

then P66 must give written notice to the undertaker.

(2) Any notice given pursuant to sub-paragraph (1) must state whether P66:

- (a) intends to submit a further planning application, planning appeal or other representation to the relevant planning authority which seeks to address the reason that is preventing the development or rendering it unviable or that has otherwise resulted in the refusal of planning permission (insofar as such reason relates to the position of the VPI apparatus); or
- (b) requires the diversion of the VPI apparatus or part of the VPI apparatus.

(3) Where P66 give written notice that it intends to submit a further planning application, planning appeal or other submission to the relevant planning authority: (a) the undertaker must use reasonable endeavours to assist P66 so far as matters relate to the VPI apparatus; and (b) P66 must comply with the requirements under paragraph 93.

(4) Any diversion of the VPI apparatus pursuant to sub-paragraph (1) must be only the extent of diversion that is required in order to ensure that the development notified by P66 to the undertaker pursuant to paragraph 93 is not prevented.

(5) Following receipt of the notice under sub-paragraph (1) the undertaker must confirm in writing to P66 within three months of the date of receipt of the notice whether it will either:

- (a) carry out such works to the VPI apparatus as may be necessary so that the position of the VPI apparatus does not materially affect the development; or
- (b) divert the VPI apparatus or part of it along the diversion route.

95.—(1) If P66 obtains a P66 planning permission for the development but does not give notice in accordance with paragraph 94 it must nevertheless notify the undertaker that a P66 planning permission has been obtained and provide a copy of it to the undertaker.

(2) If following receipt of the notice under sub-paragraph (1) the undertaker is of the reasonable opinion that the development would be likely to cause damage to the VPI apparatus or any interference with the exercise of the specified rights it may at its sole cost and expense divert the VPI apparatus or part thereof along the diversion route or carry out any such works as are described in sub paragraph 95(5)(a).

(3) Where the undertaker elects to carry out works under sub-paragraph (2) it is not required to implement any such works before the expiry of the period of six months from the date of the notice under sub-paragraph (1).

96. The diversion route must be within the described land and must be agreed between P66 and the undertaker.

97. If the VPI apparatus is to be diverted under any paragraph of this Part then P66 must grant the necessary rights to the undertaker to carry out the diversion, and to maintain and use the relevant diverted VPI apparatus.

98. In the event that the undertaker has not performed the action it has elected to carry out pursuant to paragraph 95(5) by the expiry of the period of twelve months from the date of that notice then the undertaker shall be required to immediately remove the existing gas pipeline from the pipeline corridor.

99. If there is a dispute about the diversion route or the rights to be granted pursuant to paragraph 80 then either party may refer the matter to an expert for determination under paragraph 83 of this Part of this Schedule.

Expert determination

100.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
 - (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
 - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
 - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
 - (c) the nature of the power sought to be exercised by the undertaker;
 - (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
 - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
 - (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
 - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
 - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
 - (i) the constructability notes; and
 - (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Service of Notices

101. A notice or other document required or authorised to be served on P66 under this Part of the Schedule must be served— (a) by post to the P66 address; and (b) by electronic transmission to the P66 email; or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.