

Our reference 43283-3175

8 February 2021

PLANNING INSPECTORATE
Room 3 O/P
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Dear Sirs

Network Rail Withdrawal Letter

Application by EP Waste Management Ltd for South Humber Bank Energy Centre Project

Application Reference: EN010107

IP Reference: 20025443

In light of the Applicant and Network Rail having entered into an agreement in relation to the project and the modifications the Applicant seeks to make to (and retain in) its draft DCO as outlined below, Network Rail hereby withdraws its objection to the Applicant's Application. It should be noted that the changes below to article 2 and requirements 16, 24 and 37 are already included in the Applicant's draft DCO (submitted at Deadline 3).

Changes to the Draft Order agreed between Network Rail and the Applicant:

1. ARTICLE 2

1.1 A new definition is to be added in to article 2 as follows:

"Network Rail" means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN

2. REQUIREMENT 16

Construction traffic management and travel planning

16.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and, after consultation with Network Rail, approved by the relevant planning authority.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the framework construction traffic management plan included as annex 28 of appendix 9A of the environmental statement.

(3) The plan submitted and approved under sub-paragraph (1) for Work No. 1 must include—

Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London EC1Y 4AG
Tel +44 (0)20 7606 8855 Fax +44 (0)20 7606 4390 DX 47 London
www.addleshawgoddard.com

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(a) details of the routes to be used for the delivery of abnormal indivisible loads and procedures for the notification of these to the local highway authority and, if the route includes railway assets, Network Rail; and

(b) a construction worker travel plan (which must be in accordance with the framework construction worker travel plan included as annex 27 of appendix 9A of the environmental statement).

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

~~(5) In this requirement, "Network Rail" means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN.~~

3. REQUIREMENT 24

Delivery and servicing plan

24.—(1) The authorised development must not come into operation until an operational delivery and servicing plan for all operational HGVs entering and leaving the site has been submitted to and, after consultation with Network Rail, approved in writing by the relevant planning authority.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the operational delivery and servicing plan within annex 26 of appendix 9A of the environmental statement unless otherwise agreed by the relevant planning authority.

(3) The plan approved under sub-paragraph (1) must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

4. REQUIREMENT 37

A new requirement is to be included as follows:

Heavy goods vehicle prohibition

37. The plans submitted pursuant to requirements 16, 24 and 33 must not provide for the use of South Marsh Road (west of Hobson Way, also known as South Marsh Lane Bridleway) by heavy goods vehicles accessing to or egressing from the authorised development.

5. SCHEDULE 8, PART 5: PROTECTIVE PROVISIONS FOR THE BENEFIT OF NETWORK RAIL

41. For the protection of Network Rail as defined in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

42. In this part of this Schedule—

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

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43. —(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) Subject to subparagraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.

44. —(1) The undertaker shall not submit the construction traffic management plan to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) without having first consulted with Network Rail.

(2) The undertaker shall provide Network Rail with a draft of the construction traffic management plan and Network Rail shall within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming:

(a) any comments on the draft construction traffic management plan; or

(b) any reasonable amendments to the draft construction traffic management plan as requested by Network Rail; or

(c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case this paragraph 44(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 44(2) within 28 days of receipt no further consultation with Network Rail shall be required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 44(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a construction traffic management plan which Network Rail has not been consulted on in accordance with paragraphs 44(2) or (3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 44 shall:

(a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and

(b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the construction traffic management plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the construction traffic management plan without further consultation with Network Rail.

45. —(1) The undertaker shall not submit the delivery and servicing plan to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) without having first consulted with Network Rail.

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(2) The undertaker shall provide Network Rail with a draft of the delivery and servicing plan and Network Rail shall within a period of 28 days beginning with the date on which the draft delivery and servicing plan is received by Network Rail serve written notice on the undertaker confirming:

(a) any comments on the draft delivery and servicing plan; or

(b) any reasonable amendments to the draft delivery and servicing plan as requested by Network Rail; or

(c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case this paragraph 45(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 45(2) within 28 days of receipt no further consultation with Network Rail shall be required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 45(2)(b) in the draft delivery and servicing plan it submits to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a delivery and servicing plan which Network Rail has not been consulted on in accordance with paragraphs 45(2) or (3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 45 shall:

(d) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and

(e) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the delivery and servicing plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the delivery and servicing plan without further consultation with Network Rail.

46. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in respect of the consultation with the engineer on the construction traffic management plan and the delivery and servicing plan submitted by the undertaker;

(b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(c) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

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(d) in respect of any additional temporary lighting of railway property, being lighting made reasonably necessary by reason or in consequence of damage to railway property as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others.

47 —(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified works or the failure thereof 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 a specified works or

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development or

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified works or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under subparagraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified works or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

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48. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.



Managing Associate
for Addleshaw Goddard LLP

On behalf of Network Rail Infrastructure Limited



addleshawgoddard.com

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