

THE NORTH LINCOLNSHIRE GREEN ENERGY PARK PROJECT

DEADLINE 9

10 MAY 2023

1. INTRODUCTION

- 1.1 We act for Cadent Gas Limited (**Cadent**). The draft DCO (**dDCO**) for the North Lincolnshire Green Energy Park project (**the Project**) being promoted by the North Lincolnshire Green Energy Park Limited (the **Promoter**) contains development which may affect Cadent's apparatus.
- 1.2 Cadent has several low, medium and high pressure gas pipelines and associated apparatus (the **Apparatus**) located within the order limits which may be affected by works proposed and for which further details on interactions will be required.
- 1.3 Cadent is the holder of a gas transporter licence (the **Transporter Licence**), granted pursuant to section 7 of the Gas Act 1986 (the **1986 Act**). Cadent owns and maintains the gas distribution network in the North West, West Midlands, East Midlands, the East of England and North London. The Apparatus forms part of Cadent's gas distribution network.
- 1.4 Cadent is required to comply with the terms of its Transporter Licence in the delivery of its statutory duties. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its Apparatus.
- 1.5 For the purposes of the Planning Act 2008 and section 127, Cadent is a statutory undertaker and the land included within the order limits is statutory undertakers' land. Cadent require the protective provisions secured within the DCO to be in their preferred form to ensure that there is no serious detriment to the carrying on of Cadent's undertaking.

2. EXAMINATION TO DATE

- 2.1 This submission is made on behalf of Cadent in response to the Promoter's response to the Examining Authority's (**ExA**) third round of written questions and the publication of the draft DCO (**dDCO**) (the **Promoter's Deadline 8 Response**).
- 2.2 We make this submission further to Cadent's relevant representation (the **Relevant Representation**) and Cadent's response to the first written questions at Deadline 2 – REP2-090 (the **Cadent Response**). Cadent set out its requirements for adequate protection in the Relevant Representation and the Cadent Response.
- 2.3 Cadent's preferred form of protective provisions (the **Cadent Protective Provisions**) are in Cadent's standard form and have been developed to afford full protection to Cadent and its undertaking. The Cadent Protective Provisions were submitted at Deadline 2 (REP2-091).
- 2.4 The Promoter did not comment on the substance of the Cadent Protective Provisions in its response to the Cadent Response at Deadline 3 – REP3-021 (the **Promoter's Deadline 3 Response**) and had not, until Deadline 8, commented on the substance of the Cadent Protective Provisions during the examination.
- 2.5 It was not until the Promoter's late Deadline 8 response and the late submission of the document The Applicant's Case under Section 127 and 138 Planning Act 2008 – Statutory Undertakers'

Land (the **Promoter's Section 127 Case**) that the Promoter made a substantive comment on the Cadent Protective Provisions.

2.6 Cadent's position is that, with only one remaining deadline to provide a response, this is too late for the Promoter to raise substantive issues with the Cadent Protective Provisions and that this does not afford Cadent sufficient time to respond.

2.7 The Promoter has submitted protective provisions which make amendments to Cadent's Protective Provisions in respect of the security provisions and indemnity provisions. These matters are addressed in sections 3 and 4 below.

3. SECURITY

3.1 As noted in the Promoter's Deadline 3 Response (at page 95) the Promoter is seeking extensive compulsory acquisition of freehold land, rights over land and temporary possession of land in respect of which Cadent has an interest and the Indicative Utility Diversion Drawings (APP-031) show the interaction between the Project and the Apparatus. This demonstrates the importance of securing the Cadent Protective Provisions.

3.2 The Cadent Protective Provisions include necessary insurance and security measures which are required to be put in place before works which may affect Cadent's apparatus. These are required given the nature of the Promoter and the current financial standing of the Promoter, and security provisions are required to support the indemnity provided and to address a situation where the conditions of insurance are not met.

3.3 In particular, the security measures contained in the Cadent Protective Provisions are required in order to provide certainty that the indemnity afforded to Cadent can be relied upon in the event that damage is caused to the Apparatus and the gas distribution network. Article 22 of the DCO contains a requirement for a guarantee or security in respect of the exercise of compulsory acquisition powers by the Promoter. However, Article 22 only extends to liabilities in respect of compulsory acquisition powers and does not extend to damage that may be caused as a consequence of the construction or use of the Project.

3.4 The Cadent Protective Provisions prevent the compulsory acquisition of any land (or rights in land) in which Cadent has an interest in. Therefore, as a matter of basic principle, Article 22 would never be capable of providing protection to Cadent as powers of compulsory acquisition cannot be exercised in respect of Cadent.

3.5 This is important, as the Promoter appears to accept that security in respect of such compensation is appropriate for Cadent, but the Promoter makes the case that Cadent can rely on Article 22 and then makes the further case that as a consequence the requirement to provide additional security is unnecessary (section 3.9.1 of the Promoter's Section 127 Case). This is incorrect, as Article 22 only applies in respect of compulsory acquisition compensation.

3.6 If there were damage to Cadent's apparatus, Cadent could not rely on Article 22 and as such Cadent is not seeking "additional security" as asserted by the Promoter. It is seeking security, in a similar form to Article 22. If the security provisions were not included in the form set out in the Cadent Protective Provisions, then Cadent would be left without security.

3.7 Therefore, the security provisions are essential for inclusion in the Cadent Protective Provisions.

3.8 As with Article 22, security is required given that funding is not in place for the Project and the Promoter will not secure funding until after the dDCO is made. The same justification set out in Paragraphs 2.4 of the Promoter's funding statement (REP7 – 0004) that necessitate Article 22 (in

respect of compensation for compulsory acquisition) necessitate the security provisions in the Cadent Protective Provisions (in respect of liability for damages).

- 3.9 In the current energy and security of supply crisis, providing full and proper protection to the gas distribution network is increasingly important. The Cadent Protective Provisions will help to achieve this and to avoid serious detriment to Cadent's undertaking.
- 3.10 Therefore, Cadent requests that the Promoter's late changes to the Cadent Protective Provisions are not included in the dDCO and that the dDCO includes the security provisions in the form secured by the Cadent Protective Provisions.

4. INDEMNITY CAP

- 4.1 The only justification provided by the Promoter for seeking to cap the indemnity to Cadent as part of the Examination is that: "*Cadent has a significant number of plots in which it has an interest in respect of apparatus*" (section 3.9.2 of the Promoter's Section 172 Case).
- 4.2 The significant interaction between the Project and Cadent's Apparatus, and the potential for damage associated with that interaction which could have far-reaching consequences for Cadent's gas distribution network, are precisely the reason why a capped indemnity is not appropriate.
- 4.3 The extensive interactions between the Project and Cadent's Apparatus mean that it is not possible to quantify the potential financial consequences of damage to, or disturbance of, Cadent's gas distribution network.
- 4.4 The Promoter's justification is also diametrically opposed to the Promoter's justification for seeking to impose a liability cap in respect of Network Rail (which it sets out at section 3.19 of the Promoter's Section 127 Case and where it states that an uncapped would be "*disproportionate given that only two plots (Plot 2-6 and 8-3) are affected*". Applying the Promoter's approach, an uncapped indemnity is clearly proportionate given the significant interaction in respect of Cadent's Apparatus.
- 4.5 Cadent derives no benefit from the Project and should not be exposed to any potential financial consequences as a result of damage to, or disturbance of, Cadent's gas distribution network.
- 4.6 Therefore, Cadent requests that the Promoter's late changes to the Cadent Protective Provisions are not included in the dDCO and that the dDCO includes the indemnity in the form secured by the Cadent Protective Provisions.

5. NEXT STEPS

- 5.1 Cadent's position is that there would be no serious detriment to its undertaking if the Cadent Protective Provisions are included in the dDCO.
- 5.2 Cadent requests that the Cadent Protective Provisions are included at Part 4 of Schedule 14 to the dDCO.
- 5.3 Cadent request that the Examining Authority recommend that the final dDCO, if made, includes the protective provisions in the form of the Cadent Protective Provisions and that the Secretary of State include the protective provisions in the form of the Cadent Protective Provisions in the final DCO (if made).

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