

SP MANWEB



Reinforcement to the North Shropshire Electricity Distribution Network

Summary of SP Manweb's Oral Submissions at ISH1

Application Reference: EN020021

Deadline 1 Submission

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Distribution Network**

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on 20 March 2019**

PINS Reference EN020021

QA Box

Author		SP Manweb	
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SP Manweb plc, Registered Office: 3 Prenton Way Prenton CH43 3ET. Registered in England No. 02366937

SUMMARY OF SP MANWEB’S ORAL SUBMISSIONS AT ISH1 ON 20 MARCH 2019

1.1. The table below summarises SP Manweb’s response to the Examining Authority’s questions as raised in the Agenda for ISH1. Not all responses were said in oral submissions but it is considered helpful to set out now what changes are proposed to the draft DCO in light of ISH1.

1.2. In attendance for SP Manweb at ISH1 were:

- (i) Mark Westmoreland Smith, Barrister
- (ii) Richard Glover, Partner, Squire Patton Boggs
- (iii) Steven Edwards, Senior Planner, SP Manweb
- (iv) Jacquie Critchley, Associate Partner, Gillespies

Subject Matter	PINS Comment	SP Manweb (SPM) Response
General	Consistency in capitalisation of Order	The draft DCO will be amended to ensure consistency in this regard
Preamble	Update to refer to the ‘single appointed person’ and the appropriate parts of the Planning Act 2008 (PA 2008).	SPM propose to delete paragraph 2 and 3 of the preamble and substitute with the following (based on the M20 J10a DCO but with an additional reference to the consideration of environmental information) as follows: <i>“The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).</i>

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		<p><i>The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.</i></p> <p><i>The Secretary of State, having considered the representations made and not withdrawn, the report and recommendation of the single appointed person, having taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(c) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act and has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.”</i></p>
	<p>Reference to special category land refers to “rights imposed” – see instead wording in M20 J10a made DCO. Also, as in that DCO, refer to the article number in which the special category land is defined?</p>	<p>SPM agreed to replace the words “rights imposed by” with the words “any new rights authorised to be compulsorily acquired under”</p>

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Article 2	“date of final commissioning” – relevance of “commercial basis” (articles 12 (1) and 26 (3))?	The reference to commercial basis is necessary to distinguish between the line becoming operational in the true sense and the first time electricity flows down the line which will be during commissioning and testing. Gill Dickinson of SPM’s Design and Construction team confirmed that this was a recognised process.
	“Order land” – is this saying anything is required to facilitate or is incidental to?	SPM accept that the wording “required for, or required to facilitate or is incidental to, or affected by, the authorised development” is not necessary. We, therefore, propose to delete these words such that definition reads: <i>“Order land” means the land shown on the land plans and described in the book of reference within which the authorised development is taking place”;</i>
	“Shropshire County Council” – delete County.	Name will be changed in the next version of the draft DCO.
Article 3	(2) – this suggests some works are outside the Order limits - why is this needed?	The reference in Art.3(2) to “each numbered work” is a reference to Sch.1 of the draft DCO. Art.3(2) limits the location of the Sch.1 works to their individual locations on the works plan. Without Article 3(2) no such express limitation would exist and reliance would be placed only on the words in Art3(1) “as set out in Sch.1” – this may be enough but it is considered that Art.3(2) provides helpful clarification.

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		The works plans are by definition in the Order limits (see Art.2 “Order limits”) and so there could not be works outside of the Order limits.
Article 4	(1)(a) – delete “activities” after “maintenance”.	Agreed. This will be done in next draft DCO.
Article 5	(1) – define by reference to scheduled works?	It was agreed to amend Article 5 to read: <i>“The undertaker is authorised to install and keep installed the authorised development.”</i>
	(3) – significance of “England and Wales”?	The authorised development will form part of SPM’s network of assets in the area and this network extends into Wales. As such the electricity flows along the authorised development could be used to supply parts of the network in Wales.
Article 8	(1)(a) and (b) – significance of reference to “including any of the numbered works”?	Wording unnecessary. Will be deleted in the next draft.
	(4) – in practice, are the powers ever likely to be transferred to a body other than a statutory undertaker?	Possibly not but (a) that does not remove the need for subsection (4) which deals with transfer to SUs and removes the need for express consent given that SUs/ electricity act licence holders are well established in operate assets such as the authorised development and (b) SP Manweb wish to retain the flexibility to transfer to other than SUs. There is no necessity for this to be a likely outcome given this is secondary legislation and such a test does not apply.

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<p>Article 9 (and Part 3 generally)</p>	<p>What is the relationship to the Access and Rights of Way Plans which do not appear to be referred to in the dDCO?</p>	<p>The ARoW plans (DCO Documents 2.4.0 – 2.4.16 (APP-008)) identify accesses onto the public highway and public rights of way and areas of change in relation to access. These plans are referenced in Art.2 and Schedule 9 (Documents to be Certified) (Table 8).</p> <p>SPM agree that the relationship between the DCO and ARoW plans could be clarified.</p> <p>SPM propose to do so by identifying the relevant ARoW plan in relation to each line of the table in Schedule 3</p>
	<p>(4) – where are the circumstances where the Applicant as undertaker is the street authority?</p>	<p>S.49 (1) and (4) of the New Roads and Street Works Act 1991 provide:</p> <p><i>“(1) In this Part “the street authority” in relation to a street means, subject to the following provisions—</i></p> <p><i>(a) if the street is a maintainable highway, the highway authority, and</i></p> <p><i>(b) if the street is not a maintainable highway, the street managers.</i></p> <p>...</p> <p><i>(4) In this Part the expression “street managers”, used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the</i></p>

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		<p><i>street or, if there is none, any authority, body or person having the management or control of the street.</i></p> <p>Accordingly, SPM could become the street manager and so Street Authority for, e.g. private accesses over land it controls arising from the powers under the order.</p>
Article 10	1) – given the description of the works in Schedule 3, does this list need to be so extensive?	SPM agreed to redraft the wording of Art.10(1) as follows: <i>“The undertaker may, for the purposes of the authorised development, enter on so much of any street specified in Schedule 3 (streets subject to street works) as within the Order limits and may carry out the street works specified in that Schedule.”</i>
Article 12	(2) – why is the phrase “in respect of prohibitions ----on a road” included when it is not in paragraph (3)?	<p>Agree. Amend to read:</p> <p><i>“The undertaker must not exercise any prohibition, restriction or other provision under article 11 or paragraph (1) of this article...”</i></p>
Article 13	What does “other” in line 3 refer to?	Word not necessary. Delete.
Article 15	How does this article relate to the provisions of s146 PA 2008?	<p>Section 146 of the PA 2008 states;</p> <p>“Discharge of water <i>(1) This section applies if—</i></p> <p><i>(a) an order granting development consent includes provision authorising the discharge of water into inland waters or underground strata, and</i></p>

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		<p><i>(b) but for the order, the person to whom development consent is granted would have had no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made.</i></p> <p><i>(2) The order does not have the effect of conferring any such power on that person”</i></p> <p>Art.15 reflects s.146 but prohibiting the discharge of water into waterways without the necessary consent.</p> <p>This is standard wording that was first used in the Model provisions and is frequently followed now e.g. M20 J10a and Eggborough.</p>
	<p>(1) – what does “carrying out” refer to – construction, operation or both?</p>	<p>Both. Next draft will read <i>“in connection with the construction, operation or maintenance”</i></p>
	<p>(8) (a) – simplify the range of bodies referred to.</p>	<p>SPM propose to include the following wording in the next draft of the DCO:</p> <p><i>“(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker;”</i></p>
<p>Article 16</p>	<p>Consider adding a provision obliging removal of apparatus following completion of surveys/investigations.</p>	<p>SPM propose to add a new Art.16(5)(b) to the following effect: <i>“must remove from the land any apparatus used in connection with the survey and investigation of land.”</i></p>

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		<p>The current Art.16(5)(b) will then become Art.16(5)(c)</p> <p>The words “and remove from” will be deleted from Art.16(1)(d)</p>
Article 18	Check that this article (and articles 22 and 24, and Schedule 4) are appropriate following legislative changes enacted by the Housing and Planning Act 2016.	SPM confirmed that this had been born in mind when drafted but that SPM are now in the process of rechecking and any necessary amendments will be reflected in the next draft DCO
	Also consider other recently made DCOs (e.g. M20 J10a and Silvertown Tunnel)	As above.
	(6) – is any Crown land involved? If not, delete?	No, Delete.
	(7) – capital “Subject”	Will be amended in next draft DCO.
Article 19	Consider whether s203 Housing and Planning Act 2016 may be applicable.	Again, SPM had regard to the H&PA 2016 when drafting this article but are reviewing this article in any event.
Article 21	(2) – is it the intention that the Applicant’s own rights etc. will be extinguished, as currently drafted?	No. SPM proposed to insert the words “ <i>save any such rights benefiting the undertaker</i> ” following ‘restrictive covenants’ in the first line.
Article 25	(1) - examples of “ancillary purposes”?	<p>SPM consider that the reference to ancillary purposes can be removed. The revised wording for the Article could be as follows:</p> <p><i>“25.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the</i></p>

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		<i>subsoil or air-space for those purposes or any other purpose ancillary to the authorised development</i>
Article 26	(12) – lower case “article”	Noted. Will be amended in next draft DCO.
Article 28	(1) – relevance of “So much”? Are parts of plots 2,3 and 4 not required?	<p>SPM is only seeking powers to acquire rights over these plots rather than acquiring the ownership of the plots in their entirety. It is not a case of not requiring geographic parts of the plots.</p> <p>S.159(2) PA 2008 provides that “Land” includes any interest in or right over land.</p> <p>SPM believes that the wording works in all the circumstances.</p> <p>SPM can confirm that Plots 2, 3 and 4 are required.</p>
	– what is the trigger event for discharge e.g. the exercise of a particular Order power?	The exercising of the rights. SPM proposes to include wording equivalent to 21(1)(a) and (b) in this provision.
	(2) – would this actually be “discharge”, as opposed to “suspension” and on what legal basis?	Agreed. Will be changed from “discharge” to “suspension” in the next draft DCO.
Article 29	What does this add to articles 18 and 21?	<p>It is designed to give effect to Sch.6 and to ensure that powers of compulsory purchase over SU land are subject to PPs.</p> <p>Similar wording is used in the M20 J10a DCO and the Eggborough DCO.</p>

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Article 30	This refers to “public utility undertaker” and “public communications provider” and would appear to only allow removal of their apparatus if they themselves fall within the definition of “statutory undertaker” in article 2(1).	Correct Art.30 is limited to apply to Art.29. See also definition of SU in Art2(1) which expressly includes public communications provider
Article 31	(1) – punctuation?	SPM propose to delete the comma following ‘roots’ in line 1 and insert a comma in line 2 following ‘limits’.
Article 38	Capital “Business”	Noted. Will be amended in next draft DCO.
Schedule 1	Which works constitute the NSIP and which Associated Development?	SPM agreed to identify the NSIP (Work No.3) and associated development (the other Works No.s) within Sch.1
Schedule 2	Generally - what is their status given paragraph 4.8.3 (k) of the Explanatory Memorandum?	§4.8.3 of the ExM states: <i>“The draft requirements set out in Schedule 2 may be subject to amendment following ongoing discussions with the relevant planning authority, statutory and other consultees.”</i> If the DCO is made, the Requirements would not be in draft. Accordingly the current wording is not appropriate and will be deleted in the next draft DCO
	(1) – where are “outline” hedgerow and construction traffic management plans referred to in the requirements?	SPM will remove reference to ‘outline’ in the context of the Hedgerow Management Plan and Construction Management Plans and ‘draft’ in relation to the Construction Environmental

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		<p>Management Plan (DCO Document 6.3.2 APP-036))</p> <p>This change relates to Paragraph 1 Interpretation to Schedule 2 and Requirement 9.</p>
	(3)- Table 1 Heading Pole Type (TBC)?	“(TBC)” to be deleted in next draft.
	- in which of the proposed certified documents are the specific pole types identified?	<p>The Proposed Pole Schedule is included as Appendix 3.1 to the Environmental Statement (DCO Document 6.3.1 (APP-035)).</p> <p>Wording will be introduced to make this clear.</p>
Schedule 6	An article is needed to give effect to this	<p>Agree. Art.29. will be amended to include a new Art.29(1) as follows:</p> <p><i>“Schedule 6 (protective provisions) has effect”.</i></p> <p>This follows the wording in the M20 J10a DCO.</p> <p>The current wording in Art.29 will remain but will be renumbered as Art.29(2)</p>
	Generally – current position concerning agreements with the relevant SUs.	SPM confirmed that it was in discussions with relevant undertakers in relation to the protective provisions set out in the draft DCO.
	Part 4 – Delete “Network” from the heading?	Agree. Will be deleted from next draft DCO.
Explanatory Note	Has Wem Library agreed to be a place to inspect certified documents	Yes.