

From: [REDACTED]
To: [North Shropshire Reinforcement](#)
Subject: Reinforcement to the North Shropshire Electricity Distribution Network - EN020021
Date: 27 June 2019 14:17:10
Attachments: [BIR_LIT-#6508890-v5-STW_North_Shrops_DCO_-_asset_protection_agreement.DOC](#)

Dear Sirs,

I write to provide an up-date on behalf of Severn Trent Water Limited (registration identification number 20022114).

A draft asset protection agreement was forwarded on behalf of Severn Trent Water to the solicitors for SP Manweb on 10 June 2109, receipt of which was acknowledged on 11 June 2019. To date no substantive response has been received. I attach a copy of the draft agreement for information.

If the draft agreement is acceptable to SP Manweb, Severn Trent Water will have no need to make further representations in relation to the protective provisions within the draft DCO.

However, pending receipt of a response on behalf of SP Manweb, Severn Trent Water does not at this stage know whether it will wish to attend the Issue Specific Hearing to deal with the draft DCO which is listed for Thursday 11 July 2019, nor whether early closure of the Examination may cause problems. I will confirm the position on these points as quickly as possible.

Yours faithfully

Clive Mottram | Legal Director | Head of Water Regulation | Eversheds Sutherland

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DATED

2019

ASSET PROTECTION AGREEMENT

Between

SEVERN TRENT WATER LIMITED

and

SP MANWEB PLC

**IN RELATION TO REINFORCEMENT TO THE NORTH
SHROPSHIRE ELECTRICITY DISTRIBUTION NETWORK**

THIS AGREEMENT is made on the day of 2019

Between:

- (1) **SEVERN TRENT WATER LIMITED** incorporated and registered in England and Wales with company number 2366619 and whose registered office is at 2 St John's Street, Coventry CV1 2LZ (**STW**); and
- (2) **SP MANWEB PLC** incorporated and registered in England and Wales with company number 2366937 and whose registered office is at 3 Prenton Way, Prenton CH43 3ET (**SPM**)

Whereas:

- (A) STW is a statutory water and sewerage undertaker appointed pursuant to the Water Industry Act 1991; as part of its undertaking STW owns and operates public water mains, public sewers and other assets; the said assets (the **Existing Assets**) are kept and maintained by virtue of statutory rights vested in STW.
- (B) SPM wishes to reinforce the North Shropshire electricity distribution network (**the Works**) parts of which will cross or be in close proximity to the Existing Assets. SPM has applied to the Secretary of State for a development consent order to enable it to carry out the Works (**the DCO**).
- (C) SPM's draft development consent order contains at Schedule 6 Part 2 provisions for the protection of electricity, gas, water and sewerage undertakers, which provisions shall, as between the parties to this Agreement, be subject to the provisions of this Agreement.
- (D) It has been agreed by STW that SPM shall, subject as hereinafter mentioned, be entitled to carry out the Works and/or require the removal and/or repositioning of the Existing Assets where necessary to facilitate the construction of the Works.

1. CONSENT AND GRANT

1.1 In consideration of the covenants by SPM contained in this Agreement STW hereby consents to SPM carrying out the Works as described in the DCO provided always that

1.1.1 in circumstances where the Works are to be carried out within 5 metres of the Existing Assets or will or may affect any Existing Assets, the Works shall not be carried out other than on 28 days' prior written notice to STW and a representative of STW shall be permitted to be present at and supervise the carrying out of the Works;

1.1.2 any works involving the laying of pipes or accessories thereto to form part of STW's statutory undertaking, or inspection, adjustment, repair or alteration (including moving or removing and replacing) of the Existing Assets, or any works requisite for or incidental to the purpose of any such works, shall be undertaken pursuant to STW's statutory powers following the service of statutory notice of entry onto land, such notice to be served by STW;

- 1.1.3 SPM shall have no rights to carry out any works on the Existing Assets unless expressly agreed in writing by STW;
 - 1.1.4 SPM shall use its best endeavours to ensure that the Works do not cause any interruption to the exercise by STW of its statutory functions; and
 - 1.1.5 SPM shall seek wherever possible to allow the Existing Assets to remain in situ rather than remove and/or reposition them (including by adjusting the Works) but without prejudice to SPM's need to carry out the Works.
- 1.2 In the event that STW is required in respect of the Works to serve statutory notice of entry on to land or carry out any works to the Existing Assets pursuant to its statutory powers it shall start the process of doing so, in accordance with its Code of Practice for Pipe Laying Powers on Private Land and following the correct statutory procedure, within 28 days of receipt of a written notice by SPM which requires it to serve such notice or carry out such works.

2. **COVENANTS BY SPM**

- 2.1 SPM shall consult at the earliest opportunity with STW on the design and programming of such of the Works as are likely to affect the Existing Assets, and prior to the commencement of any such Works shall provide to STW for approval, a method statement and risk assessment setting out its intentions in respect of the Works including but not limited to details of where temporary or permanent protective works will be required and details of site investigation works to be undertaken by SPM including the proposed means of confirming the horizontal and vertical location of the Existing Assets (the **Method Statement**), and shall not proceed with the Works or the relevant part thereof until STW has approved the Method Statement in writing.
- 2.2 Following the approval of the Method Statement STW shall carry out any requisite protective works. Any works to the Existing Assets shall be carried out in accordance with STW's minimum construction standards which are described in the Schedule hereto.
- 2.3 At all times SPM shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in carrying out the Works to ensure that as little damage, obstruction or interference as possible is caused to the Existing Assets and any adjacent or adjoining land and that any such damage, obstruction or interference is made good forthwith to the reasonable satisfaction of STW and in accordance with STW's minimum construction standards aforesaid and if such damage, obstruction or interference is incapable of being made good full compensation shall be paid by SPM to STW except to the extent that such loss results from the neglect or default of STW or its servants, workmen or others authorised by it.
- 2.4 SPM shall comply in all respects with all statutory requirements applicable to the Works and their retention.
- 2.5 If it is necessary for the purposes of the Works to remove or reposition the Existing Assets (notwithstanding SPM's commitment to seek to allow the Existing Assets to remain in situ) SPM shall consult with STW at the

earliest opportunity and shall in any event give STW not less than 56 days' written notice prior to the intended commencement of removal or repositioning works that such works are required. SPM shall have no right to carry out such works unless STW gives notice to SPM that STW consents to SPM constructing such removal or repositioning works. Any such works will be carried out in accordance with STW's Code of Practice for Pipe Laying Powers on Private Land and with all reasonable dispatch (having regard to SPM's timetable for construction of the Works) at SPM's cost.

2.6 The parties shall agree the reasonable estimated cost of any protective or removal or repositioning works (as the case may be) required pursuant to clause 2.2 or clause 2.5 above and SPM shall following such agreement on written demand pay in advance to STW the agreed estimated cost of the said protective or removal or repositioning works and shall pay the balance of the total costs reasonably and properly incurred by STW in completing the said protective or removal or repositioning works upon STW having satisfactorily carried out the said protective or removal or repositioning works (as the case may be) and having served written notice on SPM of their completion SPM shall pay such balance within 2 months of service of the said completion notice; if payment has not been made within that time SPM shall in addition pay interest thereon at a rate of 3% above the base lending rate of National Westminster Bank plc from the date of service of the notice until the date of payment. In the absence of agreement as to the estimated reasonable cost of the protective or removal or repositioning works, or as to the necessity thereof, or as to whether the protective or removal or repositioning works have been satisfactorily completed, or as to whether the costs actually incurred by STW are reasonable and proper, or any other issue between the parties the issue shall be referred to arbitration pursuant to article 38 of the DCO.

2.7 Following construction SPM will maintain the Works in a good and safe condition at all times.

3. FACILITIES AND RIGHTS FOR ALTERNATIVE APPARATUS

3.1 Where SPM affords to STW facilities and rights for the construction and maintenance in SPM's land of alternative apparatus in substitution for Existing Assets, those facilities and rights are, without prejudice to STW's statutory powers, to be granted upon such terms and conditions as may be agreed between the parties or in default of agreement settled by arbitration in accordance with article 38 of the DCO (Arbitration).

3.2 If the facilities and rights to be afforded by SPM in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to STW than the facilities and rights enjoyed by STW in respect of the part or parts of the Existing Assets to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by SPM to STW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

4. **COVENANTS BY STW**

- 4.1 Where claiming compensation pursuant to the provisions of this Agreement or the DCO STW shall provide SPM with full details of such matters and shall provide SPM with all information reasonably required by it.
- 4.2 STW will act reasonably in approving or withholding approval to the Method Statement and will respond in writing either approving or withholding approval within 28 days of receiving the same from SPM or its agent.
- 4.3 STW will promptly complete any requisite protective removal or repositioning works without any unnecessary delay and will confirm to SPM in writing as soon as such works are completed.
- 4.4 STW shall co-operate with SPM in respect of any statutory notice procedures required in respect of the Works.

5. **INDEMNITY FROM SPM**

- 5.1 Subject to sub-paragraphs 5.2 and 5.3, if by reason or in consequence of the construction of the Works as referred to in paragraph 10(2) of Schedule 6 Part 2 of the DCO, or by reason of any subsidence resulting from the Works, any damage is caused to the Existing Assets or any alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of STW, or there is any interruption in any service provided by STW, SPM must –
 - 5.1.1 pay the cost reasonably incurred by STW in making good such damage or restoring the supply; and
 - 5.1.2 make reasonable compensation to STW for any other expenses, loss, damages, penalty or costs incurred by STW,
 - 5.1.3 by reason or in consequence of any such damage or interruption.
- 5.2 The fact that any act or thing may have been done by STW on behalf of SPM or in accordance with a plan approved by STW or in accordance with any requirement of STW or under its supervision does not, subject to sub-paragraph 5.3, excuse SPM from liability under the provisions of sub-paragraph 5.1.
- 5.3 Nothing in sub-paragraph 5.1 imposes any liability on SPM with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of STW, its officers, servants, contractors or agents.
- 5.4 STW must give SPM reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of SPM who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

6. EXPENSES AND COSTS

- 6.1 In paragraph 12(1) of Schedule 6 Part 2 of the DCO, after, "the inspection, removal, alteration or protection of any apparatus", add, "or the construction of any new apparatus".
- 6.2 SPM shall pay STW for any time spent reasonably and properly in consultation or in supervision of the Works or in connection with the exchange of this Agreement including without prejudice to the generality of the foregoing all reasonable and proper surveyors' and legal fees and for any expenses reasonably and properly incurred by STW in undertaking any works as referred to in this Agreement including costs and compensation arising from the exercise by STW of its statutory powers to carry out street works or works on private land.
- 6.3 SPM shall in relation to any payment to STW pursuant to the provisions of this Agreement or the DCO pay VAT thereon if so required by STW and supported by a valid VAT invoice.

7. COOPERATION

- 7.1 Where in consequence of the proposed construction of any part of the Works, SPM or STW requires the removal of, or the protection or alteration of, Existing Assets, SPM must use best endeavours to co-ordinate the execution of the Works in the interests of safety and the efficient and economic execution of STW's statutory functions and STW must use its best endeavours to cooperate with SPM for that purpose.

8. DISPUTES

- 8.1 Any dispute (not being one affecting the construction of this Agreement) arising between STW and SPM under the provisions of this Agreement shall be determined in accordance with article 38 of the DCO provided nevertheless that STW and SPM shall be entitled to institute proceedings to restrain the other from doing anything which is contrary to the terms and conditions of this Agreement.

9. THIRD PARTY RIGHTS

- 9.1 No person, corporate body or partnership who is not a party to this Agreement shall have any rights under this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or any amendment of it.

10. AGREEMENT TO PREVAIL

- 10.1 If there is any inconsistency between any of the provisions of this Agreement and the protective provisions set out in Part 2 of Schedule 6 to the DCO the provisions of this Agreement shall prevail.

IN WITNESS whereof the hands of the duly authorised representatives of the parties hereto have executed this Agreement on the date set out above.

Signed:
For and on behalf of Severn Trent Water Limited

By:
Print name

Title:
Print role/title in Company

Signed:
For and on behalf of SP Manweb PLC

By:
Print name

Title:
Print role/title in Company

SCHEDULE

STW'S MINIMUM CONSTRUCTION STANDARDS

1. Any works on the Existing Assets and construction of replacement assets shall be carried out in compliance with the applicable standards –
 - 1.1 for sewers, contained in Sewers for Adoption 7th Edition – A Design & Construction Guide for Developers, published by WRc, or any replacement or updated version thereof; or
 - 1.2 for water mains, contained in the Civil Engineering Specification for the Water Industry 7th Edition, published by WRc, or any replacement or updated version thereof.