

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector

Written Representation submitted on behalf of Southern Gas Networks PLC

Planning Inspectorate Reference: EN020022

Registration ID 20023217

- 1 This written representation (**Written Representation**) is submitted on behalf of Southern Gas Networks Plc (**SGN**) in response to the application by AQUIND Limited (**Applicant**) for the AQUIND Interconnector Development Consent Order (**DCO**). The Applicant seeks development consent for the authorised development described in Schedule 1 of the DCO (**Proposed Development**).
- 2 The Proposed Development will comprise significant engineering work to land over which SGN has the benefit of rights, and at which is located SGN apparatus which is owned, operated and maintained by SGN pursuant to its gas transportation statutory undertaking which it operates pursuant to powers derived under the Gas Act 1986.
- 3 The Applicant is seeking to compulsorily acquire rights in land in which SGN has an interest.
- 4 The proposed route of the Applicant's onshore connection line interacts with operational apparatus of SGN at a number of locations.
- 5 The apparatus affected transports and regulates the flow of high pressure, medium pressure and low pressure gas.
- 6 SGN submitted a section 56 representation (RR-012) on 10th January 2020.
- 7 SGN objects to compulsory acquisition powers being granted or executed, or the interference with rights of SGN over third party land and on which it relies for the purpose of carrying out its undertaking. However, SGN is willing to enter into an agreement with the Applicant to enable the Proposed Development to be carried out while safeguarding SGN's undertaking.
- 8 SGN also objects to the seeking of powers to carry out works affecting SGN apparatus without first securing appropriate protective provisions for SGN's statutory undertaking.
- 9 Whilst negotiations with the Applicant are in progress, and SGN is hopeful that all concerns can be resolved during the course of the Examination, in the absence of an agreement that protects its interests, SGN requests that the ExA recommend the attached Protective Provisions are included as Part 3 to Schedule 13 to the Order.
- 10 SGN has also been asked by the ExA to submit a Statement of Common Ground with the Applicant (SoCG). SGN and the Applicant have agreed that a draft SoCG will be submitted by the Applicant at this Deadline 1. Both parties shall continue to discuss all matters in issue with a view to providing an updated version prior to the commencement of any hearings.

Powers sought by the Applicant in respect of land in which SGN has an interest

- 11 SGN has property interests in 92 plots of land (**Plots**) that are identified in the Book of Reference and on the Land Plans submitted with the application for the DCO.
- 12 The Applicant is seeking DCO powers in relation to the Plots to carry out the following Work Nos:
 - (a) Works No. 4 (works to lay the onshore HVDC cables)
 - (b) Works No. 5 (works to construct the onshore connection) (**Works**).
- 13 In order to undertake the Works the Applicant is seeking the compulsory acquisition of interests and rights in the Plots for the purpose of carrying out the Proposed Development and for maintaining it.

- 14 The Applicant and SGN are in ongoing discussions regarding the Works. SGN notes that the design of Work No 4 is subject to a limit of deviation to provide flexibility in relation to the delivery of the final preferred route. However, SGN is understandably keen to understand the preferred route as soon as possible so that it can ascertain the impact on its apparatus.

SGN's statutory duty

- 15 SGN owns, operates and maintains the gas distribution infrastructure in the south of England.

Statutory tests to be met by the Applicant

- 16 Two relevant provisions in the Planning Act 2008 are engaged.
- 17 Section 127 Planning Act 2008. No land owned by SGN needs to be acquired to deliver the Proposed Development, only new rights on, under or across land in which SGN has an interest other than as owner or occupier of the land. That means section 127(2) and (3) are not engaged. However, SGN notes that the Secretary of State must still apply section 127(5) of the Planning Act 2008 so as to conclude that the acquisition of new rights for the Applicant under the DCO can be created without serious detriment to SGN's undertaking.
- 18 SGN submits that the test in Section 127(5) is not met as the Secretary of State cannot be certain that the new rights in land sought by the Applicant can coexist with those of SGN without serious detriment to SGN's undertaking; and no use of other land is available to SGN which means that the serious detriment can be rectified
- 19 Section 138 Planning Act 2008. The DCO would also give the Applicant the power to remove or reposition the apparatus belonging to statutory undertakers, including that of SGN, over or within the order land. However, that can only be permitted where the Secretary of State considers it is necessary to do so.
- 20 SGN submits that the test in section 138(4) is not met by the Applicant as SGN is willing to negotiate with the Applicant in order to manage any interfaces between the Proposed Development and any apparatus and/or rights vested in SGN by private treaty.

SGN's objection to the acquisition rights identified in the Book of Reference

- 21 The Applicant and SGN's asset engineering team and engineers are having ongoing discussions, and SGN shall provide the ExA with further updates on the progress of those discussions during the course of the Examination.
- 22 Whilst SGN notes that the Applicant does not intend to extinguish any of SGN's existing rights, on the basis that the acquisition of its rights in land cannot be agreed by SGN, the DCO should not be granted without the compulsory acquisition and other DCO powers being excluded in respect of SGN's property interests. Should the DCO provide the compulsory acquisition powers do not apply to SGN interests, as SGN requests, the design of the scheme and other relevant matters that have a direct impact on SGN's apparatus and its statutory gas undertaking can be dealt with by agreement between the Applicant and SGN.

How the Applicant can address SGN's concerns

- 23 SGN invites the ExA to require that the Applicant include Protective Provisions that provide sufficient protection for SGN, its infrastructure and the safe operation of its gas distribution undertaking to be included in Part 3 of Schedule 13 to the DCO. A copy of the Protective Provisions is appended to the Schedule to this Written Representation.

SGN's objection to the DCO

- 24 For the reasons set out in this Written Representation, SGN objects to the Proposed Development.
- 25 SGN is liaising closely with the Applicant and is willing to enter into a private agreement to manage the construction of the Works whilst avoiding the risk of serious detriment to SGN's statutory undertaking. Until such agreement is in place SGN is unable to withdraw its objection to the DCO.

Conclusion

- 26 SGN does not object to the principle of the Proposed Development.
- 27 However, SGN strongly objects to the proposed compulsory acquisition by the Applicant of rights in land in order to construct, operate and maintain the Works for the reasons given in this Written Representation. Given the importance of the safe and continued operation of SGN's statutory gas distribution undertaking, SGN considers it is to be of the utmost importance that full protections are first put in place and that the Proposed Development should proceed by way of agreement rather than compulsory acquisition affecting SGN's interests in land and which risks serious detriment to its statutory undertaking.
- 28 SGN requests that the Protective Provisions appended in the Schedule to this document be included in the DCO at Part 3 of Schedule 13.
- 29 SGN considers that the Secretary of State cannot allow the DCO to be granted without amendment, as:
- (a) the test in section 127(5) of the Planning Act cannot be satisfied. The granting of compulsory purchase powers to the Applicant would result in serious detriment to SGN's undertaking and result in significant health and safety concerns for the general public; and SGN would not have any other land available to it which could be used to avoid such detriment.
 - (b) the test in section 138(4) of the Planning Act cannot be satisfied as the Secretary of State cannot currently be satisfied that any removal or repositioning of SGN apparatus is necessary for the purposes of carrying out the Proposed Development.
- 30 SGN is in ongoing discussions with the Applicant regarding the DCO. However, until such time as SGN is given the protection and assurances requested as detailed in this Written Representation, SGN's objections to the DCO cannot be withdrawn.
- 31 Should sufficient progress regarding the Protective Provisions and private agreement to be entered into not be made between the parties in the coming weeks, SGN would wish to reserve its right to be heard at an appropriate hearing to explain in detail the impact of the Proposed Development on its statutory gas distribution undertaking.

Addleshaw Goddard LLP**6 October 2020**

Schedule

SGN's Protective Provisions

Schedule 13

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

Application

1. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

(a) SGN as a Co-Insured;

(b) a cross liabilities clause; and

(c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of SGN to cover the undertaker’s liability to SGN to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SGN and where required by SGN, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of SGN to cover the undertaker’s liability to SGN for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SGN);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the pre-commencement works;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

On Street Apparatus

3. (1) Except for paragraphs 4 (*apparatus in stopped up streets*), 7 (*Removal of Apparatus*) in so far as sub-paragraph 3(2) applies, 8 (*Facilities and Rights for Alternative Apparatus*) in so far as sub-paragraph 3(2) below applies, 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

3(2) Paragraph 7 and 8 of this Agreement shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

3(3) Notwithstanding articles 11, 12, 30 and 35 or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

Apparatus of SGN in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 14 (*Permanent stopping up of streets*) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the Undertaker or of SGN to require the removal of that apparatus under paragraph 7

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (*Temporary prohibition or restriction of use of streets and public rights of way*), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 33 of the Order which shall not apply to SGN.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 20 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to SGN for any loss sustained by it; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SGN and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SGN and/or affects the

provisions of any enactment or agreement regulating the relations between SGN and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SGN reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SGN and the undertaker acting reasonably and which must be no less favourable on the whole to SGN unless otherwise agreed by SGN, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by SGN under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(5) As a condition of an agreement between the parties in sub-paragraph 6(1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must:

(a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and

(c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

- (3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.
- (4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.
- (5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8. - (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs 1 and (2) apply until SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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 in accordance with article 58 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule 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 apart from this sub-paragraph would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to

section 156 of the Planning Act 2008 or article 9 (*Consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by SGN or in respect of which SGN has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of SGN's apparatus until the following conditions are satisfied:

- (a) unless and until SGN is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and SGN has confirmed the same to the undertaker in writing; and
- (b) unless and until SGN is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to SGN that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and SGN has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 11(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent SGN from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SGN's undertaking and SGN must co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by SGN or the taking of action by SGN, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with sub-paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under sub-paragraphs 7(2), 7(4), 8(1), 11(5) and paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 42 (*Procedures in relation to certain approvals etc.*).

Notices

16. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.