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Dear Ms Williams

Keuper Gas Storage Project ("KGSP"): post-hearing documents and information

Following the recent hearings in the examination of the above application, please find enclosed the following:

- Draft DCO Revision 4, in both clean and tracked changes versions;
- DCO change log;
- Draft CEMP Revision 2 in both clean and tracked changes versions;
- Mitigation Schedule; and
- Applicant's Further Responses to Written Representations and Written Questions.

Other matters

The Applicant has explained below its approach to a number of other matters that were raised during the Issue Specific Hearing on the DCO on 26th May 2016, which have not been dealt with in the other documents.

"Operational land"

The Applicant notes Cheshire West and Chester Council's ("the Council") concerns in relation to Article 32 of the draft DCO, which relates to operational land for the purposes of the *Town and Country Planning Act 1990* ("the 1990 Act"). The Council's concern is based upon its view that the

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effect of Article 32 would be to make all of the land within the Order limits “operational land” for the purposes of the 1990 Act. The Applicant submits that this is a misunderstanding of the effect of the article.

“Operational land” is defined in the 1990 Act as follows:

Subject to the following provisions of this section and to section 264, in this Act “operational land” means, in relation to statutory undertakers—

(a) land which is used for the purpose of carrying on their undertaking; and

(b) land in which an interest is held for that purpose.

Section 264 provides, so far as relevant here, as follows:

...

(2) Where this section applies in respect of any land then, notwithstanding the provisions of section 263, the land shall not be treated as operational land for the purposes of this Act unless it falls within subsection (3) or (4).

(3) Land falls within this subsection if—

(a) there is, or at some time has been, in force with respect to it a specific planning permission for its development; and

(b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers’ undertaking.

...

In order to fall outwith the restriction in s.264, KGSP would need to be developed under a “specific planning permission”. A Development Consent Order is not a specific planning permission for the purposes of s.264. Article 32 of the draft DCO is required, therefore, in order for any of the Order land to be *capable* of constituting operational land. Article 32 represents a “deeming” provision,

which means that the Order will be treated as a specific planning permission for the purposes of s.264 of the 1990 Act.

Importantly, however, land within the Order limits will *only* be operational land under the 1990 Act if it fulfils the criteria set out in s.263, i.e. if it is “used for the purpose of carrying on [the relevant] undertaking” and if it is “held for that purpose”. Land within the Order limits that does not satisfy these criteria cannot be operational land, and is not made so by Article 32 of the draft DCO. This is reinforced by the words of s.263(2) of the 1990 Act, which make clear that:

Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

Thus, “land in general” within the Order limits – even if owned by the undertaker - will not meet the 1990 Act’s definition of “operational land”.

Definition of “maintain”

The Council has suggested that this definition should be restricted and is concerned that the current drafting would allow the Applicant to carry out an undesirably wide range of operations. The Appellant notes, however, that the operations allowed are in practice heavily restricted by the fact that maintenance works must be “unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement”. The model provisions (see Schedule 2, “model provisions for railways”) define “maintain” as follows:

“maintain” and any of its derivatives include to inspect repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of “maintain” shall be construed accordingly

This is very similar to the wording used in the draft DCO, except that the draft DCO also includes “refurbish” and “improve”, words that the Applicant suggests fall naturally within the range of meanings associated with the word “maintain”. Further, the Progress Power DCO, which has been referred to a number of times already during the examination, also contains a very similar definition of “maintain”:

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“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole, of the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

The Applicant believes, therefore, that the current wording is appropriate and has not proposed any changes as part of this revision of the draft DCO.

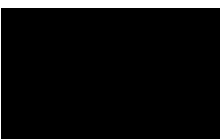
Articles 10-14: street works

The Council expressed a concern that there was no express requirement in Article 11 to provide it with details of proposed alterations to streets when seeking the Council’s consent for those works under Article 11(3). The Applicant has therefore amended Article 11 to make clear that, when seeking the street authority’s consent to carry out alterations, the undertaker must provide the street authority with such details of the proposed works as it may reasonably require.

The Council also suggested that further provision be made for seeking its consent for street works. Article 10 of the draft DCO applies the provisions of sections 54 to 106 of the *New Roads and Streetworks Act 1991* (“the Streetworks Act”) to the Order, so that any street works carried out under the DCO must be in accordance with the Streetworks Act, together with the associated *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* and statutory guidance. Together, these represent a detailed statutory scheme setting out what is required of an undertaker when carrying out street works under statutory authority. In the Applicant’s view, no further specific provision is required in the draft DCO and, as such, the Applicant has not proposed any changes in this revision of the Order.

If you have any questions, or require any additional information, then please do not hesitate to contact me.

Yours sincerely



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