



Keuper Gas Storage Project

Applicant's Further Responses to Written
Representations (HGSL)

August 2016

Application Reference No:
EN030002

KEUPER GAS STORAGE PROJECT

**APPLICANT'S FURTHER RESPONSES TO THE
EXAMINING AUTHORITY ON WRITTEN
REPRESENTATIONS BY HGSL**

Regulation No:	5(2)(q)
Document Ref:	10.16
Author:	Zyda Law 60 Cygnet Court Stratford upon Avon Warwickshire CV37 9NW
Date:	18th August 2016
Version:	FINAL

Contents

Contents	4
The Applicant's response to Written Representations by HGSL.....	5
1.....	5
2.....	5
3.....	6
4.....	6
5.....	7

The Applicant's response to Written Representations by HGSL

In relation to written representation by Pinsent Masons on behalf of Holford Gas Storage Limited (HGSL) dated 5th August 2016 submitted at deadline 7, the Applicant makes the following comments. Each of the 5 specific issues raised in the covering letter by HGSL are addressed together with other HGSL proposed changes that have not been documented by HGSL. In summary, the Applicant can accept many of the proposed changes but does not consider that all of the proposed changes are appropriate, for the reasons set out below. The Applicant has modified the Part 5 Protective Provisions for HGSL in the draft DCO Rev 7, submitted at deadline 8, in accordance with the comments below.

1	HGSL Cover Letter Dated 5 th August 2016	The amounts proposed in the definition of acceptable insurance and acceptable security are too low and would not adequately cover the likely costs incurred by HGSL as a result of any significant damage to HGSL's cavities or gas pipeline.
----------	---	---

- 1.1 In relation to numbered point 1 by HGSL, the Applicant does not accept that damage to HGSL cavities or gas pipelines is likely or will result in significant costs; however, in the interests of expediency the Applicant accepts the proposed changes.
- 1.2 Paragraph 57 definition of “acceptable insurance” and “acceptable security” are duly modified as requested.

2	HGSL Cover Letter Dated 5 th August 2016	HGSL understands that the Proposed Development will not necessitate the removal and/or relocation of any of its apparatus and has therefore deleted the relevant paragraphs.
----------	---	--

- 2.1 In relation to numbered point 2 by HGSL, the Applicant accepts that there are no proposed alterations or removal of HGSL apparatus required by the Project. The inclusion of “alternative apparatus” and related clauses stem from the agreed protective provisions for National Grid.
- 2.2 Paragraph 57 “alternative apparatus”, “apparatus”, “in”, “maintain”, “specified works” and paragraphs 61(3), 62, 63, 64(8), 65(1)-(4), 66(1), 68(1) are duly modified with regard to ‘alternative apparatus’.

3	HGSL Cover Letter Dated 5 th August 2016	As stated in its Written Representation and at the issue specific hearings, the power conferred by Article 17 (protective works to buildings) should not be exercised in respect of HGSL's apparatus without the consent of HGSL. HGSL has therefore amended paragraph 60 accordingly.
----------	---	--

3.1 In relation to numbered point 3 by HGSL, the Applicant accepts that there are no protective works to buildings owned by HGSL expected or likely, thus the powers conferred by Article 17 should not be exercised without HGSL consent.

3.2 Paragraph 60 is duly modified as requested.

4	HGSL Cover Letter Dated 5 th August 2016	The indemnity included in paragraph 66 needs to include third party claims in the event that damage caused by the Applicant to HGSL's apparatus causes damage to third party property. This is a standard provision in protective provisions and a similar indemnity is included in the existing property documents for HGSL's apparatus.
----------	---	---

4.1 In relation to numbered point 4 by HGSL, the Applicant accepts the inclusion of an indemnity in respect of damage to third party property. The revised wording suggested by HGSL goes considerably further than this, however. The Applicant does not accept all of the proposed changes.

4.2 As HGSL point out, it already enjoys protection for its apparatus from damage by agents (e.g. the Applicant) of the landlord (INOVYN Enterprises).

4.3 Where there are third party liabilities, HGSL should be under an obligation to minimize these costs.

4.4 Paragraph 66 (now 64) is duly modified to include an indemnity for damage to third party property at sub-paragraph 64(1).

5	HGSL Cover Letter Dated 5 th August 2016	As stated in its Written Representation, the HGSL Project forms an integral part of the UK's security of energy supply. The HGSL Project provides a source of gas supply flexibility to the National Transmission System (NTS) so that the UK's gas supply can be balanced and its security managed. The HGSL Project accepts gas from the NTS (operated by National Grid Gas plc) and stores it in specifically designed and created salt caverns. When required, the gas is withdrawn from the salt caverns, conditioned at the Gas Processing Plant and exported to the NTS. In the event of any interruption to this service, HGSL would be liable to pay compensation to its customers under the terms of its contractual agreements. As these costs are a known consequence of any damage caused by the Applicant to the HGSL Project, HGSL considers it appropriate and reasonable that such costs should be covered by the indemnity. HGSL refers to paragraph 97 of the Secretary of State's decision for The National Grid (Hinkley Point C Connection Project) Order and the protective provisions for Network Rail which considers the issue of consequential losses. HGSL has therefore proposed some amendments to the exclusion of consequential loss in paragraph 66.
---	---	---

5.1 In relation to numbered point 5 by HGSL, the Applicant submits that the comparison between HGSL and Network Rail is not an apt one. HGSL is plainly not a statutory undertaker with the same obligations or strategic importance as Network Rail, but rather a commercial rival of the Applicant. As such, the Applicant submits that the level of liability contended for by HGSL is not appropriate.

5.2 Further, the existing commercial arrangements between the parties exclude liability for loss of profits and other consequential losses for the benefit of both sides, as HGSL is protected from consequential costs in the event of its actions causing damage to INOVYN, KGSL, brine production operations, the chemical complexes of the brine customers and other gas storage operations across the site. The Applicant is concerned that HGSL is using the DCO examination process to gain significantly greater rights than it enjoys in its private agreements with KGSL and its parent companies (and, in fact, than it has sought in the latest draft of the side agreement under discussion between the parties). The Applicant respectfully submits that it is not the purpose of the DCO examination process to arbitrate between commercial competitors on such issues and that they should be confined to the private agreements.

6.1 In relation to the other proposed changes by HGSL included within their submitted draft Protective Provisions but not commented upon in the covering letter, the Applicant comments as follows:

- 6.1.1 Insertion of 'cavities' to "apparatus" in paragraph 57 is accepted;
- 6.1.2 Deletion of "functions" in paragraph 57 is accepted;
- 6.1.3 Sub-paragraph 61(3) has been deleted. The original purpose of this sub-paragraph related solely to the relocation and / or removal of apparatus, which the Applicant and HGSL are agreed is not relevant in this case. The sub-clause is therefore unnecessary. The combination of the deletions by HGSL and the insertion of the suggested new wording would give the sub-paragraph an entirely different (and much wider) meaning, and would have the effect of making the Protective Provisions override agreements to which the Applicant is not a party. HGSL has not justified this and the Applicant does not accept that it is necessary;
- 6.1.4 The changes to paragraph 64(10) (now 62(10)) are accepted;
- 6.1.5 Deletion of paragraph 66(3)(c) (now 64(3)(c)) is accepted;
- 6.1.6 Insertion of 'lease' in paragraph 66(4) (now 64(4)) is accepted;
- 6.1.7 Sub-paragraph 66(6) has not been accepted as it is not required;
- 6.1.8 Insertion of 'and economic', 'apparatus' and 'the' in paragraph 68(1) (now 66(1)) are accepted;
- 6.1.9 Deletion of 'statutory' from paragraph 68(2) (now 66(2)) is accepted;
- 6.1.10 Insertion of '1' in paragraph 69 (now 67) is accepted;
- 6.1.11 Deletion of the first part of paragraph 70 (now 68) is accepted; and
- 6.1.12 The Applicant has corrected the reference to '(4)' in paragraph 66(5) (now 64(5)).

6.2 The proposed change at 65(a) and (b), which have not been justified or explained by HGSL, are not accepted, as they could be used to seek a commercial gain by HGSL.

6.3 The Applicant would highlight the fact that the proposed Project is the third of its type in the local area and the fifth COMAH regulated gas storage facility that the Applicant has been involved with. The Applicant is therefore very familiar with the safety requirements for the design and construction of such a facility. In this part of the brinefield, the HGSL project was completed first and, as with the similar gas storage developments, parts of the facility were put into gas operation while other parts were still being constructed. Stublach Gas Storage project then followed and its pipeline construction crossed critical, hazardous HGSL infrastructure and included sections of pipeline construction in close proximity to the HGSL high pressure gas systems. In addition, new cavities, adjacent to operational HGSL cavities, were solution mined by the Stublach Gas Storage project. The development of the Stublach Gas Storage project did not impact upon the operation or safety of the HGSL facility.

- 6.4 The current proposal is effectively more of the same, with a layout in line with the approach taken on the preceding projects. In developing the pre-construction COMAH report for the Project, the Applicant will have to fully take account of the presence of the existing, neighbouring HGSL facility and ensure that all risks are identified and appropriately mitigated by the Applicant. The Applicant will of course seek to liaise with HGSL at all the key stages of its Project design and construction to ensure the Project development is managed without impact on HGSL.
- 6.5 The COMAH process requires an applicant to develop a safety report for consideration by the Health and Safety Executive (HSE) and to review this report periodically. In their guidance document on The Control of Major Accident Hazards Regulations 2015, the HSE state that in judging how the duty to prevent major accidents should be complied with, the competent authority recognises that risk cannot be completely eliminated and there should be some proportionality between the risk and the measures taken to control the risk. The HSE go on to explain that good practice represents a consensus between regulators, technical experts, duty holders and other stakeholders on what constitutes proportionate action to control a given hazard. The protective provisions (65(1)(a) and (b)) proposed by HGSL would allow HGSL to propose and implement significant and potentially disproportionate control measures and pass on the costs to the Applicant, a commercial competitor. The Applicant submits that this would be inappropriate in a commercial environment.
- 6.6 The proposed change (deletion) of paragraph 67, which has not been justified or explained by HGSL, is not accepted by the Applicant. INOVYN Enterprises and HGSL enjoy the benefits of a number of commercial agreements, leases and deeds between the parties. As an agent of INOVYN, the Applicant is required and intends to comply with the terms of these agreements. It is not the intention for these protective provisions to modify or have an effect on those existing agreements. Paragraph 67 (now 65) seeks to ensure that this is the case.