

Our reference JOHNMD/43283-2630

9 April 2020

BY EMAIL

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The Planning Inspectorate  
Temple Quay House  
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Dear Sir/Madam

**Application by Esso Petroleum Company Limited (Applicant) for an Order granting development consent for the Southampton to London Pipeline Project (Order)  
PINS Reference: EN070005  
Post- Deadline 7 Submission to address the Applicant's Case pursuant to Section 127 of the Planning Act 2008**

1. We write to update the Examining Authority (**ExA**) further to Network Rail's Deadline 7 submission [**REP7-061**] and the publication of the Applicant's Section 127 Case [**REP7-049**].
2. The Applicant's case is that the tests in Section 127 of the Planning Act 2008 are met and that the Applicant can purchase the rights it needs in the land which Network Rail owns or in which it has an interest without serious detriment to Network Rail's undertaking. As confirmed in its Deadline 7 submission Network Rail strongly contests this position.
3. We do not repeat Network Rail's section 127 submission in this letter. However, with reference to the new points raised by the Applicant in its Section 127 case, we respond as follows, starting with the Applicant's proposal that a new Paragraph 21(6) be inserted into the Protective Provisions.

**Proposed new paragraph 21(6) of the Protection Provisions - a time limit for the agreement of the voluntary agreements, after which the Order powers can be undertaken by the Applicant without the consent of Network Rail**

4. Paragraph 21 of the Protective Provisions lists the articles in the Order that may only be exercised with Network Rail's consent and provides that rights over railway property may not be extinguished without Network Rail's consent.

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5. In its Section 127 Case, the Applicant states that in order to accept paragraph 21, as requested by Network Rail, paragraph 21 (6) should be inserted, which states:

*"(6) This paragraph will cease to have effect if within 56 days of the making of this Order the interests and rights required by the undertaker in respect of any railway property in order to construct and maintain any specified works have not been completed by agreement with Network Rail".*

6. Network Rail disagrees strongly with the proposed insertion of this sub-paragraph as the effect would be to limit the time available for the agreement of the voluntary property agreements, after which the Applicant would be able to exercise compulsorily the powers in the Order without Network Rail's consent.
7. For reasons already stated in its Deadline 7 submission, the Protective Provisions proposed by the Applicant, in the absence of paragraph 21, are not sufficient to safeguard Network Rail's statutory undertaking.
8. The key issue for Network Rail is that it would not be in control of whether or not agreement is reached before the expiry of the 56 day period. Reaching agreement is dependant as much on the conduct of the Applicant as it is on that of Network Rail. The inclusion of paragraph 21(6) would put Network Rail entirely at the mercy of the Applicant; for example, the Applicant could delay responding to Network Rail or take an unreasonable stance in relation to the property agreement negotiations and rely on the expiry of the 56 days following which it could rely on its compulsory acquisition powers in any event. This position is not acceptable to Network Rail and Network Rail strongly resists the inclusion of paragraph 21(6) in the Network Rail protective provisions.
9. From Network Rail's perspective, as the ExA is aware, Network Rail does not object to the principle of the Order, has continued to liaise with the Applicant regarding the asset protection agreements required, has obtained the relevant clearance conditions and entered into negotiations (at an early stage of the examination process) with the Applicant regarding the property agreements needed for the delivery of the pipeline scheme.
10. Network Rail's view is that the property document drafts are well advanced, that negotiations are now progressing well and considers that it is feasible that negotiations can be concluded during the course of the ExA's consideration of the Order.
11. We have explained in our Deadline 7 submission, why the circumstances of this scheme differ to the scheme referred to by the Applicant at paragraph 1.3.8 of the Section 127 Case (Hinkley Point C) and do not repeat those submissions in this letter.
12. Finally, we request that the ExA consider this paragraph in the context of the many other DCOs that have been approved by various Secretaries of State, which do not include such a time restriction; the parties are left to agree matters between them voluntarily.

**Network Rail Protective Provisions: further proposals by the Applicant in its Section 127 Case**

13. The Network Rail Protective Provisions attached to its Deadline 7 submission remain the Protective Provisions that Network Rail request be added to Part 3 of Schedule 9 to the Order.
14. With regard to the further proposals set out by the Applicant in its Section 127 Case in relation to the Network Rail Protective Provisions, we address below the points that have not already been addressed in Network Rail's Deadline 7 submission.
15. Regarding the points raised by the Applicant, using the Applicant's paragraph numbering:

Paragraph 1.3.9(1) We are in discussions with the Applicant regarding paragraphs 22 and 26 of the Protective Provisions, which address the construction of protective works by Network Rail in certain circumstances.

Network Rail's position remains that its standard wording is required to allow Network Rail to undertake works, if reasonably necessary, to safeguard and protect the railway. These provisions are standard for the protection of the railway.

Network Rail has no interest or remit to undertake works outside of its area of expertise, for example the construction of the pipeline, and it would equally not expect pipeline contractors to undertake certain works that require specialist railway knowledge.

Paragraph 1.3.9(2) The time period for seeking alterations to railway property is addressed at paragraph 16 of Network Rail's Deadline 7 submission.

Paragraph 1.3.9(3) We are in discussions with the Applicant regarding the insertion of the word "delay" at paragraph 28(5) of the Protective Provisions. Network Rail agrees, in its Protective Provisions, that its consent shall not be unreasonably withheld and we contend that this is sufficient. Network Rail, as a statutory undertaker and body regulated by the Department for Transport must act reasonably in any event.

This point is also addressed at paragraph 21(5) of the Protective Provisions, which states that any consent by Network Rail to the powers listed at paragraph 21 must not be unreasonably withheld, but may be given subject to reasonable conditions and, if relevant, subject to the consent of any leaseholder with an interest in the property affected. Therefore, in certain circumstances, third parties could cause delay to any consent given and Network Rail would not

wish to be held accountable. Network Rail is, however, agreeing that it should not unreasonably withhold its consent.

Paragraph 1.3.9(4) The wording of the indemnity (paragraph 32 of the Protective Provisions) is addressed at paragraph 17 (onwards) of Network Rail's Deadline 7 submission.

Should the Panel have any questions regarding any of the issues raised in this letter please let us know.

Yours faithfully

**Addleshaw Goddard LLP**

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