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Southampton to London  
Pipeline Project

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**DATE 19/08/2020**

Dear Mr. Leigh,

**Re: Planning Act 2008 Application for Development Consent Order for Southampton to London Pipeline by Esso Petroleum Company, Limited**

Thank you for your letter of 5 August 2020 requesting updates or information on several points. The Applicant's response to the matters directed towards the Applicant is set out below.

**Crown Land**

The Applicant is pleased to confirm that all the voluntary agreements required with the Ministry of Defence for the pipeline easement and valve compound lease have now been completed.

We have previously reported that the Ministry of Justice (MoJ) and the Applicant had agreed all the terms of the voluntary land rights to cross a public highway save for a requirement by the MoJ that its commercial tenant must also consent to the grant of land rights including the terms therein and the nature of the works. Although our discussions with the commercial tenant are well advanced, formal authorisation from the MoJ to enable the commercial tenant to provide consent has not been forthcoming despite engagement with all parties. The resolution of this private contractual issue between the MoJ and its commercial tenant is outside of the Applicant's control and therefore the Applicant is uncertain when the tenant will be in a position to provide the consent, thus enabling the agreement to be completed. The Applicant will shortly be escalating this to the Secretary of State for Justice as this road crossing remains a critical outstanding matter in respect of the necessary land rights for the project.

**River Thames Flood Alleviation Scheme**

The Applicant recognises the interactions between the replacement pipeline and the Environment Agency's proposed flood channel and intake structure, and accordingly, following early engagement with the Environment Agency, has widened the order limits to enable a variety of potential engineering options to be accommodated. The



Applicant can therefore confirm that the construction and operation of the SLP will not prevent the Environment Agency's scheme as currently proposed.

The Applicant continues to work on the provision of a constructability and cost assessment for the potential options in this location including a future pipeline diversion if required. This work needs to take account of ground conditions (including the presence of a former landfill in the area and related permit requirements). The Applicant is undertaking a ground investigation to inform this work but due to recent working restrictions this has been delayed. As a result, the Applicant has not been able to develop detailed engineering options at this stage for discussion with the Environment Agency.

The Applicant will continue to engage with the Environment Agency on this matter, with the aim of reaching agreement through negotiations. As the next step, the Applicant will propose a joint engineering workshop with the Environment Agency in September in line with the aim of satisfying the Environment Agency's concerns by the close of this year.

### **Compulsory Acquisition**

The Applicant can report that negotiations for Voluntary Agreements have been ongoing since the close of the examination and remain active. The Applicant has made further progress with some parties and as requested now encloses a clean updated version of the Compulsory Acquisition Schedule (Application Document 8.9 Revision 7.0).

The Applicant confirms that there are no changes proposed to the Book of Reference resulting from the conclusion of voluntary agreements since the close of the examination.

### **Network Rail Infrastructure Limited**

Discussions between the Applicant and Network Rail in relation to Protective Provisions and related matters are continuing but, at the present time, an agreement is still to be reached. In the absence of such an agreement, the Applicant remains of the view, as elaborated in the section 127 case application document ([REP7-049](#)), that the Protective Provisions for Network Rail's benefit included in the draft DCO submitted at Deadline 7 ([REP7-021](#)) are reasonable and provide Network Rail with an appropriate degree of protection for its interests and assets.

It will be noted from the section 127 case application document that the Applicant's main source of concern relates to Network Rail's insistence that the powers conferred by the DCO (if made), including most notably the Applicant's powers to acquire rights over Network Rail land by compulsion, must be subject first to obtaining Network Rail's prior written consent.

The Applicant has always maintained the view that, in circumstances where no voluntary agreement to secure the land rights required over Network Rail land has



been reached (despite continued efforts on the Applicant's part to reach such a voluntary land agreement), the fetter which Network Rail seeks to impose on any compulsory powers would effectively amount to a veto on the Applicant's ability to deliver the scheme or a defacto requirement to accept whatever terms Network Rail lays down as part of a voluntary negotiation.

The Applicant considers this is not viable and should it need to have recourse to its powers of compulsory acquisition, the Applicant requires certainty that it can do so unimpeded by third parties. It is for this reason, as set out in the section 127 case submitted at the close of examination, that the Applicant sought to moderate the effect of any provision that would fetter the Applicant's powers in this way, by the insertion of a sub-paragraph (6) at paragraph 21 of Schedule 9 to the draft DCO submitted at Deadline 7.

Fundamentally, the Applicant would also stress that Network Rail has failed to provide compelling reasons why its ability to veto the exercise of any DCO powers that affect its property is required in addition to the wide ranging and high degree of protection provided elsewhere in the Protective Provisions. For example, the Protective Provisions include a process for the prior approval of plans before any works in respect of Network Rail land commence and would require the Applicant to comply with any reasonable conditions imposed by Network Rail. It is therefore not clear to the Applicant, and Network Rail has failed to explain, why those provisions in particular fail to provide sufficient safeguards for its undertaking. In this regard the Applicant notes the Secretary of State's recent "minded to approve" letter for the Hornsea Three Project Offshore Windfarm, specifically the conclusions reached at paragraph 18.13 of that letter. The Applicant considers that there is no reason why the same principles should not apply to this case.

The Applicant has, as noted, made concerted efforts without success to reach voluntary agreement with Network Rail to secure the rights over land required where the proposed pipeline crosses Network Rail property. In the absence of any binding and enforceable property rights over Network Rail land, the Applicant is therefore in a difficult position. The Applicant simply cannot, for the reasons cited, accept the fetter on its powers which Network Rail says should be included in any Protective Provisions, if the Order is made.

That notwithstanding, discussions have continued in the hope that such an agreement in relation to property rights might be reached before the Secretary of State's decision on the application.

### Affinity Water

The Applicant has also not reached agreement with Affinity Water, who despite repeated approaches before and during the examination have only sought to negotiate agreed protective provisions more than three months after the end of the examination. The Applicant is currently in early discussions but again considers that

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the protective provisions in the draft DCO it has submitted to the examination (which are widely precedented) adequately protect Affinity Water's apparatus. The relevant provisions are in Part 1 of Schedule 9, which apply to all electricity, gas, water and sewerage undertakers other than those who have their own provisions in Schedule 9 or have reached agreement with the Applicant separately from the DCO.

The Applicant will continue to negotiate with Affinity Water, but particularly given the limited time remaining, even if agreement is not reached, the Applicant considers that Affinity Water's assets are already adequately protected. The Applicant recognises that some of the issues raised by Affinity Water such as working practices and pollution control are covered by existing commitments secured by DCO requirements such as the Construction and Environmental Management Plan and the Water Management Plan. The Applicant will highlight this to the undertaker as part of its continuing engagement.

Yours sincerely,

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Tim Sunderland  
Project Executive  
Southampton to London Pipeline Project