



Our reference ELSEM/HODGSB/43283-2630

16 September 2020

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FAO GARETH LEIGH
HEAD OF ENERGY INFRASTRUCTURE PLANNING

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

Comments for Network Rail on the responses to the additional information requested on 5 August 2020

Introduction

1. Following the letter dated 5 August 2020 received from the Department for Business, Energy & Industrial Strategy on behalf of the Secretary of State, and the subsequent responses received and published on the Southampton to London Pipeline Project page of the National Infrastructure Planning website. We write to update the Secretary of State in relation to Network Rail's engagement with the Applicant since the 17 August, and to provide Network Rail's final comments regarding the following:
 - a) the property agreements and Framework Agreement to be entered into with the Applicant;
 - b) the Protective Provisions that Network Rail requires for the benefit of the railway for inclusion at Part 3 of Schedule 9 to the Order as set out by Network Rail in its Deadline 7 Submission [REP7-061] (**Network Rail Protective Provisions**); and
 - c) the Applicants response to the Secretary of State Consultation.

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2. We will not repeat the detailed submissions already made by Network Rail though out the course of the examination. Particularly as, unfortunately, the position has not moved on in any significant way since Network Rail's last submission of the 17 August 2020, which we refer the Secretary of State to (**NR Secretary of State Consultation Response**).
3. Further to the NR Secretary of State Consultation response, we can confirm that up until today (16 September 2020) while discussions between the Applicant and our client have continued, and we have continued to press the Applicant, we had not received a mark-up of the draft private property agreements to be entered into between the parties.
4. These documents were sent to the Applicant's solicitors on 24 July 2020. The Applicant's solicitor responded on a headline point on 4 September 2020 and Network Rail have subsequently conceded on this and another headline point, as Network Rail is keen to work with the Applicant to secure an agreement. However, until today we were still awaiting a mark-up from the Applicant's solicitors. A nearly two month delay is unacceptable, particularly in light of the 56 day restriction on reaching an agreement, that the Applicant is seeking to include within paragraph 21 of the Network Rail Protective Provisions, and this not what we would consider, what the Applicant refers to in its response to the Secretary of State Consultation as, 'concerted efforts' to reach a voluntary agreement. We also note, from their responses to the Secretary of State Consultation, that Affinity Water Limited and the Environment Agency have struggled to engage the Applicant in completing voluntary agreements.
5. Discussions on the Framework Agreement and the Protective Provisions have continued with the Applicant, and the Applicant's solicitor has been quick to respond to our latest comments on the Protective Provisions and the updated draft Framework Agreement. However, again, it has not been possible to reach an agreement with the Applicant, and although we will continue to liaise with the Applicant's solicitor, it seems increasingly unlikely that an agreement will be reached on all outstanding points ahead of the Secretary of State making a decision in relation to the Order.
6. Furthermore, Network Rail do not accept that its version of paragraph 21 of the Protective Provisions, namely without the strict 56 day deadline in which to finalise the required agreements, is tantamount to a 'veto', as the Applicant suggests in its response to the Secretary of State Consultation. Paragraph 21 clearly provides that Network Rail's consent may not be unreasonably withheld, and could not therefore be used as a 'veto'.

In contrast, the 56 day deadline would provide the Applicant with the opportunity to simply cease negotiations with Network Rail and wait for the deadline to pass before proceeding with compulsory acquisition, and this is a real concern for Network Rail, given the difficulty Network Rail have had in engaging the Applicant in completing voluntary agreements.

7. Accordingly, we ask that the Applicant's proposed paragraph 21(6) which contains the 56 day deadline, is not included in the Order, and instead the Network Rail Protective Provisions are included in the Order when made.

8. We also wish to confirm that as at the time of this submission an agreement has not been reached in relation to the indemnity included at paragraph 32 of the Network Rail Protective Provisions, and we ask that, in order to ensure Network Rail and the public purse is sufficiently protected for any cost incurred due to the Applicants project, the full indemnity preferred by Network Rail, as set out at paragraph 32 of the Network Rail Protective Provisions, is included in the Order.

Yours faithfully



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