

**VIKING CCS PIPELINE PROJECT
DEADLINE 7 (26 SEPTEMBER 2024)
CADENT GAS LIMITED**

INTRODUCTION

1. Cadent Gas Limited (**Cadent**) is a statutory undertaker for the purposes of the Planning Act 2008. Cadent submitted a relevant representation (Document Reference RR-020) which sets out Cadent’s position on the Project and the application of the tests pursuant to the Planning Act 2008 and a written representation (REP1-090) to provide an update on the position.

QUESTION 2.7.15

2. The Examining Authority’s (**ExA**) second round of questions includes question 2.7.15 directed at the Applicant and Cadent: “*Draft provisions are contained in Part 5, Schedule 9 and the Applicant indicated at D4 [REP4-054] that there were only a couple of points which remained outstanding. Has agreement now been reached?*”.
3. Cadent submitted its response to Question 2.7.15 at Deadline 5 (REP5-075) setting out its position and detailing the protective provisions it required, by reference to numerous previously made DCOs which contained substantially similar protective provisions. The Applicant submitted its response to Cadent’s Deadline 5 submission at Deadline 6 (REP6-046). Cadent sets out its response on the two outstanding matters in Table 1 at Appendix 1 below.
4. As set out in Cadent’s relevant representation and written representation, Cadent will require protective provisions to be included within the DCO to ensure that its interests are adequately protected and to ensure compliance with relevant safety standards. The current protective provisions included in the draft DCO do not afford adequate protection to Cadent. The protective provisions appended to Cadent’s Deadline 5 response (REP5-075) do afford adequate protection to Cadent.

NEXT STEPS

5. Cadent requests that the Examining Authority recommend that the DCO, if it is to be made, includes Cadent’s standard indemnity wording. Cadent also requests that, if the Secretary of State makes the DCO, the Secretary of State includes Cadent’s standard indemnity wording in the DCO.
6. Cadent will continue to engage with the Applicant and will notify the Examining Authority and the Secretary of State if agreement is reached.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

26 SEPTEMBER 2024

APPENDIX 1

TABLE 1

Paragraph Reference	Difference Between Parties	Applicant’s Position	Cadent’s Position
<p>53(3) of Part 5 of Schedule 9: Removal of Apparatus</p>	<p>The Applicant’s preferred form of protective provisions includes an amendment to paragraph 53(3) as set out in track changes below:</p> <p>“(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may<u>must</u>, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.”</p>	<p>The Applicant does not consider it appropriate that this should be entirely at Cadent’s discretion, as this could result in an impediment to the Proposed Development coming forward. The Applicant considers that the wording requiring Cadent to take such steps “as are reasonable in the circumstances” would already account for its statutory and regulatory duty. Cadent would be entitled to refuse to do something that compromised those functions under the existing wording.</p> <p>The Applicant therefore considers that the wording it has proposed is appropriate, and that the Applicant’s preferred form of protective provisions would avoid any serious detriment to Cadent’s undertaking.</p>	<p>Cadent’s position in respect of Paragraph 53(3) is consistent with the protective provisions which are included in the Applicant’s draft DCO in respect of National Gas Transmission plc and National Grid Electricity Transmission plc (see Paragraph 21(3) of Part 3 of Schedule 9 and Paragraph 37(3) of Part 4 of Schedule 9: REP6-0003).</p> <p>The Applicant has not set out any justification as to why Cadent should be treated differently to National Gas Transmission plc or National Grid Electricity Transmission plc, or why the Applicant can accept the word “may” (and not “must”) in Paragraph 21(3) of Part 3 of Schedule 9 and Paragraph 37(3) of Part 4 of Schedule 9 but not in Paragraph 53(3) of Part 5 of Schedule 9.</p> <p>Cadent is the holder of a gas distribution licence (the Licence)</p>

			<p>pursuant to the Gas Act 1986 (the Gas Act) and is under a statutory duty to maintain an efficient and economical pipe-line system for the conveyance of gas.</p> <p>Cadent is required to comply with the terms of the Licence, and is regulated by Ofgem. As money spent and costs incurred by Cadent are ultimately passed on to consumers in their energy bills, one of Cadent’s duties is to ensure that it conducts itself in an efficient and cost-effective way. Therefore, it cannot be obliged to take steps which are the responsibility of the Applicant.</p>
<p>57(3) of Part 5 of Schedule 9: Indemnity</p>	<p>Cadent’s preferred form of protective provisions do not include sub-paragraph 57(3)(c)</p> <p>The Applicant’s preferred form of protective provisions include the following additional sub-paragraph 57(3)(c):</p> <p>“(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of— (c) any indirect or consequential loss of Cadent or any third party (including</p>	<p>The Applicant considers that the restriction that it seeks on liability reflects the default ‘at law’ position, where it would only be liable for indirect losses of third parties where they were reasonably foreseeable. Having an open-ended indemnity in the form sought by Cadent could impose a far greater burden on the Applicant. The Applicant does not consider this to be necessary to</p>	<p>Cadent’s preferred form of wording is set out in several previously made DCOs (noted and referenced in REP5-075) which all form pieces of law as statutory instruments. The Applicant has not set out any position as to why the DCO for this Project should depart from those made DCOs, or why the protection afforded to Cadent should be lesser in respect of this Project as opposed to those recent projects.</p>

	<p>but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) where reasonably foreseeable.”</p>	<p>prevent serious detriment to Cadent’s undertaking.</p>	<p>The Applicant identifies in REP6-046 that there could be a “far greater burden” on the Applicant if Cadent’s wording is adopted. The consequences of the Applicant’s wording have the opposite effect: if the Applicant’s wording is adopted, this could impose a far greater burden on Cadent. The Applicant has not justified why it is appropriate for Cadent to accept this burden and not the Applicant.</p> <p>The difference between the Applicant and Cadent is that Cadent and its statutory undertaking derive no benefit from the Project and should not be put to risk of a “great burden”. The Applicant should be responsible to Cadent for the full extent of any losses to which Cadent is put by reason of execution of works which are entirely within the Applicant’s control.</p> <p>It is important to set the context for this wording, which is an indemnity which applies in circumstances where the Applicant’s Project has caused damage to Cadent’s apparatus (which forms part of the</p>
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			gas distribution network and is integral for security of supply of gas). In these circumstances, it is appropriate that the burden rests with the Applicant and not Cadent.
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