

SABIC UK PETROCHEMICALS LIMITED (URN 20049383)

SABIC TEES HOLDINGS LIMITED (URN: H2TS-AFP121)

SABIC PETROCHEMICALS BV

APPLICATION BY H2TEESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE H2TEESSIDE PROJECT (EN070009)

**WRITTEN SUMMARY OF SABIC'S REPRESENTATIONS TO
COMPULSORY ACQUISITION HEARING NO.1**

1. OPERATIONAL CONTEXT

1.1 To properly consider SABIC's objections it is necessary to understand in broad terms, their operations.

1.2 A detailed description of SABIC's operations is set out in Section 3 of its Detailed Written Representation [REP2-100].

1.3 However in brief:

1.3.1 Ethane is shipped into the North Tees Site.

1.3.2 It then passes through the linkline corridors and Tunnel No. 2 to Wilton.

1.3.3 At Wilton it is processed into ethylene by the Cracker.

1.3.4 The ethylene produced has a number of possible destinations:

(a) Some of the ethylene goes to the LDPE Plant, where it is processed into low density polyethylene which is used in a variety of products.

(b) Some passes through the linkline corridor to North Tees for liquefaction and onward shipping.

(c) Some is transmitted though the Trans-Pennine Ethylene Pipeline to the North West of England.

(d) Surplus ethylene can be stored at Wilton until required in underground storage cavities.

(e) The site is also connected by pipeline to similar ethylene plants in Scotland. Ethylene must be received from or returned to Scotland on a continual basis via the Wilton-to-Grangemouth Ethylene Pipeline in order to allow all three business to operate efficiently.

1.4 The key point is this: the constituent parts of SABIC's operations must be understood as a **single, interconnected, holistic system** rather than a fragmented mosaic of separate operations.

1.5 A helpful analogy might be an electrical circuit. If the circuit is broken temporarily, even to a very small extent, the whole circuit fails.

- 1.6 What is different is the consequences of an interruption to SABIC's system.
- 1.7 As set out in paragraph 5.1.2 of SABIC's Detailed Written Representation [REP2-100] the Cracker cannot be turned on an off at the flick of a switch.
- 1.8 If it was forced to shut down for any reason it would have to be **re-started, a process which would take between 2 and 3 weeks.**
- 1.9 This would interrupt operations at the LDPE Plant and would also prevent supply to other local, national and international users.
- 1.10 The result would be significant detriment to SABIC:
- 1.10.1 A huge loss of revenue likely to run into the tens of millions;
 - 1.10.2 Delay to the fulfilment of orders; and
 - 1.10.3 Reputational damage,
- plus noise and nuisance to the local community.
- 1.11 SABIC is a large employer, and its activities bring significant amounts revenue into the region both directly through its activities with local businesses and employees, and indirectly through the multiplier effect of its local spending.
- 1.12 Its operations are of national significance and due to the scale and nature of its operations it would be right to give a similar weight to its objections as to those of a statutory undertaker.
- 1.13 It follows that **suitable and adequate protective provisions** are therefore necessary both in respect of preventing the works interrupting the circuit, but also – pertinent this this hearing – preventing SABIC's land being acquired or rights from being extinguished such that the circuit is broken.

2. APPROACH TO PROTECTIVE PROVISIONS

- 2.1 SABIC provided the Applicant with a copy of its Protective Provisions during the consultation phase on 23 January 2024.
- 2.2 These were submitted to the Examination as part of SABIC's Deadline 3 Response [REP3-021].
- 2.3 SABIC's protective provisions broadly align with those included in the York Potash DCO, where SABIC took an active role in the Examination.
- 2.4 Despite now being deep into this Examination we only received a costs undertaking in respect of SABIC's legal costs for negotiating protective provisions last week.
- 2.5 And we only received a substantive reply to SABIC's protective provisions on the day before this CAH hearing (12 November 2024).
- 2.6 We are therefore a long way behind where we would like to be in negotiations and it has not been possible to review the Applicant's position in detail or to take instructions.
- 2.7 SABIC stands ready to discuss and negotiate suitable and adequate protections with the Applicant **where the Applicant provides substantive justification for departing from SABIC's protective provisions.**

3. SPECIFIC ISSUES BETWEEN THE PARTIES

3.1 Control of Compulsory Acquisition and Temporary Possession

- 3.1.1 During the hearing Leading Counsel for the Applicant responded to numerous objections to compulsory acquisition and temporary possession which had been made by interested parties with the comment that those are matters which are capable of being protected by protective provisions.
- 3.1.2 Broadly, SABIC considers that its objections in respect of compulsory acquisition and temporary possession are capable of being dealt with by suitable and adequate protective provisions.
- 3.1.3 However for protective provisions to be of any value they must be **both suitable and adequate**. They must find the right balance between ensuring SABIC's continued operation and the need for the scheme to progress.
- 3.1.4 This protection is particularly important in the context of SABIC's single, interconnected, holistic system and the consequences of compulsory acquisition or temporary possession interrupting SABIC's circuit (see paragraphs 1.1.7 to 1.1.12 above).
- 3.1.5 It remains to be seen whether the protective provisions suggested by the Applicant do provide suitable and adequate protections. However an initial view suggests that they do not appear to include any control in relation to these issues.

3.2 The need to protect the Inventory Owner

- 3.2.1 Due to the way that the SABIC group of companies are set up to operate, another group company **SABIC Petrochemicals BV owns the molecules** processed by SABIC UK Petrochemical's operations.
- 3.2.2 Protecting SABIC UK Petrochemicals Limited in respect of the Applicant's activities is therefore only part of the jigsaw.
- 3.2.3 To revive the electrical circuit analogy, there is no point in protecting the copper wire from being removed if the electricity in the wire, and the processes which it is driving, are not also protected.
- 3.2.4 SABIC therefore considers that the protection of the indemnity and certain other parts of the protective provisions must apply to SABIC Petrochemicals BV.
- 3.2.5 In the event of the Applicant damaging SABIC's apparatus, this would allow SABIC Petrochemicals BV to recover directly from the Applicant.
- 3.2.6 The alternative would be that SABIC would have to waste time and resources pursuing litigation against one of its own group companies who would then have to try to recover these sums from the Applicant.
- 3.2.7 That position is perverse and wasteful of time and money and should be avoided.

3.3 Further Issues

- 3.3.1 At the hearing the ExA set out a timetable to deal with the detailed issues between the parties. SABIC will therefore make detailed submissions in writing as to the differences between the parties at the appropriate deadline.
- 3.3.2 However in addition to the points articulated above, these issues may include:

- (a) The need to protect SABIC's assets affected by the scheme whether or not they are within the Order limits;
- (b) The need to take into account the fact that underground assets are likely to be affected by the scheme;
- (c) The adequacy of the indemnity; and
- (d) The adequacy of the insurance wording.

Womble Bond Dickinson (UK) LLP

20 November 2024