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20 January 2016

Dear Sirs

**APPLICATION FOR THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT
CONSENT ORDER – (REFERENCE 151231 TR030002)**

This submission is made on behalf of the CATS Parties. We understand that other pipeline corridor operators (SABIC, Huntsman and Ineos) share our concerns and may be contacting you separately to confirm that this is the case.

We refer to the deadline 7 and 8 submissions of the applicant, and specifically to their document “Responses to other parties’ submissions for deadline 6” (document 8.12) and the applicant’s final draft Development Consent Order (document 4.1E). Parties were asked to respond by 20 January 2016.

Deadline 7 Submissions

The purpose of deadline 7 was to allow parties the opportunity to comment on deadline 6 submissions. It was not intended as an opportunity to lead new evidence or advance new lines of argument.

Appendix 2 of document 8.12, contains the applicant’s response to the deadline 6 submission of the CATS Parties.

At Section 4 (route selection) of Appendix 2, (pages 1 and 2 of Appendix 2), the applicant states:-

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“The northern route is therefore an insurance, albeit sub optimal, to allow the delivery of the York Project scheme from mine to coast to be achieved within a fundable timescale. To delay the harbour, by the need for a significant amendment to the DCO to change to a northern route if the southern route proved not to be feasible would delay the whole project and severely impact upon project funding and hence deliverability”.

The applicant has promoted their project on the basis of employing either the southern route or the northern route. As set out in our Deadline 6 submission, when setting out the benefits of the project, the applicant did not distinguish between the use of the northern or southern routes. We do not understand the applicant to be deviating from that position. However, we are concerned at the suggestion that route selection between the southern and northern routes would impact on project deliverability. Such a statement would contradict the applicant’s previous submissions, that the project could be delivered using either the southern route or the northern route.

The applicant’s concerns appear to be confined to the drafting of the DCO – they do not suggest there are operational or other reasons why use of the northern route would prejudice to their project.

The applicant’s suggestion that significant amendments to the DCO would be required, such as to prejudice the feasibility of the whole project, is simply not credible. The removal of the southern route as one of the two alternatives is, in our view, a relatively straightforward drafting exercise and we would suggest that the applicant has significantly exaggerated the work involved.

The Inspector and Secretary of State are entitled to conclude on the basis of the applicant’s own submissions that the northern route is a viable option, and that the project can proceed on the basis of the use of this route only.

Deadline 8 Submission

Whilst much of Schedule 9 of the applicant’s final draft Development Consent Order is acceptable to the CATS Parties, the indemnity provisions are not agreed.

The CATS Parties have recommended the use of an alternative form of indemnity, similar to that currently used in their industry. An alternative form of indemnity wording has been produced by the CATS Parties – whilst the applicants do not accept the principle, the detail of this alternative wording is agreed.

The benefits of the alternative approach to the indemnity have been set out in previous submissions. Those reasons remain valid, and we would recommend the alternative form of indemnity to the Inspector and Secretary of State.

We have provided a copy of this submission to the applicant.

Yours faithfully



for and on behalf of Burness Paul LLP
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