

CADENT GAS LIMITED

Response to ExA's Second Written Questions issued 8th May 2018 on behalf of Cadent Gas Limited



1 Meridian South
Meridian Business Park
Leicester
LE19 1WY
Tel: 0116 289 2200
www.shma.co.uk

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The Examining Authority's Second Written Questions and requests for information (FWQs) Issued on 8 May 2018

Response on behalf of Cadent Gas Limited

Ref.	Topic	Question to Application/NGET	Response
2.8.48		(i) Would the Applicant and other parties state their position regarding the protective provisions? [as per Revision 2 of the dDCO submitted at deadline 3]	<p>The protective provisions submitted with the dDCO submitted at deadline 3 are generic and not expressly for the protection of Cadent on their standard terms. However negotiations between Cadent and the Promoter are continuing and an agreed version of the protective provisions for Cadent's benefit should be capable of being included in the dDCO for Revision 3 by agreement between the parties.</p> <p>As it is anticipated that a final version of the Protective Provisions for the benefit of Cadent will be fully agreed between the parties by deadline 5 (6th July 2018) these should be included within dDCO rev 3, in response to your question 2.8.48 (ii),</p>
		(ii) With regard to Part 1 of Schedule 10, several of the protective provisions contain a provision similar to paragraph 5 which has the effect of neutralising the compulsory acquisition and temporary possession powers. What is the justification for such a provision in light of the powers included in Part 3 Powers of acquisition and possession of land of the Order?	<p>From Cadent's perspective in the specific circumstances of this case they have buried apparatus within the Order Land. In this instance some Apparatus is to be retained in situ and protected and other apparatus is likely to be diverted. The protective provisions provide a process for diversion of apparatus to enable the apparatus to be moved out of the way of the Promoters authorised development, whilst still ensuring protection of Cadent's statutory undertaking and continuity of service. All apparatus is required to serve existing infrastructure/development currently in situ in the area, as part of Cadent's distribution network in accordance with their statutory undertaking.</p> <p>In order for Cadent's existing apparatus to remain in situ and be operated safely its pre-existing land and rights need to remain</p>

			<p>unaffected by the Order. This is acknowledged and agreed with the Promoter.</p> <p>As such it would be wholly inappropriate to grant a developer/promoter, even another statutory undertaker in the case of the PoTLL, powers to acquire land, rights or override Cadent's existing interests in land or their apparatus as this would affect their ability to deliver their statutory undertaking, unless necessary and fully justified in accordance with s127 of the Planning Act 2008. It would also be inappropriate to allow the Promoter to impose restrictive covenants affecting Cadent's apparatus or otherwise grant any powers of appropriation or use of Cadent's apparatus otherwise than by agreement with Cadent. Cadent's ability to deliver their statutory undertaking by way of their existing apparatus in this area needs to be given at least as much weight as the Promoters need to deliver the proposed authorised development. As such it is essential that Protective Provisions are used to narrow down the otherwise extremely broad powers granted by the DCO. This is not disputed by the Promoter who acknowledges that it is appropriate that Cadent's apparatus and land rights are retained and that the two parties co-operate in order that both can fulfil their respective statutory undertakings notwithstanding the DCO powers and the proposed new authorised development. The Protective Provisions provide a mechanism within them to allow the diversion of any necessary apparatus to make way for the authorised development, if required.</p> <p>The need for Cadent to be protected from Compulsory Acquisition and related powers is enshrined in section 127 of the Planning Act 2008, which notwithstanding that the ability to invoke Special Parliamentary Procedure has now been removed from the legislation, still provides</p>
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			<p>that Compulsory Acquisition of statutory undertakers land or rights may <u>only</u> be authorised where it can be acquired without serious detriment to the carrying on of the undertaking or where if purchased it can be replaced by other available land/rights. If broad unfettered powers of compulsory acquisition of land and rights and other related powers overriding or interfering with statutory undertakers rights are granted in a DCO without the adequate protection provided for in the Protective Provision this would be contrary to s127 of the Planning Act 2008 unless full consideration has been given to the impact of such acquisition on the statutory undertaking.</p> <p>Put the other way, if the protective provisions did not protect Cadent from the compulsory acquisition and other related powers in Articles 23, 25, 26, 27, 29, 29, 32, 33, 34 and 35 then it would be inappropriate to make the dDCO as it stands because it could potentially prevent Cadent's statutory function being fulfilled and would cause detriment to their statutory undertaking, as for instance their apparatus could be removed without or before replacement of alternative apparatus. There is no justification to grant the Promoter wider compulsory acquisition (and related) powers than they require to carry out their development. All other DCO's secured to date include protective provisions in a similar form as they relate to statutory undertakers.</p>
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