

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

IMMINGHAM GREEN ENERGY TERMINAL DEVELOPMENT CONSENT ORDER

PINS REFERENCE TR030008

**WRITTEN REPRESENTATION ON BEHALF OF
CADENT GAS LIMITED FOR DEADLINE 7**



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1 INTRODUCTION

- 1.1 Cadent Gas Limited ("Cadent") is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks in North London, Central and North West England. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way.
- 1.2 Cadent made a relevant representation in this matter on 4 December 2023 [RR-002] and submitted a written representation at Deadline 1 [REP1-088]. This was in order to protect apparatus owned by Cadent located within the order limits (plot(s) 5/10, 5/11, 5/12, 5/18, 5/20, 5/22, 6/2, 6/5, 6/6, 6/8, 6/10, 6/17, 7/12, 7/13) which may be affected by the proposed works.
- 1.3 Cadent has continued to discuss the Protective Provisions in Part 7 of Schedule 14 with the Applicant and a summary of the position reached on the matters of concern is provided at the Appendix to this Representation.
- 1.4 In summary, Cadent believes that it has an agreed way forward on the acceptable insurance and security concern. If it has, then this means that all matters save for one matter (which is related to Paragraph 94 Arbitration) and the changes introduced in the dDCO for Deadline 6 (**page 130 of REP6-005**) has not yet been resolved. Further explanation is included below. However where matters are not yet finalised (highlighted in bold below) we request that Cadent provide a finalised position at Deadline 8 on these matters.

APPENDIX

Change Requested in Written Representation [REP1-088]	Position Reached by Deadline 7
<p>In terms of the specific amendments requested Cadent confirm as follows:</p> <p>1 INCLUSION OF DEFINITIONS RELATED TO ACCEPTABLE INSURANCE AND SECURITY AND TEXT TO BE INCLUDED IN THE NOW PARAGRAPH 94(5) AND (6)</p> <p>1.1 Provision needs to be included within the dDCO that the works in the vicinity of Cadent's apparatus are not commenced unless: (1) there is third party liability insurance effected and maintained for the construction period of the relevant works; and (2) the person or body undertaking the works (acknowledging the ability to transfer the benefit of the DCO) has the appropriate net worth at the time of commencing works to enable it to meet any liability arising from damage to Cadent's apparatus or that there is appropriate security in place through a bond or guarantee.</p> <p>1.2 Cadent derives no benefit from the Project and needs to ensure that it is not be exposed to any costs or losses as a result of the Project. Money spent and costs incurred by Cadent is ultimately passed on to consumers in their energy bills. This is not appropriate in respect of losses caused by a third party and Cadent requires, therefore, the comfort that works near its apparatus are the subject of appropriate insurance and security.</p>	<p>As noted above, Cadent believes it has an agreed way forward with the Applicant regarding these requirements and if that is the case Cadent is not seeking further changes to the Protective Provisions. Cadent requests that it provides an updated position at Deadline 8.</p>

<p>2 DEFINITION OF APPARATUS AND CADENT'S UNDERTAKING</p> <p>The definition of apparatus and references to gas supply need to capture a broader spectrum of apparatus as Cadent becomes responsible for delivering low carbon hydrogen pipelines.</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>
<p>3 DEFINITIONS ASSOCIATED WITH GROUND MONITORING</p> <p>Definitions and provisions need to be added to enable Cadent to be able to call for ground monitoring as part of the measures to ensure the protection of its retained apparatus.</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>
<p>4 DEFINITION OF "SPECIFIED WORKS"</p> <p>Limb (c) and other references to Cadent's guidance need to reference Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus. This guidance is applicable in its entirety not just paragraph 8. The importance of these industry standards is explained above.</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>
<p>5 APPLICATION OF THE 1991 ACT</p> <p>Cadent's template protective provisions regarding the Application of the 1991 should be incorporated.</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>
<p>6 PERMANENT AND TEMPORARY STOPPED UP STREETS</p> <p>Cadent's standard protective provisions associated with permanent and temporary stopped-up streets are missing.</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>

7 RETAINED APPARATUS (NOW PARAGRAPH 92)

7.1 Cadent require 56 days to approve any plan. Cadent cannot agree to curtail the time for responses due to Cadent's statutory functions and the legislation governing pipelines.

- (a) 1. Major Accident Hazard pipelines are regulated by the Pipeline Safety Regulations 1996. Under Regulation 15, it is an offence to cause damage to a pipeline as may give rise to a danger to persons and could result in enforcement action by the HSE.
- (b) 2. The Pipeline Safety Regulations 1996 requires that pipelines are operated so that the risks are as low as is reasonably practicable. In judging compliance with the Regulations, the HSE expects duty holders to apply relevant good practice as a minimum.
- (c) 3. Well established national standards and protocols for major accident hazard pipelines assist the HSE in ascertaining whether the risks incurred in working with such pipelines have been mitigated as much as reasonably practicable.
- (d) 4. These industry standards have the intention of protecting: a. integrity of the pipelines, Cadent's network and distribution of gas; b. safety of the local area surrounding gas pipelines; and c. safety of personnel involved in working near to gas pipelines.

7.2 Cadent therefore needs to ensure that the industry regulatory standards are being complied with and that there are no health and safety risks which could have potentially serious consequences for individuals or property located in proximity to the pipeline/s.

The concern with a shorter period to approve a plan has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required to paragraph 92.

The Deadline 6 version of the Protective Provisions removed the previous carve outs of matters which were excluded from being referred to Arbitration (see page 130 of REP6-005). Cadent has a deep and justified concern re this Deadline 6 change regarding approvals under this paragraph being referred to arbitration. Paragraph 99 in the Deadline 6 version of the dDCO [REP6-004] now provides that any difference or dispute is referable to dispute resolution. As noted in Cadent's Written Representation [REP1-088] Cadent has its statutory functions and there is legislation governing pipelines. Cadent has a statutory duty under its Licence to ensure that the legislation and protocols are complied with. Cadent has a high pressure gas main in the vicinity of the authorised development. It must be for Cadent, therefore, with its statutory duty and licence obligations and as an experienced gas undertaker, to determine what measures are reasonable for the protection and integrity of its network including the high pressure gas main and not a third party.

Discussions continue and Cadent would wish to update the Examining Authority on this issue at Deadline 8.

APPENDIX

Change Requested in Written Representation [REP1-088]	Position Reached by Deadline 7
<p>7.3 Cadent has the benefit of a gas transporter licence (the Licence) under section 7 of the Gas Act 1986 (the Act). Cadent has a statutory duty under its Licence to ensure that these Regulations and protocols are complied with.</p> <p>7.4 For all of the above reasons, it is for Cadent, as an experienced gas undertaker under statutory and Licence obligations, to determine what measures are reasonable for the protection and integrity of its network and it needs to have sufficient time to do so.</p> <p>8 INDEMNITY (NOW PARAGRAPH 94)</p> <p>8.1 Cadent needs to ensure that it is not be exposed to any costs or losses as a result of the Project and therefore all expenses, costs etc need to be covered. For clarity, the indemnity only applies in respect of third party claims as follows: “any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent”. The indemnity also provides that Cadent must give the Applicant reasonable notice of any such third party claim or demand and that “no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering their representations”. Therefore, before the</p>	<p>This concern has been addressed in the Deadline 6 version of the Protective Provisions and no further changes are required.</p>

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<p>Applicant could be liable to Cadent for a third parties' costs under the indemnity, three things would need to occur:</p> <ul style="list-style-type: none">(a) First, the Applicant must have caused damage or in any interruption in any service provided, or in the supply of any goods, that have caused loss to the third party;(b) Second, that third parties' costs must have been properly incurred by or recovered from Cadent; and(c) Third, Cadent must have either settled that claim having consulted and considered the Applicant's representations or have been obliged to make the payment in under a statutory compensation scheme. This procedure ensures that the indemnity only applies to properly incurred or recovered costs, and provides the Applicant with the opportunity to make representations on any such claim. This is sufficient protection for the Applicant. <p>8.2 The additional wording at sub-paragraphs 3(c) enables a dispute to be created and a risk that Cadent is unable to recover all costs or losses. On this point, money spent and costs incurred by Cadent is ultimately passed on to consumers in their energy bills. This is not appropriate in respect of losses caused by a third party.</p>	