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12 October 2020

Dear Sirs

**Portishead Branch Line - MetroWest Phase 1 ("the Scheme")
Objection to Application for Development Consent Order
Objector: CLH Pipeline System (CLH-PS) Limited ("CLH")**

We act for and on behalf of CLH in this matter.

1 Introduction

- 1.1 This correspondence constitutes an objection to the application submitted by North Somerset Council ("the Promoter") for a Development Consent Order ("the DCO") to rebuild the disused branch line between Portishead and Pill and reintroduce train services. CLH is an interested party for the purposes of the Scheme and has received a Section 56 notice from the Promoter.
- 1.2 CLH has been engaging with the Promoter as the Scheme potentially impacts and interferes with CLH's existing pipelines, which lie within the Order Limits. CLH has identified that it will require protective provisions to be agreed with the Promoter to ensure its apparatus and land interests are adequately protected and to ensure the safe ongoing operation of its pipelines.
- 1.3 CLH does not object in principle to the Scheme proposed by the Promoter. CLH does, however, object to works being carried out in close proximity to its apparatus unless and until suitable protective provisions have been secured to its satisfaction. CLH also objects to any compulsory acquisition powers for land or rights or other related powers to acquire land temporarily or otherwise interfere with easements or rights which would affect its land interests, rights, apparatus or access to apparatus.

2 Interests in land within the Order Limits

- 2.1 CLH has the right to retain, maintain and use pipe-line apparatus in land within the Order Limits pursuant to Part 4 of the Energy Act 2013. The documents and plans submitted for the Scheme indicate that CLH's apparatus will be affected by the Scheme two distinct locations:

**Lawyers & Parliamentary Agents**

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- (a) Sheepway, east of Portishead, where two of CLH's existing pipelines cross the track bed perpendicularly; and
 - (b) beneath the M5 viaduct, south of the Bristol Port Company's Portbury Dock branch, where a further two of CLH's existing pipelines run within a proposed temporary construction compound. This site will be subject to temporary powers in favour of the Promoter and/or Network Rail Infrastructure Limited.
- 2.2 CLH operates a network of fuel distribution pipelines that form a critical part of the UK's fuel supply system. The four pipelines affected by the Scheme are multi-fuel pipelines that transport fuel products on an almost continual basis, 7 days a week. CLH is responsible for the safe operation, maintenance and long term integrity of its pipelines and CLH's rights and access to its pipelines must be preserved at all times to allow it to inspect, maintain and repair its pipelines in order to fulfil its responsibility.
- 2.3 As CLH's pipelines are already present within the Order Limits, the making of the DCO without adequate protective provisions in place will put the integrity, safety and operation of the pipelines at significant risk, as discussed further below.

3 Nature of objection to the DCO

- 3.1 CLH does not object to the Scheme in principle. Conversely, it does object to any acquisition of its apparatus or rights under any compulsory acquisition powers granted in the DCO, and the grant of any further rights or powers that have the potential to:
- create a risk, whether during or after construction of the Scheme, to the physical and operational integrity of the pipelines;
 - obstruct CLH's ability (physically or legally) to protect its pipelines and gain access to the pipelines for inspection, maintenance and repair, whether during or after construction of the Scheme; or
 - prevent or diminish CLH's ability to enforce its legal rights in respect of current and future protection of the pipelines from surface or underground activity.
- 3.2 In addition, the execution of works in close proximity to the apparatus will pose risks to the ongoing safe operation of the pipelines, such as:
- restriction of future access, rendering the pipelines unsafe should a fault or feature be identified by future inspections;
 - third party damage during construction including strikes and pipeline failure due to repeated heavy plant crossing; and
 - stress to the pipelines by overburdening or undermining without correct support.

4 Protective provisions

- 4.1 The draft DCO contains protective provisions relating to CLH's apparatus at Schedule 16 Part 6. However, these provisions are not adequate for the protection of CLH's apparatus and its rights. CLH is therefore negotiating a separate protective provisions agreement with the Promoter.
- 4.2 As drafted, the DCO is inadequate to protect CLH's apparatus or ongoing functions, which are of national importance. In particular, CLH requires the following protections, which are absent from the draft DCO but which are important for the ongoing and safe operation of CLH's pipelines:

- to prevent the Promoter from acquiring or frustrating CLH's rights in respect of its apparatus or any of its rights in land unless by agreement with CLH;
- to restrict the Promoter's ability to obstruct access to the apparatus or otherwise interfere with CLH's ability to carry out its functions as an oil pipeline operator;
- should the Promoter require removal of CLH's apparatus, to afford CLH sufficient notice, sufficient details of the proposed new position of the apparatus and the rights to construct suitable alternative apparatus;
- to ensure CLH is provided with sufficient notice and detail to assess any works that the Promoter intends to carry out within 15m of any part of CLH's apparatus, for example to determine whether protective works or monitoring of adjoining activities or works are necessary;
- where considered necessary by CLH or the Promoter, to ensure tests are undertaken to determine any interference to cathodic protection;
- to ensure that the Promoter secures any land which is required to accommodate any alternative apparatus required in the event that a diversion to the existing pipelines is required as a result of the Promoter's scheme.
- to indemnify CLH against all losses, damage, liability, costs and expenses incurred as a result of the Promoter's works, including CLH's costs of stopping and restoring supply through its apparatus, and to ensure CLH remains neutral in cashflow;
- to include a covenant on the part of Network Rail to comply with the obligations of any protective provisions agreement, as successor to the Promoter.
- to require the Promoter to enter into a works agreement, to govern the roles and responsibilities of the parties, for example in the event of complex or technical works to the apparatus or alternative, where reasonably required by CLH; and
- to ensure the Promoter suspends works on the Scheme on receipt of notice from CLH in the event of an emergency, including at the behest of Her Majesty's Government, the Secretary of State, any other government, a domestic government agency or an international agency.

4.3 Until the protective provisions agreement is agreed and completed, CLH will maintain its objection to the proposed scheme.

5 Further comments

5.1 CLH reserves the right to make further representations as part of the examination process, but will continue to collaborate with the Promoter to progress the protective provisions agreement. Our amendments to the agreement made on behalf of CLH are currently with the Promoter's solicitors for consideration. Should it not be possible to reach agreement with the Promoter, CLH reserves its right to attend compulsory acquisition or issue specific hearings to address the required format of the protective provisions.

5.2 CLH is confident that the parties, acting responsibly, will be able to progress matters but at this stage, CLH must make a representation regarding the risk to its pipeline assets; CLH objects to any interference or risk by the Project to these assets and related land rights.

5.3 CLH looks forward to updating the Planning Inspectorate upon the state of negotiations and, if necessary, detailing continued concerns in subsequent written representations to the Planning Inspectorate.

Yours faithfully



Veale Wasbrough Vizards LLP