

Your Reference



Our Reference
2762074/VJF01

Secretary of State for Transport
c/o Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Gowling WLG (UK) LLP
4 More London Riverside
London
SE1 2AU

DX 132076 London Bridge 4

6 January 2025

Dear Madam

Cambourne to Cambridge Transport and Works Act Order application

We are instructed by Cadent Gas Limited ("**Cadent**"). Cadent **object** to the above Transport and Works Act Order ("**TWAO**") application due to the terms of the proposed TWAO as currently drafted.

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, West Midlands, East and North West England. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way.

Cadent has, however, low, medium, and intermediate gas pipelines and associated below and above ground apparatus located within the order limits which are affected in multiple locations by works proposed and which may require diversions subject to the impact. Cadent has, therefore, identified that it will require adequate protective provisions to be included within the TWAO to ensure that its apparatus and land interests are adequately protected and to include compliance with relevant safety standards.

Despite negotiations on the form of the protective provisions having been on-going for some time, the protective provisions for the benefit of Cadent included in the submitted TWAO are not considered adequate for the protection of Cadent's operations. Cadent is required to comply with the terms of its licence in the delivery of its statutory responsibilities. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its apparatus.

The industry standards referred to above have the specific intention of protecting:

- (a) the integrity of the pipelines and thus the distribution of gas;
- (b) the safety of the area surrounding gas pipelines;
- (c) the safety of personnel involved in working with gas pipelines.

GOWLING WLG (UK) LLP
Registered Office: 4 More London
Riverside, London, SE1 2AU

T: +44 (0)370 903 1000
F: +44 (0)370 904 1099
gowlingwlg.com

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Secretary of State for Transport

It is essential that Protective Provisions on Cadent's standard terms are agreed and included in the Order or a side agreement. The changes which Cadent would wish to see and the reason for the need for the changes are included with this letter of objection.

Cadent contend that it is essential that these issues are addressed to their satisfaction to ensure adequate protection for their Apparatus and that Protective Provisions on their standard terms are provided. Until such provisions are in place Cadent, therefore, **objects** to the above TWAO application.

Yours faithfully

Gowling WLG

☎ Enquiries please contact: Vicky Fowler

+44 (0)207 759 6650

vicky.fowler@gowlingwlg.com

Gowling WLG (UK) LLP

SUMMARY OF CHANGES REQUIRED BY CADENT GAS LIMITED TO THE PROTECTIVE PROVISIONS IN PART 4 OF SCHEDULE 12

Relevant Part of dDCO	Response on behalf of Cadent Gas Limited
Part 4 of Schedule 12 paragraph 26	<p>This paragraph deals with Cadent's Apparatus in stopped up streets etc within paragraph 26 the following wording needs to be included as paragraph 2 of Schedule 11 also deals with apparatus and rights of statutory undertakers in stopped up streets:</p> <p>"(3) The Protective Provisions in this Part of this Schedule apply and take precedence over paragraph 2 of Schedule 11 (apparatus and rights of statutory undertakers in stopped up streets) of the Order which shall not apply to Cadent."</p>
Part 4 of Schedule 12 paragraph 24 (Interpretation) and paragraph 32	<p>Inclusion of definitions related to acceptable insurance and security and text to be included in paragraph 32</p> <p>Provision needs to be included within the TWAO or a side agreement 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>Cadent derives no benefit from this project and needs to ensure that it is not 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>The following additional definitions need to be included in paragraph 24 (Interpretation) in Part 4 of Schedule 12 or within a side agreement:</p> <p>"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A- "if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;</p> <p>"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event.</p>

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	<p>Such insurance must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation):</p> <ul style="list-style-type: none"> (a) Cadent as a Co-Insured; (b) a cross liabilities clause; (c) a waiver of subrogation in favour of Cadent; and (c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate; <p>"acceptable security" means either:</p> <ul style="list-style-type: none"> (a) evidence provided to Cadent's reasonable satisfaction that the Undertaker has a tangible net worth of not less than £50,000,000.00 (Fifty Million Pounds (or an equivalent financial measure); or (b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent); <p>The following additional clause needs to be added to paragraph 32 (indemnity) of Part 4 of Schedule 12</p> <p>(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for</p>

Relevant Part of dDCO	Response on behalf of Cadent Gas Limited
	<p>its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following conditions are satisfied:</p> <p>(a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same to the undertaker in writing; and</p> <p>(b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same in writing to the undertaker.</p> <p>(6) In the event that the undertaker fails to comply with sub-paragraph 32(5) of this Part of this Schedule, nothing in this Part of this Schedule will prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.</p>
Part 4 of Schedule 12 paragraph 27(2)	<p>Paragraph 27(2) Acquisition of land – the reference to variations needs to be included i.e</p> <p>(2) As a condition of agreement between the parties in sub-paragraph 628(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it shall be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds...."</p>

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Part 4 of Schedule 12 paragraph 28(3)	<p>Paragraph 28 which deals with removal of apparatus includes the following as sub-paragraph (3):</p> <p>(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed as soon as reasonably practicable save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.</p> <p>The "must" needs to be "may" and the "as soon as reasonably practicable" deleted. It is for the Applicant as promoter of the Project to afford any replacement facilities and rights not Cadent.</p>
Part 4 of Schedule 12 paragraph 30(1) and 30(4)(b)	<p>Paragraph 30 deals with the retained apparatus and the approval of plans by Cadent. Sub-paragraph(1) refers to a plan being submitted 28 days before commencement of any specified works. In the same paragraph we also have at sub-paragraph 4(b):</p> <p>"Cadent must use reasonable endeavours to meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1) (or such longer period as may be agreed between the parties) and</p> <p>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.</p> <p>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.</p> <p>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.</p>

Relevant Part of dDCO	Response on behalf of Cadent Gas Limited
	<p>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.</p> <p>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.</p> <p>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.</p> <p>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>Part 4 of Schedule 12 paragraph 32(1)(b)</p>	<p>Paragraph 32 is the Indemnity provision. At paragraph 32(1)(b) we have</p> <p>(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid 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.</p> <p>The word "properly" should be deleted. Cadent needs to ensure that it is not exposed to any costs or losses as a result of the Project and therefore all expenses, costs etc need to be covered. 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>
<p>Part 4 of Schedule 12 paragraph 36</p>	<p>Paragraph 36 provides for Arbitration – further carve outs need to be provided in relation to agreement of facilities and rights 28(2) and 28(4) and 29(1). Cadent has a statutory duty to maintain a safe and efficient network. It is Cadent that needs to be</p>

Relevant Part of dDCO	Response on behalf of Cadent Gas Limited
	<p>satisfied that it has the necessary rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus. Insufficient property rights have the following safety implications:</p> <ul style="list-style-type: none"> (a) Inability for qualified personnel to access apparatus for its maintenance, repair and inspection. (b) Risk of strike to pipeline if development occurs within the easement zone in respect of which an easement/restrictive covenant is required to protect the pipeline from development. (c) Risk of inappropriate development within the vicinity of the pipeline increasing the risk of the above.