**TWEEN BRIDGE SOLAR FARM ORDER**
**REPRESENTATION IN RESPONSE TO JUSTIFICATION FOR THE APPLICANTS PREFERRED PROTECTIVE PROVISIONS (REP5-039)**
**DEADLINE 6 (22 SEPTEMBER 2026)**
**CADENT GAS LIMITED**

## 1. INTRODUCTION

1.1 Cadent Gas Limited ("**Cadent**") is a statutory undertaker for the purposes of the Planning Act 2008 and 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 is making this submission in response to the Applicant's submission: Justification for the Applicants Preferred Protective Provisions (REP5-039) (the **Justification**).

## 2. PRECEDENT FOR CADENT'S PREFERRED PROTECTIVE PROVISIONS

2.1 The Applicant's position in the Justification is entirely inconsistent with recently made DCOs in the solar sector which interact with Cadent's assets and which contain the protective provision which the Applicant disputes. For example:

2.1.1 Para 66 of Part 6 of Schedule 15 to The Cottam Solar Project Order 2024;

2.1.2 Para 100 of Part 8 of Schedule 15 to The Mallard Pass Solar Farm Order 2024;

2.1.3 Para 66 of Part 6 of Schedule 15 to The West Burton Solar Project Order 2025;

2.1.4 Para 125 of Part 4 of Schedule 10 to The Oaklands Farm Solar Park Order 2025;

2.1.5 Para 100 of Part 9 of Schedule 15 to The Tillbridge Solar Order 2025;

2.1.6 Para 105 of Part 6 of Schedule 15 to The Springwell Solar Farm Order 2026; and

2.1.7 Para 140 of Part 11 of Schedule 11 of The Beacon Fen Energy Park Order 2026.

2.2 These are recently made DCOs for similar projects, and in each case the made DCO contains the form of protection that Cadent requires and the Applicant disputes. The Applicant does not identify any valid reason to distinguish between its project and each of these recently made DCOs for other solar projects.

2.3 The Applicant's position in the Justification is also inconsistent with other DCOs in the solar sector which impact Cadent's assets which have been through the examination process and which are pending decision (for example, each of the Fosse Green, Frodsham, Great North Road, Green Hill and Steeples schemes). All of these schemes include substantially the same wording as is included in the Applicant's final draft of the protective provisions for the protection of Cadent. Again, the Applicant does not identify any valid reason to distinguish between its project and each of these other solar projects.

2.4 The Applicant's position is further inconsistent with all made DCOs in the transport sector and the wider energy sector which interact with Cadent's assets. As with the solar sector, all made

DCOs which include protective provisions for the benefit of Cadent Gas Limited include the disputed protective provision required by Cadent. This includes, as a non-exhaustive list but noting those DCOs made within the last year, the following:

2.4.1 The Five Estuaries Offshore Wind Farm Order 2025, which includes Cadent's provision at Para 188 of Part 15 of Schedule 9;

2.4.2 The Outer Dowsing Offshore Wind Farm Order 2026, which includes Cadent's provision at Para 5 of Part 9 of Schedule 18; and

2.4.3 The North Falls Offshore Wind Farm Order 2026, which includes Cadent's provision at Para 161 of Part 12 of Schedule 14.

2.5 This demonstrates the consistent approach to the inclusion of the disputed protective provision in favour of Cadent.

2.6 In support of its position, the Applicant relies on three previous DCOs for the refusal of a "veto" power in support of its position at section 3.18 of the Justification (none of which relate to Cadent, or the infrastructure of a gas undertaker). It cites, at a high level and without detail as to the underlying issues, three previous DCOs relating to other undertakers being:

2.6.1 The HyNet Carbon Dioxide Pipeline Order 2024 (**HyNet**);

2.6.2 The A122 (Lower Thames Crossing) Development Consent Order 2025 (**Lower Thames Crossing**); and

2.6.3 The Dogger Bank South East and West Offshore Wind Farms Order 2026 (**Dogger Bank South**).

2.7 Of the three previous DCOs cited by the Applicant in support of its position, two of those projects (HyNet and Lower Thames Crossing) had an interaction with Cadent's assets. In both of those cases, the respective DCOs as made contain the protective provision in the form sought by Cadent in this Examination and these are contained at:

2.7.1 Para 52 of Part 5 of Schedule 10 to The HyNet Carbon Dioxide Pipeline Order 2024 in respect of HyNet; and

2.7.2 Para 53 of Part 5 of Schedule 14 to The A122 (Lower Thames Crossing) Development Consent Order 2025 in respect of Lower Thames Crossing.

2.8 The third previous DCO identified (Dogger Bank South) does not interact with Cadent's assets, but does interact with another gas undertaker's assets (National Gas Transmission plc). Again, in that case the protective provisions in favour of that gas undertaker include substantially similar protective provisions to those sought by Cadent (at Para 67 of Part 6 of Schedule 15 to The Dogger Bank South East and West Offshore Wind Farms Order 2026).

2.9 In recent previous cases where applicants have sought to resist similar wording in respect of similar undertakers (for example in respect of National Grid Electricity Transmission plc (**NGET**) in respect of both the Rampion 2 Offshore Wind Farm Order 2025 and the Dogger Bank South East and West Offshore Wind Farms Order 2026) the Secretary of State has determined that such drafting must be retained to adequately protect the affected undertaker.

2.10 Therefore, each of these three previous DCOs that the Applicant cites contains precisely the form of wording that Cadent requires (and in the two cases where there was an interaction with Cadent for the benefit of Cadent). This further supports Cadent's position.

2.11 The Applicant makes a broad statement at section 3.2 of the Justification that its position is "supported by precedent". This is clearly wrong, and the above demonstrates this. There is no precedent in respect of Cadent, in made DCOs or in other DCOs which are pending decision and which included protective provisions for the benefit of Cadent, for the exclusion of Cadent's preferred wording and the precedent which the Applicant quotes supports Cadent's position as opposed to the Applicant's position.

## 3. THE GUIDANCE

3.1 The 2024 Guidance, which was published on 30 April 2024 and to which the Applicant refers in the Justification, was withdrawn on 24 July 2026 on the basis that it is out of date. However, the majority of the precedent referred to above was determined whilst the Guidance was in effect and still saw protective provisions for Cadent secured in the same form as Cadent requires in this scheme.

3.2 The 2026 Guidance provides, at paragraphs 4.25 to 4.26 (emphasis added):

3.2.1 4.25 Applicants should therefore aim to agree the form of protective provisions with the relevant **parties for inclusion in the draft DCO prior to submitting the application for development consent. Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO**. However, these must be adapted as necessary, so they accurately reflect the proposed development. Furthermore, they should not simply negate the principal provisions of the DCO and thereby become an impediment to implementation of the project, for example by conferring unfettered plan approval procedures at detailed design stage that could be operated by the statutory undertaker to frustrate delivery of the project.

3.2.2 4.26 However, provisions exempting land belonging to a statutory undertaker from broad compulsory acquisition provisions within the draft DCO, for example to avoid engaging the additional requirements in section 127 of the Planning Act, may be acceptable if the applicant can demonstrate that the necessary land interests and rights have been, or will be, obtained by agreement with the statutory undertaker concerned.

3.3 The 2026 Guidance expressly notes that provisions exempting land belonging to a statutory undertaker from broad compulsory acquisition powers may be acceptable. The Cadent protective provisions do not operate as a veto in any event, and the Applicant has not identified how the Cadent protective provisions are an impediment to the implementation of the project.

3.4 Importantly, it is the Applicant who is not compliant with the 2026 Guidance. The Applicant did not agree the form of protective provisions with Cadent prior to submitting the application, and the Applicant has only included its drafting late in the examination at Deadline 5. On the contrary, Cadent has submitted its preferred form of protective provisions alongside its Relevant Representation and Written Representation and at various deadlines in the DCO examination. The Applicant had not commented on that drafting in the examination until Deadlines 4 and 5.

## 4. THE FINGLETON REVIEW

4.1 The Applicant refers to the Fingleton Review in the Justification however its rationale for doing so is unclear.

4.2 The Fingleton Review recommends at Recommendation 28 that the Model Provisions "*should include….Acceptable protective provisions for statutory undertakers*". Cadent has a preferred form of Protective Provisions which are routinely secured in DCOs and which routinely contain the protective provisions in the form required by Cadent.

4.3 The Cadent Protective Provisions are well precedented, and well understood. Paragraph 392(c) of the Fingleton Review expands upon this recommendation by stating the following: "*Developers must negotiate project specific "protective provisions" with statutory undertakers (organisations responsible for critical national infrastructure like railways and sewers). These usually cover the same issues as previous DCOs but are treated as completely fresh and bespoke, leading to protracted negotiations*".

4.4 In this case, the Applicant is treating the process as fresh and bespoke, rather than accepting the significant precedent and the requirements of Cadent as a statutory undertaker.

## 5. THE PROTECTIVE PROVISIONS

5.1 The Applicant's submission ignores the distinction between an approval process for physical works (which provides protection for Cadent's physical assets and imposes control over the works which can interact with Cadent's assets, as summarised in section 3.5 of the Justification) and an approval process for compulsory acquisition (which ensures that Cadent retains the necessary land rights in respect of its gas distribution network). Put simply, if Cadent's assets remain in situ (as is intended as part of the Proposed Development) then Cadent must retain the land rights to access Cadent's assets so that it can safely maintain and operate the gas distribution network. The specific importance of this issue is recognised and enshrined in statute through section 127 of the Planning Act 2008.

5.2 The Applicant does not specifically engage with the Cadent protective provisions in the Justification (other than at Table 5 and by reference to its broad position) and does not identify how the Cadent protective provisions are said to negate any other provisions of the DCO. The Cadent protective provisions do not negate any provisions of the DCO, and instead set a process for consent (just as the remainder of the Cadent protective provisions, which the Applicant has accepted, set a process around the carrying out of the authorised development).

5.3 Cadent's preferred form of protective provisions are not an impediment to development, and the Applicant has not identified any such practical impediment in the Justification. The Applicant's submission does not address the Cadent protective provisions or the interaction between the Proposed Development. Instead, it adopts a high-level position which it sweepingly applies to a number of different undertakers.

5.4 Cadent's protective provisions are not a "veto"; they are a process to regulate the interaction of land rights, which would otherwise not be controlled. Paragraph (1) does not negate any powers of compulsory acquisition; instead, it limits the acquisition of Cadent's interest until such time as there is an agreement from Cadent and it is always subject to the other terms of the protective provisions. Likewise, other elements of the protective provisions address practical matters such as the treatment of any de-commissioned apparatus (paragraph (5)) and the treatment of land rights at HM Land Registry (paragraph (6)). These matters are not a veto or negation of any powers in the draft DCO, and are instead important controls to address ongoing land rights matters.

5.5 It would be wholly inappropriate for the DCO to authorise powers which could lead to the extinguishment of Cadent's land rights, which are required so that it can safely own and

operate the gas distribution network. The Applicant acknowledges the importance of protecting the infrastructure comprised within the gas distribution network, and ensuring that land rights are retained is a key element of this protection.

5.6 Cadent has no objection in principle to the development, and has no intention of veto-ing the development. However, Cadent must take the necessary steps to protect the gas distribution network and ensure the safe and efficient operation of the gas distribution network.

5.7 Cadent has submitted its preferred form of protective provisions into this examination. The Applicant has not responded at earlier deadlines, has not set out its position and has not identified why the Cadent protective provisions specifically would not be appropriate.

5.8 The Applicant has not identified how the Cadent protective provisions would, in fact, be an impediment to this scheme. The Applicant relies on Guidance, but has not complied with the same Guidance in the promotion of its draft DCO.

5.9 The Applicant has not demonstrated why this scheme should be treated as an exception to the significant precedent identified above.

## 6. NEXT STEPS

6.1 In order for Cadent to be able to withdraw its objection, the protective provisions must include this paragraph. Cadent will continue to engage with the Applicant to secure this on a voluntary basis.

6.2 Cadent notes that the Applicant has not provided a section 127 or section 138 justification.

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**
**22 SEPTEMBER 2026**