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## By Fosse Green DCO Portal

Our ref: CC33/ETJ/UK01-000162-00367/139363635 v5

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28 April 2026

Dear Planning Inspectorate

## Fosse Green Energy Limited (the "Applicant") Development Consent Order (EN010154) (the "Application") Deadline 5 Submission

Fieldfisher LLP ("**Fieldfisher**") continue to act for BPA.

Please note that Phillips 66 Limited ("**P66**") has today purchased all the assets and land rights relating to the "Pipeline" from Prax Downstream UK Limited (in liquidation) and Prax Lindsey Oil Refinery Limited (in liquidation) (together being herein referred to as "**Prax**").

BPA are now instructed to act as agents for P66 (as successors in title to Prax) in respect of this Application and any reference to 'BPA' should from now on be interpreted as a reference to BPA acting on behalf of and as agents of P66. Any reference to "**dDCO**" "**Order**" "**Order Limits**" "**Pipeline**", "**Project**" and "**Project Works**" are to continue to be interpreted in accordance with the definitions in AS-129.

BPA has maintained throughout its written representations and oral submissions that any protections negotiated for Prax, would need to be capable of benefitting successors in title (albeit the timing of the transfer is unfortunate given the advanced stage of the Examination).

Pursuant to the Planning Act 2008 ("**PA 2008**") a person will be an interested party if:

- the Examining Authority has under section 102A decided that it considers that the person is within one or more of the categories set out in section 102B or
- the Examining Authority has under section 102A decided that it considers that the person is within one or more of the categories set out in section 102B.

Section 102A(2) applies if:

- (a) a person makes a request to the Examining authority to become an interested party,
- (b) the request states that the person claims to be within one or more of the categories set out in section 102B;
- (c) the person has not been notified of the acceptance of the application in accordance with section 56(2)(d), and
- (d) the applicant has issued a certificate under section 58 in relation to the application.

Section 102B applies if the person has a Category 1, 2 or 3 interest within the Order Land.

As a result, P66 request to be substituted for Prax (with interested party references "F7876C980" and "FE20B848") as the interested party for the purposes of Chapter 4 of Part 6 of the PA 2008 (section 102) given that:

- a. P66 has now purchased the Pipeline and all the attendant land rights relating thereto from Prax; and
- b. P66 is therefore within the Category 102B (PA 2008) requirements; and
- c. The tests in Section 102A(2) PA 2008 have been satisfied.

Assuming that the Planning Inspectorate is happy to accept the substitution of the interested parties as set out above, we request that the remainder of this letter should be construed accordingly and as if the submissions and as previously made by BPA on behalf of Prax had been made by BPA on behalf of P66.

We refer to the Examining Authority's Rule 17 letter dated 2 April 2026 [PD-019] (the "**Rule 17 Letter**"). We refer further to the Examining Authority's third written questions issued on 23 April 2026 [PD-021] ("**ExQ3**").

P66 have been kept generally apprised by BPA and Prax of the progress on this Application. However, given P66 has only today acquired the Prax assets and given the timing issues referred to in paragraph 1.3), it has not had the opportunity of approving the Applicant's crossing proposals, safety data and submissions in detail.

While P66 is keen to assist the Planning Inspectorate in the delivery of its aims and has therefore confirmed that it is happy in principle with the submissions enclosed with this letter, we request that all BPA/P66's submissions at this Deadline 5 be construed as being subject to further review by P66.

We would also like to point out that given the fact that the crucial technical data was not received until yesterday and the change of ownership of the Pipeline today, it was not possible to engage with / negotiate the submission documents with the Applicant's solicitors today. Copies of this letter and its enclosures have however been shared with the Applicant's solicitors contemporaneously with remission of this letter.

BPA/P66 enclosures with this letter comprise:

- 1. "P66 Outline Specification" – This is agreed in principle. (Please refer to paragraph 1.4 below)
- 2. Protective Provisions – This document is not agreed. (Please refer to the points at issue between the parties at paragraph 2.7)
- 3. Statement of Common Ground – This has not been agreed / signed. (Please refer to Paragraph 3).

## 1. **AC Interference Modelling Data / Timeline**

- 1.1 BPA were provided with updated AC Interference Modelling Report on 15 April 2026 at 16:09. Such data was insufficient as outlined in an email from BPA to AECOM dated 21 April 2026 timed at 13:16.
- 1.2 On 24 April 2026 at 16:24, AECOM provided an updated AC Interference Modelling Report which included indicative crossing drawings. However, such data still remained insufficient in respect of

the exact parameters for the cable and where any transition from trefoil to flat formation is to be carried out.

**1.3 Following a call with BPA, AECOM did not provide the further revised AC Interference Modelling Report together with a proposed crossing detail / specifications at 11:16 on 27 April 2026 (one day prior to Deadline 5).**

1.4 P66/BPA are in principle happy with the AC Interference Modelling Report and the therein embedded outline specification at Appendix 'C' and 'D' thereof (together comprising the "P66 outline specification" (enclosed herewith)) but note that the P66 outline specification currently incorrectly refers to the Pipeline as a "gas pipeline" and should be amended.

1.5 The P66 outline specification in respect of the Project's interaction with the Pipeline must remain subject to detailed review and approval by P66.

## **2. Protective Provisions**

2.1 Following draft protective provisions issued by Fieldfisher on 18 March 2026 in accordance with the timetable agreed at CAH2, the Applicant's solicitors provided an amended copy of the draft protective provisions at 13:10 on 22 April 2026.

2.2 Fieldfisher subsequently returned the draft protective provisions along with comments on those protective provisions at 16:28 on 24 April 2026.

2.3 The Applicant's solicitor returned a further draft of protective provisions with additional amendments on 27 April 2026 at 11:42 requesting a list of any points which are not agreed be provided. Fieldfisher provided the list of points on 27 April 2026 at 14:35.

2.4 The Applicant's solicitor provided comments on the list of points on 27 April 2026 at 22:23.

2.5 In accordance with question DCO.3.08 of ExQ3 [PD-021], we enclose preferred protective provisions in both portable PDF and clean word copy.

2.6 While the enclosed draft protective provisions have been approved in principle by P66, they remain **strictly subject to further instruction from BPA/P66** in light of the fact that they have had no opportunity to undertake a detailed review.

2.7 BPA have communicated to the Applicant that (subject to P66's further comments) the following matters have not been agreed:

a) The definition of "P66 outline specification" (This will reference the agreed design and crossing parameters) – this definition now needs to refer to the details as the "P66 outline specifications" by the Secretary of State under article 41 (certification of plans and documents, etc.) for the purposes of this Order.

b) The definition of "restricted works" (This is relevant in terms of quantifying what activity will trigger the application of these protective provisions) (c) – Restricted works needs to include any 'interference' with the Pipeline as damage can occur through physical and non-physical (e.g., AC Interference) means.

c) The definition of "works" (b)(ix) (This relates to works' information to be provided) – The Applicant seeks the additional drafting in square brackets– "any other [non-physical test based] information reasonably required by P66...". This additional drafting is not included in the precedent Exolum Seal Sands Ltd. And Exolum Riverside Ltd. protective provisions within the Net Zero Teesside DCO ("**Exolum / NZT PPs**") on which these protective provisions are based. The effect of this wording is to unnecessarily qualify and narrow the scope of information that may be required. The definition of "works details" should

remain sufficiently broad to enable P66 to request all information reasonably required to properly assess the impact of the restricted works on its operations. Introducing a specific limitation by reference to “non-physical test-based information” risks creating distinctions between categories of information.

- d) Paragraph 3(4) – (This relates to the how the reasonable requirements of P66 in relation to the works are communicated). The Applicant requests that approval to be "notified to the undertaker in writing" rather than "made in writing". Notices would need to follow the formal notice provisions in the Order. Realistically however, works' consents / supervision would be dealt with by engineering teams on the ground and "made in writing" both reflects that reality and is as per the precedented Exolum / NZT PPs.
- e) Paragraph 3(4) and 3(5) – (This relates to the timing for works' approvals) The Applicant is insisting that there be a provision for a deemed approval. Given the nature of the asset, this is not acceptable (in the same way as if we were dealing with an adopted gas main) and should not be included. The approval process is intended to ensure that P66 has a proper, effective and safe review of proposed works to assess the impact on its Pipeline and operations before those works can be carried out. There is no deemed approval included in the Exolum / NZT PPs.
- f) Paragraph 4(1)(c) – (This relates to what damage the Applicant is responsible for) The Applicant confirmed that this can be accepted provided that wording can be agreed to make clear that this does not apply to cumulative effects (Fieldfisher has added wording to deal with this request).
- g) Paragraph 6(1) – (This relates to recovery of expenses) Legal and professional costs will need to be recovered
- h) Paragraph 6(1) – (This relates to recovery of expenses) In-house staffing costs incurred by P66 and its agents will need to be recovered (This is in line with the precedented Exolum / NZT PPs).
- i) Paragraph 6(1)(c) – (This relates to recovery of expenses) It is the Applicant's position that given the proposed method of installation (e.g. trenchless technique) it is not aware that any access rights will be interfered with. If the Applicant carries out its works in such a way as to interfere with Prax's access then further land rights may be needed. It is outside of P66's control how the Applicant will exercise its rights under the Order therefore in the event that new land rights must be obtained by P66, these costs should be recoverable from the Applicant.
- j) Paragraph 6(1)(f) – (This relates to recovery of expenses) All costs properly incurred by P66 and its agents as a result of the Order and authorised development should be recoverable from the Applicant (currently there is no agreed position on costs)
- k) Paragraph 6(2) – (This relates to recovery of expenses) The Applicant requests being made aware of all costs before they are incurred. However, there may be emergency situations (e.g., a pipeline breach or emergency repairs) where works (and therefore costs) must as a matter of law be carried out immediately. Also, there may be other costs such as legal advice where prior written notice may not be

able to be given in advance in the circumstances (e.g., damage to the pipeline causes a third party claim). It has however been agreed that where it is reasonable to do so, prior notice will be given.

- l) Paragraph 6(3) – The Applicant has at the time of submission failed to provide an undertaking to cover BPA's legal costs incurred as agents of Prax to date. BPA's legal costs incurred up to 30 April 2026 should be recovered from the Applicant.
- m) Paragraph 7(6) – The cap of £50million is not agreed (this position is preceded by the Exolum / NZT PPs)
- n) Paragraph 9 – (This wording relates to the Liquidators) This wording is no longer required due to the transfer of the Pipeline to P66.

### 3. Statement of Common Ground

3.1 On 10 April 2026, Fieldfisher returned the draft statement of common ground to the Applicant's solicitors for review. Thereafter, on 23 April 2026 at 20:00, AECOM returned the draft statement of common ground with further amendments.

3.2 In order to assist the Examining Authority, we enclose a statement of common ground in both portable PDF and clean word copy which **remains strictly subject to BPA's further technical review and any comment and strictly subject to approval by P66.**

### 4. Update

4.1 BPA/P66 note and appreciate that the Applicant has been engaging in the last week following the issuing of the Rule 17 Letter.

4.2 As a result of the sale of the Pipeline to P66, today the statements in this letter together with the documents enclosed (while approved in principle by P66) remain strictly subject to P66 approval following detailed review.

4.3 P66/BPA's position is that they cannot support the draft Order in its current form until BPA's concerns (as set out in the submissions made on behalf of Prax/BPA to date) have been satisfactorily addressed and appropriate protections have been agreed.

4.4 P66/BPA must reserve the right to make further representations (including whether to object in principle to the DCO) during the Examination for the reasons outlined above.

Yours faithfully



**Fieldfisher**

Encs:

1. "P66 Outline Specification" – PDF (Document to be certified under article 41 (certification of plans etc) for the purposes of the Order
2. P66 Protective Provisions – Word (Clean)
3. P66 Protective Provisions – PDF
4. P66 Statement of Common Ground – Word (Clean)
5. P66 Statement of Common Ground - PDF