

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**

**MORGAN AND MORECAMBE OFFSHORE WIND FARMS TRANSMISSION ASSETS  
DEVELOPMENT CONSENT ORDER**

**PINS REFERENCE EN020028**

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**WRITTEN REPRESENTATION ON BEHALF OF  
CADENT GAS LIMITED**

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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 has made a relevant representation in this matter which was accepted by the Examining Authority as an additional submission [AS-058] in order to protect apparatus owned by Cadent. Cadent does not object in principle to the development proposed by the Applicant.
- 1.3 Cadent is holder of a licence under Section 7 of the Gas Act 1986 and operates four gas distribution networks in North London, Central England (West and East) and the North West. 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, to which see paragraph 2.
- 1.4 Cadent has low, medium, intermediate and high pressure gas pipelines and associated apparatus located within the order limits which are affected by works proposed as indicated by the numerous references to Cadent in the Book of Reference.[APP-015]. Cadent's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the order limits need to be maintained at all times and access to inspect such apparatus must not be restricted.
- 1.5 Cadent has identified that it will require adequate protective provisions to be included within the DCO to ensure that its apparatus and land interests are adequately protected and to include compliance with relevant safety standards.
- 1.6 Cadent wish to ensure appropriate land rights are available for any diversion of their assets sitting outside the adopted highway boundary and will require consent to be granted where there are proposals to work within the easement strip of any existing Cadent's Apparatus.

## **2 REGULATORY PROTECTION FRAMEWORK**

- 2.1 Cadent require all Applicants carrying out development in the vicinity of their Apparatus to comply with:
  - (a) CD/SP/SSW/22 Cadent's policies for safe working in the vicinity of Cadent's Assets;
  - (b) ICE (institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations, and
  - (c) the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.
- 2.2 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.
- 2.3 Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.

### 3 PROTECTIVE PROVISIONS

- 3.1 Cadent seeks to protect its statutory undertaking, and insists that in respect of works in close proximity to their Apparatus as part of the authorised development the following procedures are complied with by the Applicant:
- (a) Cadent has had the opportunity to review and consent to the plans, methodology and specification for works within 15 metres of any Apparatus, works which will adversely affect their Apparatus or otherwise breach distances/guidance set out in paragraph 2 above.
  - (b) DCO works in the vicinity of Cadent's apparatus are not authorised or commenced unless protective provisions are in place preventing compulsory acquisition of Cadent's land or rights or overriding or interference with the same.
  - (c) DCO works in the vicinity of Cadent's apparatus are not commenced unless there is third party liability insurance effected and maintained for the construction period of the relevant authorised works and that the person or body undertaking the works (acknowledging the ability to transfer the benefit of the DCO) has the appropriate net worth to enable it to meet any liability arising from damage to Cadent's apparatus (acknowledging the potential significant consequences of damaging a gas pipeline) or there is appropriate security in place through a bond or guarantee.
- 3.2 Cadent maintain that without an agreement or qualification on the exercise of unfettered compulsory powers or works in the vicinity of its Apparatus the following consequences will arise:
- (a) Failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk.
  - (b) Any damage to Apparatus has potentially serious hazardous consequences for individuals/property located in the vicinity of the pipeline/apparatus if it were to fail.
  - (c) Potentially significant consequences arising from lack of continuity of supply;
- 3.3 Insufficient property rights have the following safety implications:
- (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.
- 3.4 The dDCO [AS-004] contains specific Protective Provisions for the protection of Cadent, but they are deficient in a number of respects. Cadent have been in discussions with the Applicant and understands that the next draft of the dDCO should include amendments to Cadent's protective provisions which address a number of its concerns. Two matters, however, remain outstanding and these need to be addressed through a side agreement, if the requirements are not to appear on the face of the DCO.
- 3.5 In particular, definitions related to acceptable insurance and security and related text need to be included in paragraph 2 and 11 in a side agreement as set out in the Schedule to this Representation.

- 3.6 Provision needs to be included within the dDCO or in 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.
- 3.7 Insurance and appropriate security are required given the nature of the apparatus in the vicinity of the development and the current financial standing of the Applicants. As recorded in the Funding Statement which accompanies the application [APP-008]:
- (a) Morgan Offshore Wind Limited is a special purpose vehicle which does not currently hold substantial assets or revenue generating ability. The necessary financial and fund sets or revenue generating ability. The necessary financial and funding support comes from the Morgan Shareholders bp plc and EnBW; and
  - (b) Morecambe Offshore Wind Farm Limited is also a special purpose vehicle which does not currently hold substantial assets or revenue generating ability. The necessary financial and funding support comes from its shareholders and ultimate parent companies i.e. Flotation Energy and Cobra Instalaciones y Servicios S.A (the Morecambe Shareholders).
- 3.8 The security provisions are required to support the indemnity provided and to address a situation where the conditions of insurance are not met. In particular, the security measures contained in the Cadent Protective Provisions are required in order to provide certainty that the indemnity afforded to Cadent can be relied upon in the event that damage is caused to the Apparatus and the gas distribution network.
- 3.9 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.
- 3.10 For the purposes of the Planning Act 2008 and section 127, Cadent is a statutory undertaker and the land included within the order limits is statutory undertakers' land. Cadent require the above additional protections to ensure that there is no serious detriment to the carrying on of Cadent's undertaking. Cadent contend that it is essential that the above outstanding issues are addressed to their satisfaction to ensure adequate protection for their Apparatus and so that Protective Provisions consistent with their standard terms are provided.

## **APPENDIX**

### **AMENDMENTS REQUIRED TO PROTECTIVE PROVISIONS IN PART 6 OF SCHEDULE 10**

## **Additions to Paragraph 2 (Interpretation)**

### **2. In this Part of this Schedule—**

“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.;

“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. 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):

(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;

“acceptable security” means either:

(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);

(b) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap 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 and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(c) 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);

“parent company” means a parent company of the undertaker acceptable to Cadent and which will have been approved by Cadent acting reasonably;

## **Additional wording to Paragraph 11 (Indemnity)**

(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 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:

(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

(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.

(6) In the event that the undertaker fails to comply with sub-paragraph 90(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.