

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005–06

CROSSRAIL BILL

P E T I T I O N

Against the Bill – On Merits – Praying to be heard by Counsel, &c.

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED

THE HUMBLE PETITION of:

EDF ENERGY NETWORKS LTD

SHEWETH as follows:—

- 1 A Bill (hereinafter referred to as “the Bill”) has been introduced into and is now pending in your Honourable House intituled “A Bill to make provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich; and for connected purposes.”.
- 2 The Bill is promoted by the Secretary of State for Transport (hereinafter called “the Promoter”).

Relevant clauses of the Bill

- 3 Clauses 1 to 20 of the Bill together with Schedules 1 to 9 make provision for the construction and maintenance of the proposed works including the main works set

out in Schedule 1. Provision is included to confer powers for various building and engineering operations, for compulsory acquisition and the temporary use of and entry upon land, for the grant of planning permission and other consents, for the disapplication or modification of heritage and other controls and to govern interference with trees and the regulation of noise.

4 Clauses 21 to 44 of the Bill together with Schedule 10 make provision for the application with modifications and the disapplication in part of the existing railways regulatory regime which is contained in and in arrangements made under the Railways Act 1993 and associated legislation. In particular, they provide for the disapplication of licensing requirements, the imposition of special duties on the Office of Rail Regulation (“ORR”), the modification of railway access contract and franchising arrangements and the disapplication of railway closure requirements and of the need for consent from Transport for London in relation to impacts on key system assets. Provision is also included to enable agreements to be required as between the nominated undertaker and controllers of railway assets, to govern the basis for arbitration and to provide for the transfer of statutory powers in relation to railway assets.

5 Clauses 45 to 59 of the Bill together with Schedules 11 to 14 contain miscellaneous and general provisions. These include provision for the making of transfer schemes, the designation of nominated undertakers, the devolution of functions and as respects other actions to be taken by the Secretary of State. Provision is also made in particular for the disapplication or modification of various additional miscellaneous controls, for the treatment of burial grounds, for the application of provisions of the Bill to future extensions of Crossrail, for the particular protection of certain specified interests (including your Petitioners) and as respects arbitration.

Your Petitioners and their properties

6 Your Petitioners are EDF Energy Networks Ltd (“EDF”), the company which represents the electricity distribution businesses of EDF Energy Networks (LPN)

plc (“LPN”), EDF Energy Networks (EPN) plc (“EPN”), and EDF Energy Networks (SPN) plc (“SPN”), all of which are within the EDF Energy group of companies. Your Petitioners are electricity undertakers for the purposes of Part 1 of the Electricity Act 1989 as amended. LPN is licensed to distribute electricity within its statutory area covering inner London. EPN is licensed to distribute electricity within its statutory area covering all the counties of Norfolk, Suffolk, Hertfordshire, most of Cambridgeshire, Essex and Bedfordshire, parts of Buckinghamshire and Oxfordshire, and the northern suburbs of Greater London. SPN is licensed to distribute electricity within its statutory area covering the Kent, Surrey and Sussex areas of south east England.

7 Your Petitioners have overhead and underground electricity lines and other electrical plant (including electricity substations or substation chambers) (“Apparatus”) located in land which is subject to compulsory and temporary acquisition or use under the Bill.

8 In addition, your Petitioners own Apparatus in public highways which, whilst not subject to the compulsory purchase proposals of the Bill, are in the immediate vicinity of the proposed works and liable to be injuriously affected by them.

9 For these reasons, and having regard to the more detailed particulars referred to below, your Petitioners object to the Bill and they allege and are prepared to prove that they and their rights and interests are injuriously and prejudicially affected by the Bill for the reasons (amongst others) here stated.

Your Petitioners’ concerns

10 Whilst your Petitioners support the expansion of railway capacity in London, they have substantial concerns that the powers conferred on the Promoter will enable the Promoter to interfere with and compromise the use of the Apparatus in the vicinity of the proposed works. Your Petitioners have particular concerns relating to the following Apparatus:

- (a) Shaft in relation to a cable tunnel extension at Shorts Gardens Electricity Substation in the Borough of Camden (“Shorts Gardens Shaft”);
- (b) Westham to Greenwich Dome cable tunnel (“Greenwich Cable Tunnel”);
- (c) Electricity Substation at Duke Street in the City of Westminster (“Duke Street Substation”); and
- (d) Electricity Substation at Fisher Street in the Borough of Camden (“Fisher Street Substation”).

11 Your Petitioners are concerned that Schedule 14 which specifies protective provisions to the Bill provides inadequate protection to electricity undertakers. Your Petitioners believe that the inadequate protective provisions will adversely affect your Petitioners’ ability to carry out their statutory duties and question whether the impact of the Bill’s proposals on the electrical network and distribution services within the statutory areas of LPN, SPN and EPN has been fully thought through or adequately catered for.

Protective provisions – Schedule 14

12 Clause 52 and Part 2 of Schedule 14 sets out measures to provide for the protection of the apparatus of electricity, gas, water and sewerage undertakers which may be affected by the proposed works. Your Petitioners believe the protective provisions do not adequately protect their interests and seek the following amendments and assurances.

13 Paragraph 1(2) of Part 2 of Schedule 14 defines “apparatus” as electrical lines or “electrical plant” as defined in the Electricity Act 1989. Your Petitioners seek confirmation that the definition of “apparatus” for the purpose of the Bill will cover any operational buildings operated by your Petitioners, including electricity substation buildings or substation chambers.

- 14 Paragraphs 2(2) and (3) of Part 2 of Schedule 14 enables the Promoter to authorise the removal of the Apparatus before its replacement with alternative apparatus. This could cause hardship to your Petitioners' customers and is a draconian power to which your Petitioners strongly object.
- 15 Paragraph 3 of Part 2 of Schedule 14 would provide an undertaker with not less than 28 days' written notice for the removal of any apparatus. Your Petitioners seek an assurance from the Promoter that he will afford your Petitioners with flexibility in relation to the time limits provided by the Bill. Further, your Petitioners respectfully submit that the Bill should be amended to afford your Petitioners such notice and consultation as is reasonable in the circumstances (and in any event not less than 28 days), to take into account any events that would cause a delay to or frustrate your Petitioners' ability to provide alternative Apparatus, including but not limited to the different considerations and time frames applicable in relation to the provision of different sorts, types and sizes of Apparatus, or the obtaining of any required consents (such as planning permission or third party consents) when facilities and rights for alternative Apparatus are not available in land held by the Promoter for the purpose of its undertaking. In addition, your Petitioners seek an assurance that, should your Petitioners be required to exercise any of their statutory powers over private land to obtain the necessary rights and facilities to construct alternative Apparatus, your Petitioners shall not be liable for any loss, delay, or disruption to the scheduled works by virtue of events that are outside the control of your Petitioners, such as (but not limited to) the due process required in relation to the obtaining of any rights and facilities, including but not limited to the obtaining of planning permission, or any objection, complaint, or appeal from any person with an interest in such private land.
- 16 Under paragraph 3(4) of Part 2 of Schedule 14, your Petitioners are required to use their "best endeavours" to obtain the necessary rights and facilities to construct alternative Apparatus in third party land, where neither the Promoter nor the nominated undertaker is able to afford such facilities and rights. Your Petitioners seek assurances that the Promoter has included within the limits of

land to be acquired or used, all such land as it reasonably believes is necessary to carry out all the diversionary works necessitated by the proposed railway. Further, your Petitioners are concerned that such "best endeavours" may require them to exercise their statutory powers, such as powers of compulsory purchase or other powers to obtain rights in third party land (such as in relation to obtaining wayleaves), in order to ensure such necessary facilities and rights are provided. Your Petitioners do not believe it is necessary for them to exercise their statutory powers to obtain land or rights over land, when powers for the Secretary of State to acquire land for the purpose of relocating Apparatus are already provided for in clause 7 of the Bill. A qualification exempting your Petitioners from being required to use their compulsory purchase powers was provided previously in the Channel Tunnel Rail Link Act 1996 and should, your Petitioners respectfully submit, be included and extended in the Bill to include an exemption from any of your Petitioners' powers to obtain rights over third party land.

- 17 Paragraph 4 of Part 2 of Schedule 14 provides that, should your Petitioners fail to construct the alternative Apparatus to agreed standards and specifications, your Petitioners should be liable to compensate the nominated undertaker for any resulting loss or damage. Your Petitioners believe that, as there will be mutual obligations under any agreement relating to the construction of alternative Apparatus, the Bill should be amended so that, firstly, your Petitioners should not be liable for any breach of an agreement where such breach is attributable to the act, neglect or default of the nominated undertaker or Promoter; and secondly that the nominated undertaker or Promoter should be liable to compensate for any loss or damage to the Apparatus resulting from their failure to comply with their obligations.
- 18 Paragraph 5(2) of Part 2 of Schedule 14 of the Bill states that, following the removal of the Apparatus and the construction of alternative Apparatus, any rights of your Petitioners relating to the land in which the removed Apparatus was situated shall be extinguished. Your Petitioners are concerned that the extinguishing power in the Bill is too wide, as it would extinguish any continuing legal interests in any remaining Apparatus in any part of the parcel of land in

which the Apparatus was removed. Your Petitioners believe the Bill should be amended insofar that the extinguishment of rights should only relate to any rights to the land in relation to the removed Apparatus.

- 19 Paragraph 6 of Part 2 of Schedule 14 gives the nominated undertaker the right to carry out any part of the work necessary in connection with the construction of alternative Apparatus, or the removal of Apparatus, subject to notice and agreed plans and specifications, under the supervision (if given) and to the reasonable satisfaction of your Petitioners. In addition to agreed plans and specifications, in order to ensure to maintain high standards of any work undertaken, your Petitioners seek the right to specify requirements as to costs of any such works, the technical competence of any contractors appointed by the nominated undertaker to undertake such works, and the level of insurance required to be maintained. Your Petitioners observe that the provision of supervision is at their election and seek assurances that any liability of the nominated undertaker towards your Petitioners will not be subject to such discretionary supervision.
- 20 Your Petitioners are concerned that the Promoter, in exercising its powers to underpin or strengthen a building, is not required to exercise such powers so as not to obstruct or render less convenient the access to any of the Apparatus. Your Petitioners seek an amendment to the Bill so that the Promoter will be required to exercise a duty of care in relation to the Apparatus and any underpinning work and, further to this, after the words "paragraphs 5 and 6 of Schedule 3" at paragraph 9(2) of Part 2 of Schedule 14, there should be added the following words: "and paragraphs 5 and 6 of Schedule 2".
- 21 Paragraph 10 of Part 2 of Schedule 14 preserves rights of access to Apparatus in any part of the highway which ceases to be part of a highway. However, this paragraph does not specify how such provision will be made. Your Petitioners respectfully submit that powers to inspect, repair, maintain, renew, remove or use any Apparatus should also be preserved, or easements should be granted to such effect, to ensure that your Petitioners continue to have all the rights necessary to carry out their service obligations.

22 Your Petitioners seek clarification of the costs and expenses recoverable under paragraph 11(1) of Part 2 of Schedule 14. Your Petitioners seek assurances that “reasonable expenses” which are recoverable would take into account costs actually incurred in relation to the proposed works rather than costs based on estimates, to take into account any difficulties encountered during the actual diversionary works. Further, your Petitioners note that costs and expenses which are recoverable include “any other work or thing rendered reasonably necessary in consequence of the exercise by the nominated undertaker” of any of its powers. Your Petitioners seek assurances that this would include both any additional operational and maintenance costs which would not have occurred but for the works, and also any costs in connection with securing any rights and facilities required for the relocation of the Apparatus, throughout the period of time your Petitioners are liable to incur such costs.

23 Paragraph 13(2) of Part 2 of Schedule 14 provides that any person appointed by the Secretary of State to determine a dispute between the nominated undertaker and an undertaker should have regard to any such matters as may be specified by the Secretary of State on making the appointment. Your Petitioners respectfully submit that this provision is unfairly prejudicial to your Petitioners and creates a conflict of interest by granting the Promoter, in an arbitration regarding provisions of the Bill, both the power to specify the arbitrator and also to specify which matters should be adjudged. In the interests of fairness, your Petitioners seek an amendment to the Bill to ensure that the person nominated by the Secretary of State to arbitrate any dispute will be neutral and will not be bound by directions from the Promoter, or alternatively that the Secretary of State should specify in what circumstances he would exercise his discretion to set out matters to be adjudged and to specify the types of matters he would be concerned with in such circumstances.

24 Your Petitioners, in furtherance of their statutory duties, may need to make their own adjustments and alterations (including additions) to the Apparatus in land which is subject to the Bill, but which your Petitioners have not yet been requested to remove. Your Petitioners are concerned that, should they carry out

their own alterations at their own cost, the Promoter may nevertheless still serve notice on your Petitioners requiring removal or re-alteration of the altered Apparatus. Your Petitioners seek assurances from the Promoter that, should your Petitioners be required to make alterations to their Apparatus within the limits of the Bill, the Promoter will co-operate with your Petitioners to ensure that the impact of such alterations on the construction of the works, and the impact of the works on such alterations, will be minimised.

- 25 Under the New Roads and Street Works Act 1991 and the Street Works (Sharing of Costs of Works) (England) Regulations 2000, your Petitioners will be liable to contribute towards the costs of diversionary works in consequence of the proposed works. Your Petitioners seek assurances that, should they be requested to divert Apparatus due to the proposed works and carry out such diversions, should your Petitioners be requested to remove or divert the diverted Apparatus due to (for example) a subsequent change in the route of the proposed railway, either planned prior to, or during construction of, the proposed railway, your Petitioners will not be liable to contribute to any costs or will be repaid in full for any such diversionary works caused by such subsequent changes to the proposed route of the railway.

Other concerns

- 26 Your Petitioners believe that any route of the proposed works should be along the best possible route in terms of minimising disruption to your Petitioners' customers and the environment, allowing existing essential infrastructure projects to be completed, and minimising operational cost and increasing general efficiency. Any proposed route for diversion of the Apparatus, in addition to the above considerations, should take into consideration your Petitioners' regulatory obligations and seek to minimise any increases in your Petitioners' operational costs. In particular, your Petitioners seek full justification for the proposed alignment of the tunnel at the Shorts Gardens Shaft, including full consideration of any alternative routes, even if such route is outside the current limits of deviation or limits of land to be acquired or used. The Shorts Garden Shaft is as

of the date of this Petition being constructed by your Petitioners and is a critical part of a major £45 m infrastructure investment plan. Your Petitioners understand that the westbound Crossrail tunnel alignment as proposed by the Bill intersects with the Shorts Gardens Shaft.

27 Your Petitioners object to any extinguishment of any rights such as wayleaves under clause 8 (extinguishment of private rights of way) of the Bill.

28 Your Petitioners are concerned about the possible effect of electromagnetic interference arising from the electrical functioning of the proposed railway on the Apparatus. Your Petitioners accordingly submit that further protection for the Apparatus is required to safeguard against this possibility.

29 In view of the fact that the Promoter would under the powers sought to be conferred by the Bill be able to acquire the subsoil or new rights under or over the Apparatus, your Petitioners fear that this could lead (by tunnelling, other construction works and the running of trains) to damage to the Apparatus (leading to a potential loss of supply of electricity to your Petitioners' customers and potential regulatory fines), in particular to the Duke Street Substation, the Fisher Street Substation, the Greenwich Cable Tunnel, and the Shorts Garden Shaft, and any Apparatus within such structures. They also apprehend that this could cause them significant loss and damage. Accordingly your Petitioners submit:

- (a) That the Promoter should be under a duty, in carrying out the work, to use all means available to minimise damage or injurious affection to the Apparatus;
- (b) That the Promoter should be required to submit plans and detailed proposals and justification for the works and route of the works affecting the Apparatus (including consideration of any alternative routes whether within or without the Bill's proposed limits of deviation);
- (c) An effective and agreed monitoring system should be in place before commencement and during construction of the works, to measure the

exact effect of any settlement on the Apparatus or property within the vicinity of the Apparatus;

- (d) To agree a threshold with your Petitioners for ground and building movement within the vicinity of the Apparatus, to the effect that if that threshold is exceeded the Promoter should be obliged to cease construction until such time as remedial measures as agreed with your Petitioners are put in place which will minimise settlement affecting the Apparatus; and
- (e) That full indemnity and compensation should be provided for all costs, loss (including consequential loss such as loss of income, regulatory fines or drop in your Petitioners' business status) and damage (structural or otherwise) to your Petitioners' Apparatus and operations, caused by the proposed works.

30 As a general matter, your Petitioners submit that provision should be made for the Promoter to repay to your Petitioners all proper costs, charges and expenses (including the proper fees of such professional advisers as they may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.

31 It is of concern to your Petitioners that the undertaking is to be transferred from the Promoter to another body (the nominated undertaker). Your Petitioners wish to be assured that the Promoter and nominated undertaker will be jointly bound to adhere to all or any contractual arrangements which the Promoter may enter into with your Petitioners.

32 Your Petitioners submit that the Promoter should be required to indemnify them from all claims and demands which may be made in consequence of the construction, use or maintenance of the works under the Bill, or their failure or want of repair, or in consequence of any act of omission of the Promoter, its contractors or agents in carrying out the works under the Bill.

33 There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

Conclusion

34 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and should not be allowed to pass into law without these issues being addressed.

YOUR PETITIONERS THEREFORE HUMBLY PRAY your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by themselves, Counsel or Agents and with witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners and in support of other such clauses and provisions as may be necessary or expedient for their protection or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND YOUR PETITIONERS WILL EVER PRAY, &c.

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