

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2005–06

CROSSRAIL BILL

PETITION

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:

TRANSCO PLC

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 Transco plc and are a gas undertaker within the meaning of Part I of the Gas Act 1986 and supply gas throughout England, Wales and Scotland. Your Petitioners support the principle of the Bill but object to parts of the Bill which will have a significant adverse impact upon their land, apparatus and business.

7 Your Petitioners have gas mains and other apparatus located in land which is subject to compulsory and temporary acquisition or use under the Bill. 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.

8 Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for the reasons amongst others, here stated.

Your Petitioners' concerns

9 Your Petitioners own and operate gas conveyancing apparatus within the location of works proposed in the Bill. The proposals under the Bill will impact upon this apparatus. Your Petitioners will be required to relocate this apparatus in order to avoid damage to their property and disruption to their operations.

10 Your Petitioners' land at Crow Lane, Romford will be adversely affected by the proposals contained in the Bill. The Bill provides for the permanent compulsory acquisition of the northern part of your Petitioners' operational land. Your Petitioners are concerned that such acquisition will severely restrict their ability to utilize this important site and they question whether all or any of your Petitioners' land is permanently required by the Promoter. Your Petitioners believe that the Promoter should be put to the strictest proof that such land is required for the purposes of the Bill and that permanent acquisition would be in the public interest.

11 Your Petitioners are concerned that Schedule 14 which specifies protective provisions to the Bill provides inadequate protection to electricity and gas undertakers.

12 Specifically your Petitioners have concerns regarding the powers sought by the Promoters at Schedule 3 to the Bill for the stopping up, interference with and works to highways. Your Petitioners respectfully submit that the powers in paragraphs 7 and 8 to Schedule 3 are unnecessarily wide and in light of these provisions Schedule 14 to the Bill offers inadequate protection to your Petitioners.

13 Accordingly, your Petitioners seek a binding agreement from the nominated undertaker that it will not exercise its powers under paragraphs 7 and 8 to Schedule 3 unless Schedule 14 is amended as requested by your Petitioners.

Schedule 14

14 Part 2 of Schedule 14 to the Bill provides for protection of the interests of electricity, gas, water and sewerage undertakers. Your Petitioners are gas undertakers for the purposes of this Schedule. Your Petitioners are concerned that protection provided by Part 2 of Schedule 14 is not adequate to protect its interests.

15 Your Petitioners believe that the definition of "apparatus" at paragraph 9(2)(b) of Part 2 of Schedule 14 should be amended to include apparatus used for the storage of gas. Limiting apparatus to that used only for the conveyance of gas excludes much of your Petitioners' operational apparatus from the protective provisions.

16 Paragraphs 2(2) and (3) of Part 2 of Schedule 14 enable the Promoter to authorise the removal of apparatus of your Petitioners 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.

17 Paragraph 3(4) of Part 2 of Schedule 14 provides that the nominated undertaker may serve notice on any undertaker requiring that best endeavours be used to obtain the necessary facilities and rights for the construction of alternative apparatus where it is to be constructed on land not within the control or ownership of the nominated undertaker. Your Petitioners object to the inclusion of this paragraph as it fails to impose any obligation on the Promoter or nominated undertaker and is accordingly outside the scope of Schedule 14. Your Petitioners would wish to see this paragraph removed or a satisfactory explanation of its purpose provided. If this paragraph is to be included, Schedule 14 should be amended to provide that statutory undertakers will not be required to exercise their compulsory purchase powers to acquire such rights and facilities as may be necessary under paragraph 3(4).

- 18 Your Petitioners respectfully submit that paragraph 4(2) of Part 2 of Schedule 14 should be removed or amended. As it currently reads this paragraph places an unfair obligation on statutory undertakers which does not apply to the nominated undertaker and which would in any event be subject to the normal provisions of contract law.
- 19 With regards to paragraph 6 of Part 2 of Schedule 14, your Petitioners do not object to the nominated undertaker carrying out the construction of alternative apparatus so long as such work is carried out by the nominated undertaker or its contractor as approved in advance by your Petitioners in order to ensure that the necessary standards are met. Your Petitioners request that paragraph 6 be amended to reflect this. Further, your Petitioners require that they be involved in the tendering process carried out by the nominated undertaker for the purpose of securing of contractors to carry out such works and to improve the control of costs in order that your Petitioners may ensure value for money and avoid unreasonable costs being payable by your Petitioners.
- 20 Your Petitioners are concerned to ensure the safety and security of their apparatus. They believe therefore that the nominated undertaker should be prevented from working, including excavating and backfilling, within 600mm of a gas main. Your Petitioners request that paragraph 6(2) of Part 2 of Schedule 14 be amended accordingly.
- 21 Your Petitioners request that paragraph 7(3) of Part 2 of Schedule 14 be amended to provide that determination by arbitration will only occur where the rights and facilities to be afforded by the nominated undertaker cannot be agreed between the parties. Where such agreement can be reached there will be no need for there to be determination by reference to arbitration in accordance with paragraph 13 of Part 2 of Schedule 14.
- 22 Your Petitioners are concerned that any works authorised by the Bill on their apparatus and property should be under their supervision to ensure that such works are carried out to a satisfactory standard and that the standard of the works will not fall below your Petitioners operational requirements and obligations. Accordingly, your Petitioners would ask that the Bill be amended to provide for an independent supervisor of such works to be jointly appointed, at the expense of the nominated undertaker, by the nominated undertaker and your Petitioners to oversee such works. Your Petitioners request that paragraph 8(2) of Part 2 of Schedule 14 be amended to reflect this. Such amendment would also deal with your Petitioners' concerns relating to paragraph 12(2)

of Part 2 of Schedule 14 which allows the nominated undertaker to claim negligence on the part of your Petitioners. In the absence of amendments to section 8(2), your Petitioners would wish to see paragraph 12(2) removed.

23 With regards to notice provisions specified at paragraphs 3(1)(a) and 8(1) of Part 2 of Schedule 14, your Petitioners require that this period be 56 days in order to provide your Petitioners with sufficient time to make provisions for its operational apparatus and request the Bill be amended accordingly. Further, in respect of paragraph 8(3), your Petitioners request that the notice period be increased from 14 days to 28 days to provide your Petitioners with adequate time to consider the plans and descriptions put to them and time to provide a comprehensive response.

24 Your Petitioners note that paragraph 10 of Part 2 of Schedule 14 provides that undertakers will continue to have access to land for the purposes of maintenance, repair and renewal where that land ceases to be highway land however this paragraph does not specify how such provision will be made. Your Petitioners request that easements be granted for this purpose and request that paragraph 10 be amended accordingly.

25 Your Petitioners generally support the provisions of paragraph 11(5) of Part 2 of Schedule 14. However they would wish to have inclusion of the provision for the deferment of renewal contained in the Code of Practice pursuant to the New Roads and Street Works Act 1991.

Other Concerns

26 Your Petitioners are concerned about vibration occurring both during construction and on completion of the proposed works. This vibration may have an adverse impact upon sensitive apparatus. Your Petitioners request that provision is made to ensure the absence of impact-induced vibration by use of absorptive track beds or other means.

27 Your Petitioners are concerned about the potential effects of electromagnetic interference on their apparatus arising from the construction and operation of the proposed works and the operation of high voltage cables and other electrical equipment. Your Petitioners submit that a full appraisal should be made and disclosed by the Promoter of the

potential impacts and will wish to be satisfied that appropriate protective measures will be taken.

28 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.

29 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

30 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 HUMBL Y 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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