

IN PARLIAMENT  
HOUSE OF COMMONS  
SESSION 2013–14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

PETITION

Against – 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 SOUTH STAFFORDSHIRE WATER PLC.

SHEWETH as follows:-

1. A Bill (hereinafter referred to as “the bill”) has been introduced and is now pending in your honourable House intituled “A bill to make provision for a railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Old Oak Common in the London Borough of Hammersmith and Fulham to a junction with the Channel Tunnel Rail Link at York Way in the London Borough of Islington and a spur from Water Orton in Warwickshire to Curzon Street in Birmingham; and for connected purposes.”
2. The Bill is presented by Mr Secretary McLoughlin.
3. Clauses 1 to 36 set out the Bill’s objectives in relation to the construction and operation of the railway transport system mentioned in paragraph 1 above. They include provision for compulsory acquisition, extinction and exclusion of rights over land, temporary possession and use of land, deemed planning permission, water, street works and Local Acts. Clauses 37 to 42 establish a regulatory regime for the railway transport system. Clauses 43 and 44 provide for the nominated undertaker and transfer schemes. Clauses 45 and 46 provide for statutory undertakers and protective provisions. Clauses 47 and 48 provide for regeneration and reinstatement. Clauses 45 to 59 of the Bill deal with miscellaneous and general provisions. Those clauses are supplemented by the terms of the various schedules to the Bill, including Schedule 20 (*Water*) and Schedule 31(*Protective Provisions*).
4. The works proposed to be authorised by the Bill are specified in Schedule 1 to the Bill

and the scheduled works are defined in the Bill as the works specified in Schedule 1 to the Bill which are works authorised to be constructed by the nominated undertaker (defined in the Bill and hereinafter referred to as "the nominated undertaker").

5. Your petitioner is South Staffordshire Water plc, a company incorporated under the Companies Acts with registered number 02662742 and having its registered office at Green Lane, Walsall, West Midlands, WS2 7PD (hereinafter referred to as "your Petitioner").
6. Your Petitioner is a water utility company, and as such a utility undertaker as defined in the Bill, which serves large parts of the West Midlands and Staffordshire area, including Walsall, Sandwell and Dudley, together with areas such as Tamworth, Uttoxeter, Burton, Lichfield, Sutton Coldfield and Cannock. Within these areas, your Petitioner serves a population of circa 1.2 million people supplying 330 million litres of water every day, across a network of pipes that total 6,000km in length to approximately 500,000 homes and 36,000 business customers in an area covering 1,500km<sup>2</sup>. Your Petitioner does not provide sewerage services.
7. Your Petitioner's business is derived from that of the South Staffordshire Waterworks Company, which was formed in 1853 to provide "an abundant supply of pure water" to the inhabitants of the West Midlands and Staffordshire.
8. Your Petitioner's business also includes the provision of mineral and spring water to customers in the Midlands and ultimately customers in the North West and Yorkshire. This part of your Petitioner's business is predicated upon supplies being drawn from specified boreholes and particular pipelines.
9. Included within your Petitioner's licence from OFWAT is the supply of water to the Cambridge region under the trading name Cambridge Water. The description of your Petitioner's business as set out above is under exclusion of the Cambridge Water element of such.
10. As a regulated water utility, your Petitioner's expenditure in any given 5 year period is set by OFWAT in its approval of your Petitioner's business plan for that period.
11. Your Petitioner has previously incurred unbudgeted expenditure in consequence of previous major transport infrastructure projects, including the West Coast mainline, M6 Toll and other rail modernisation projects. As a consequence, your Petitioner is anxious that neither its business nor its customers should be required to bear additional expenditure or risk in consequence of the works to be authorised by the Bill.
12. Due to the essential nature of the supply of water to its customers, your Petitioner (in common with other water undertakers) is subject to strict service level requirements with escalating penalties applying in the event of service interruption.

13. The Bill would authorise the construction and operation of a railway system and its associated development through the catchment and supply areas from which your Petitioner draws water and to which it supplies its customers, where your Petitioner has plant, equipment and boreholes upon which its business is dependent and in respect of which your Petitioner has various rights and obligations.
14. Your Petitioner does not object in principle to the decision to construct a high speed railway, but it does object to the scheduled works proposed to be carried out in your Petitioner's catchment and supply areas.
15. Your Petitioner will be directly or indirectly affected by the scheduled works which the Bill would authorise. Your Petitioner's rights, interests and, in some instances, rights in and over property are injuriously affected by the Bill. Accordingly, your Petitioner objects to the Bill, for reasons amongst others, hereinafter appearing.
16. *Protection of aquifers*

The quality and volume of water within the aquifers of your Petitioner's catchment area are of the essence to your Petitioner's business.

The Bill does not provide any direct protection for the interests of water undertakers (such as your Petitioner) in the aquifers upon which their businesses depend. Such interests include matters of the nature defined as "category 1 specified work" in Part 5 of Schedule 31 (*Protective Provisions*) of the Bill, in addition to the possible consequences of abstraction of water by the nominated undertaker as referred to in paragraph 3 of Schedule 20 (*Water*).

Your Petitioner is particularly vulnerable to such impacts due to the geographic restrictions of its catchment area, which constrain its options for alternative supplies.

Your Petitioner avers that the functions and responsibilities of the Environment Agency and / or a local drainage authority (as defined in paragraph 51(2) of Schedule 31 of the Bill) are not fully aligned with the protection of the interests of the water undertakers. Accordingly the interests of water undertakers are not adequately protected by the provisions of Schedule 31.

Your Petitioner considers that Schedule 31 (*Protective Provisions*) should be amended to provide for:

- (a) a requirement for the nominated undertaker to consult the relevant water undertakers in respect of any matter (whether relating to abstraction, impoundment, drainage or contamination) which may affect the quality or quantity of water in the relevant water undertaker's catchment area; and

- (b) an indemnity by the nominated undertaker for any costs (whether professional or otherwise) that may be incurred by a relevant water undertaker or which a relevant water undertaker may suffer as a consequence (whether directly or indirectly) arising from any degradation, whether through contamination or otherwise, arising from any element of works authorised by the Bill once enacted or from any act or omission by the nominated undertaker or its supply chain.

Your Petitioner abstracts water from aquifers using licences issued by the Environment Agency. These licences are subject to various conditions including a requirement to support good ecological status of rivers and streams. It is therefore important that any activities that affect this status are clearly identified to differentiate them from the impact of your Petitioner's abstraction.

#### *17. Deemed planning consent*

Your Petitioner made timeous representations in response to the consultation on the Environmental Statement for the scheduled works expressing its concerns about *inter alia* the adequacy of Volume 5 of the Environmental Statement in respect of your Petitioner's water resources. Those concerns remain unresolved. Accordingly, your Petitioner requests that clause 19(2)(c) of the Bill be amended to qualify the word 'covered' with the word 'adequately' or its like, on the basis that it would be contrary to established law and good practice to allow the relevant sections of the scheduled works to benefit from deemed planning permission without first being subject to a full and proper assessment of its environmental effects.

#### *18. Dewatering of cuttings and associated drainage*

In paragraph 2 of the representations referred to in in paragraph 17 above, your Petitioner expressed its concerns about the dewatering effects of the proposed deep cuttings at Swinfen and Hints on your Petitioner's water resources both during and after construction of section CFA21 of the scheduled works.

Your Petitioner avers that the dewatering of cuttings and other excavations must be subject to appropriate site investigation and a construction dewatering plan drawn up for consultation and then agreement with interested parties. Such plans should include monitoring and mitigation requirements. Such plans should also include the number and details of dewatering points, off site monitoring of groundwater levels, measurements of discharge flow rates, water quality and ecological indicators.

Your Petitioner avers that constructed cuttings and associated sustainable drainage systems should be monitored to confirm the predicted impacts on groundwater levels and surface water flows through groundwater levels and discharge flow measurement and other ecological indicators as highlighted during the construction phase of such elements of the scheduled works.

Within your Petitioner's catchment area, an extended period no less than 10 years will be required for such monitoring given the nature of the Sherwood Sandstone and experience from previous major changes in abstraction in the area. The results of this monitoring should be made available to interested parties.

Appropriate amendments to Schedule 31 (*Protective Provisions*) to the Bill are in your Petitioner's submission required to address the concerns raised in this paragraph.

19. *Certainty of supply*

Your Petitioner has obligations to both manage its sources of water and abstraction of such so as to provide continuity of supply to its customers. In both those respects it is exposed to seasonal variations which may in isolation or in conjunction with other matters referred to in this Petition be exacerbated by acts or omissions of the nominated undertaker.

Your Petitioner plans its business, budgets and operations (including shut downs and other major works) around the above considerations when submitting its 5 yearly statutory business plan to OFWAT.

Your Petitioner avers that the Bill should be amended to require the nominated undertaker to prepare and implement its programme of works in a manner that mitigates rather than exacerbates the impact of seasonal variations affecting water undertakers.

Your Petitioner notes that continued fulfilment by undertakers of their service obligations is one of the objectives of paragraph 21(1) of Schedule 31. Failure to comply with those objectives triggers compensation for the nominated undertaker under paragraph 21(2) of Schedule 31.

Your Petitioner requests that an obligation corresponding to that in paragraph 21(2) is placed upon the nominated undertaker; such that compensation will be payable to relevant water undertakers if the nominated undertaker fails to adequately plan for the facilitation of continued fulfilment by relevant water undertakers of their service obligations. Such would result in a mutuality of obligations.

20. *Continuity of operations*

Paragraph 19 of Schedule 31 (*Protective Provisions*) to the Bill provides that apparatus must not, unless a certificate is issued by the appropriate Ministers under sub paragraph (3), be removed nor any rights to maintain, repair, renew, adjust, alter or inspect the apparatus in that land be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of your Petitioner.

Your Petitioner, in light of past experience of major transport projects and the

potential impacts on its business and customers, avers that the loss of apparatus or associated rights in advance of alternative apparatus becoming operational should be certified only after the undertaker has had an opportunity to make representations to the Ministers in that regard.

Your Petitioner requests that paragraph 19 of Schedule 31 (*Protective Provisions*) to the Bill be amended accordingly.

21. *Interface timescales*

Your Petitioner is concerned that notwithstanding the terms of paragraphs 19 and 20 of Schedule 31 (*Protective Provisions*), the Bill does not adequately provide for water undertakers to receive sufficient advanced information on likely requirements for the movement of apparatus.

Your Petitioner's concerns in this respect include the constraints of

- (a) lead-in time for the procurement of some pipes and materials;
- (b) the normal minimum notice period under the New Roads and Street Works Act 1991 (NRSWA) for major works;
- (c) the requirement under Section 159 of the Water Industry Act 1991, for relevant water undertakers to give a minimum of three months' notice to landowners when laying pipes in private land;
- (d) the operational imperative that your Petitioner may only be able to carry out work on certain pipes such as strategic pipes at specific times during the year; and
- (e) the possibility that, for ensuring security of its supply, your Petitioner may need to give longer notice periods.

In light of these concerns, your Petitioner suggests that the Bill be amended to provide for powers to enable the relevant water undertakers to take such appropriate action as they would otherwise be empowered to take (including without notice) in order that there are adequate safeguards that apparatus will not be removed, nor any right's to maintain, repair, renew, adjust, alter or inspect the same extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the relevant water undertakers.

Such an amendment would balance the interests of progress of the scheduled works and continuity of water supplies.

Absent such a provision, relevant water undertakers ought not to be held responsible for failure to move apparatus within unrealistic timescales.

22. *Requirement to obtain necessary facilities and rights*

Your Petitioner is concerned that sub-paragraph (4) of paragraph 20 of Schedule 31

*(Protective Provisions)* to the Bill inappropriately places the risk of failure to secure adequate land rights by the nominated undertaker onto the utility undertaker.

Your Petitioner craves that it should not be responsible for acquiring land or rights in land or otherwise bear the cost of the acquisition of land or rights in land to facilitate the provision of alternative apparatus, where the nominated undertaker or the Secretary of State is unable to make land available.

In the event that the risk of failure to secure adequate land rights is to rest with the utility undertaker, all costs incurred in seeking to secure such rights (including legal and other professional costs) should in your Petitioner's submission be borne or otherwise reimbursed by the nominated undertaker.

23. *Construction of alternative apparatus*

Your Petitioner is concerned about the integrity of its network, standards of work and materials specified and rights of inspection and recourse (warranties) in respect of the construction (as defined in Schedule 31 to the Bill) of alternative apparatus (as so defined).

In common with many other undertakers, your Petitioner has long-term contracts with contractors undertaking street and other works. Any work to apparatus or alternative apparatus used or intended for use in connection with your Petitioner's service obligations by a contractor other than such as your Petitioner would otherwise contract with will create legal, commercial, technical and operational issues (not least including risk and liability questions).

Your Petitioner avers that all construction of alternative apparatus should (in the absence of agreement to the contrary) be required to be undertaken by the relevant undertaker or its approved contractors at the cost of the nominated undertaker.

Accordingly, your Petitioner requests that the power provided for in paragraph 23 of Schedule 31 be amended to restrict its use (in the absence of agreement to the contrary) to circumstances where the relevant undertaker or its approved contractor are procured by the nominated undertaker.

Additionally, your Petitioner notes that the provisions of the Water Industry Act 1991 to self-lay parts of diversionary works have not been dis-applied by the Bill in respect of Phase One purposes. Your Petitioner requests that such self-lay provisions are disapplied.

In relation to paragraph 23(2)(a), your Petitioner requests that for clarification the word 'specification' expressly encompasses materials, design and methodology.

24. *Costs and budgets*

Your Petitioner's expenditure in any given 5 year period is set by OFWAT in its approval of your Petitioner's business plan for that period.

Accordingly, your Petitioner is concerned about the potential impacts on its business and customers of unforeseen costs which it may incur in relation to Phase One purposes.

Your Petitioner requests that the nominated undertaker should be responsible for all costs (including professional costs and charges) incurred or that may be suffered by your Petitioner in relation to Phase One purposes.

Your Petitioner submits that its customers should not be put to a detriment because of the Bill. Any costs that your Petitioner incurs will have the effect of disrupting services and capital expenditure to improve infrastructure and services together with potentially having a direct financial impact on such customers.

Your Petitioner notes that the efficacy of the Bill is to not impose what could be considered a "secondary tax" charge on its customers in order to supplement the central cost of the Bill.

25. *Basis of Contributions to Diversionsary Works*

Your Petitioner should not be liable to make a contribution towards the costs of any works which are carried out as a consequence of works authorised by the Bill (whether as scheduled works or otherwise) funded by the nominated undertaker.

In light of OFWAT's approval of your Petitioner's expenditure plans and your Petitioner's previous experience of interfaces with major railway and road infrastructure projects, your Petitioner requests that a possible interpretational point underlying the determination of the cost is put beyond doubt by an amendment to the Bill.

Your Petitioner avers that the works to be authorised by the Bill are by their nature and scale a major central government infrastructure projects.

Accordingly, to provide for certainty of equitable treatment and to pre-empt any future dispute, your Petitioner craves that the Bill be amended to provide for all works arising from Phase One purposes be at the cost of the nominated undertaker.

Without prejudice to your Petitioner's position as stated above, in the event that the provisions of the Street Works (Sharing of Costs of Works) (England) Regulations 2000 (hereinafter referred to as "the 2000 Regulations") are to apply to Phase One purposes, your Petitioner avers that the nature and scale of the works to be authorised by the Bill are such that they are a major transportation work. Accordingly your Petitioner requests that express provision be made in the Bill that

the contribution percentage to be paid by water undertakers in respect of diversionary works pursuant to the 2000 Regulations will be 7.5% notwithstanding any provision of the 2000 Regulations which would provide for a higher percentage to be payable.

26. *Access to Apparatus*

Customer service levels in the regulated water industry are measured by reference to the Service Incentive Mechanism (SIM) and the results of such measurement are used to determine financial incentives for relevant water undertakers by rewarding those relevant water undertakers with a high SIM score with higher price limits. Your Petitioner receives a generous contribution in relation to SIM and is concerned that works as a consequence of the Bill and works undertaken by the nominated undertaker could have a detrimental impact on its SIM score. Any impact on the SIM score together with penalties and reputational costs could result in a direct cost in the region of £15m plus reputational damages and remedial activity to avoid any fines.

The consequences for a water utility of denial of access to apparatus, which causes or compounds a service issue, can (due to the financial incentives referred to above) extend beyond the immediately apparent costs incurred.

For these reasons, your Petitioner requires access to its apparatus at all times. The nominated undertaker must provide alternate means of access to your Petitioner's apparatus where access is obstructed whether temporarily or permanently.

Accordingly, paragraph 26 and paragraph 28 of Schedule 31 (*Protective Provisions*) to the Bill do not adequately protect your Petitioner's interests. The provisions of the Bill wrongly allocate residual risk in respect of access to apparatus to undertakers rather than the nominated undertaker.

Your Petitioner craves that the Bill is amended to correct the risk allocation.

27. *Removal of redundant apparatus*

Your Petitioner's position is that it should not be obliged to remove any of its apparatus rendered redundant by the provision and bringing into operation of apparatus pursuant to provisions of the Bill.

Your Petitioner craves that the nominated undertaker be obliged to, in so far as may be necessary or desirable for the scheduled works, to remove redundant apparatus. Your Petitioner requests that paragraphs 22 and 28 of Schedule 31 (*Protective Provisions*) to the Bill are amended accordingly.

Redundant apparatus should be vested in the nominated undertaker and accordingly your Petitioner requests that paragraph 28(2) of Schedule 31 should be deleted.

28. *Equivalence of alternative apparatus to apparatus (betterment)*

Your Petitioner will, as far as is reasonably practicable and subject to geotechnical and other engineering requirements, replace existing apparatus on a like for like or otherwise modern equivalence basis.

With reference to paragraph 28 of Schedule 31 (*Protective Provisions*) to the Bill, your Petitioner contends that there are instances which in terms of the Bill as currently drafted would fall to be regarded as betterment that are actually burdensome on an undertaker.

For example: increasing the depth of a pipe from 1 to 4 meters may not be an improvement as increasing depth may lead to an increase in pumping cost.

Equally, metric conversion (imperial measure pipes or other apparatus no longer being available on the market but rather apparatus specified according to metric measurement which is not an exact equivalent) may result in a choice being required between restricted capacity or other specification or an increase in such. Your Petitioner's position is that it is inequitable that it should be penalised by either accepting a constraint that did not previously exist or being financially penalised for a specification enhancement which arises due to circumstances beyond its control.

Your Petitioner craves that paragraph 28 is amended to reflect the above points.

29. *"Lift and Shift" Provisions*

Your Petitioner may have to move apparatus to an alternative site due to scheduled works and this may result in your Petitioner having to make payments or incur significant costs or expenses in accordance with "lift and shift" provisions in deeds with landowners. Where this is the case the nominated undertaker must reimburse your Petitioner for all costs, payments and expenses incurred by your Petitioner.

The nominated undertaker may exercise compulsory purchase powers in respect of land which is already subject to an easement in favour of your Petitioner with onerous lift and shift provisions. In such circumstances either:

- the nominated undertaker must not invoke the lift and shift provisions; or
- if the lift and shift provisions are invoked, the cost must be at the expense of the nominated undertaker; or
- such lift and shift provisions must be extinguished altogether.

Your Petitioner craves that the Bill is amended accordingly.

30. *Costs arising from Programme Changes*

As stated in paragraph 19 above, your Petitioner plans its business, budgets and

operations (including shut downs and other major works) when submitting its 5 yearly statutory business plan to OFWAT.

It is therefore important to both your Petitioner and its customers not only that the nominated undertaker prepares its programme for Phase One purposes in a manner that adequately plans for the facilitation of continued fulfilment by your Petitioner its service obligations, but that such a programme is adhered to.

Your Petitioner avers that the nominated undertaker must be required to reimburse your Petitioner for all costs and/or expenses incurred or which may be suffered as a result of changes in the nominated undertaker's programme.

### 31. *Future proofing (Culverts etc)*

Your Petitioner is concerned that the scheduled works may have the effect of creating a physical barrier to future development of land on either side of the route of the railway. The impact of any such development constraint may extend for a considerable distance beyond the land immediately adjacent to the scheduled works.

Whilst the protective provisions in the Bill address current apparatus (as defined in the Bill), there is no provision for future capacity or additional crossings requirements. Your Petitioner avers that seeking to provide further or enhanced infrastructure crossings under (or over) the scheduled works once the same have been constructed will probably be prohibitively expensive (and risk significant disruption).

Your Petitioner craves that the Bill be amended to provide for a design requirement upon the nominated undertaker that it provides (at its expense) culverts and other crossings of a suitable nature, scale and frequency along the route to allow for the crossing under the scheduled works of further or enlarged additional utility pipes and cables in the future.

Your Petitioner accepts that there can at this time be no certainty as to if, when and where a need for additional crossings or capacity may be required. For that reason, your Petitioner respectfully suggests that a minimum capacity and frequency of such crossings be provided for in the Bill.

Your Petitioner contends that a provision of the type requested will provide a suitable balance of the interests of the nominated undertaker and the potential adverse impacts on undertakers, their customers and wider socio-economic consequences of potential development constraints which may otherwise arise.

### 32. *Cap on Your Petitioner's Liability*

Your Petitioner's expenditure in any given 5 year period is set by OFWAT in its approval of your Petitioner's business plan for that period.

In order to allow for suitable provision to be made its business plans for the periods during which the works to be authorised by the Bill are to be constructed, your Petitioner requests that a cap be inserted into the Bill to limit the liabilities (including contingent liabilities) of relevant water undertakers in terms of or in consequence of the Bill for which your Petitioner will need to provide for.

33. *Control of Claims*

Your Petitioner notes the provision for compensation in paragraph 29 of Schedule 31 of the Bill, which your Petitioner welcomes.

Your Petitioner is, however, concerned about the possible consequences of the sole conduct limitation in sub-paragraph (4).

Your Petitioner is concerned that, in taking decisions pursuant to the sole conduct provision, the nominated undertaker may be unaware of issues of wider consequence to your Petitioner specifically or it and its fellow undertakers. As a consequence, the nominated undertaker could create potentially far reaching or costly precedents which would have unwelcome implications for your Petitioner and its customers.

Your Petitioner therefore craves that paragraph 29 of Schedule 31 (*Protective Provisions*) to the Bill be amended to delete the sole conduct rights of the nominated undertaker so as to leave conduct of claims in the hands of the undertaker with settlement or compromise in regard to the same being subject to consent of the nominated undertaker, such consent not to be unreasonably withheld or delayed.

Your Petitioner further craves that the Bill be amended to provide that the nominated undertaker indemnifies the undertaker for all costs (including professional fees and expenses) reasonably incurred in respect of any cost, compensation, claims, demands, proceedings or damages to which paragraph 29 of Schedule 31 (*Protective Provisions*) to the Bill applies.

YOUR PETITIONER therefore humbly pray your Honourable House that the Bill may not be allowed to pass into law as it now stands and that it may be heard by its Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioner and in support of

such other clauses and provisions as may be necessary or expedient for its protection, or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

AND your Petitioner will ever pray, &c.



Neil Amner,  
Agent for South Staffordshire Water plc

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HIGH SPEED RAIL (LONDON-WEST MIDLAND)  
PETITION OF SOUTH STAFFORDSHIRE WATER PLC

AGAINST the Bill – On Merits - By Counsel, &c.

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