

**IN PARLIAMENT  
HOUSE OF COMMONS  
SESSION 2013–14**

**HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL**

**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 NATIONAL GRID GAS 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 (referred to in this Petition as "the Promoter"), supported by The Prime Minister, The Deputy Prime Minister, Mr Chancellor of the Exchequer, Secretary Theresa May, Secretary Vince Cable, Secretary Iain Duncan Smith, Secretary Eric Pickles, Secretary Owen Paterson, Secretary Edward Davey and Mr Robert Goodwill.

**Relevant clauses of the Bill**

- 3 Clauses 1 to 36 of the Bill 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 of land, planning permission, heritage issues, trees and noise. Clauses 37 to 56 of the Bill establish a regulatory regime for the railway transport system and clauses 59 to 65 of the Bill deal with miscellaneous and general provisions.
- 4 Clause 1 of the Bill will authorise the nominated undertaker (as defined in the bill) to construct and maintain the works specified in Schedule 1 to the Bill ("the scheduled works"), being works for the construction of Phase One of High Speed 2 ("HS2") and works consequent on, or incidental to, such works. The lines,

situations and levels of the scheduled works and the limits of deviation within which the works may be carried out are shown on the deposited plans and sections referred to in the Bill. An Environmental Statement (the "ES") has also been prepared in respect of Phase One of HS2 of the Bill.

5 Clause 2 of the Bill will authorise the nominated undertaker to carry out certain additional works for the purposes of or in connection with the scheduled works including altering, or altering the position of, apparatus including mains, sewers, drains and cables.

6 Clause 3 of the Bill introduces Schedule 4 to the Bill which contains provisions relating to highways including power to stop up and interfere with highways.

7 Under clause 4 of the Bill, the Secretary of State will have power to acquire compulsorily so much of the land within "the Act limits" as may be required for the purposes of or in connection with Phase One of HS2 or any high speed rail transport system of which it forms or is to form a part. By clause 63(2), land is within the Act limits if it is within the limits of deviation for the scheduled works or within the limits of land to be acquired or used, as shown on the deposited plans. The limits of land to be acquired or used includes operational land owned by your Petitioner which is therefore subject to the power of compulsory acquisition under the Bill.

8 Clause 5 of the Bill provides that the power to compulsorily acquire land under section 4(1) includes power to acquire such easements or other rights over land to which the power relates as may be required for Phase One purposes by creating new easements or other rights, or acquiring easements or other rights already in existence. Your Petitioner has apparatus and associated easements, rights and restrictions to protect its apparatus at numerous locations along the route which are subject to the power of compulsory acquisition under the Bill.

9 Clause 12 of the Bill applies sections 271 to 273 of the Town and Country Planning Act 1990 (extinguishment of rights of statutory undertakers etc.) to land held by the Secretary of State as being land which is required for or in connection with the works authorised by the Act as they apply in relation to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act.

10 Clause 14 of the Bill introduces Schedule 15 to the Bill which contains provisions about temporary possession and use of land in connection with the works authorised by the Act.

- 11 Clause 46 of the Bill introduces Schedule 31 to the Bill which contains provisions protecting the interests of certain bodies who may be affected by other provisions of the Bill and Part 2 of Schedule 31 seeks to provide protections for the benefit of your Petitioner.
- 12 Clause 48 of the Bill allows the nominated undertaker to carry out works to reinstate within the Act limits all or part of an undertaking whose operation or use has been discontinued or substantially impaired by the exercise of the powers of the Bill.
- 13 Clause 50 of the Bill makes provision to facilitate authorisation of further adjustments or minor extensions of Phase One by means of an order under the Transport and Works Act 1992 ("TWA Order").

#### **Your Petitioner and its properties and apparatus**

- 14 Your Petitioner is National Grid Gas plc. Your Petitioner is a gas undertaker within the meaning of Part I of the Gas Act 1986 and supplies gas throughout England, Wales and Scotland. Your Petitioner supports the principle of the Bill but objects to parts of the Bill which will have a significant adverse impact upon its land, apparatus and business.
- 15 Your Petitioner has Gas Governor sites and gas mains and other apparatus located in land which is subject to compulsory and temporary acquisition or use under the Bill or access rights across. Your Petitioner will be required to relocate this apparatus in order to avoid damage to its property and disruption to its operations.
- 16 In addition, your Petitioner owns apparatus which, whilst not subject to the compulsory acquisition proposals of the Bill, are in the immediate vicinity of the proposed works and liable to be injuriously affected by them.
- 17 Your Petitioner and its rights, interests and property are injuriously affected by the Bill, to which your Petitioner objects for the reasons amongst others hereinafter appearing.
- 18 To the extent that up to the date of the deposit of this Petition satisfactory levels of information have not been provided by the Promoter for areas which are of concern to your Petitioner and that no agreements satisfactory to your Petitioner has been completed with the Promoter or resolution of your Petitioner's concerns as set out in this Petition your Petitioner seeks the following amendments to the Bill or appropriate undertakings from the Promoter.

### **Your petitioner's concerns**

- 19 Generally your Petitioner is concerned that Schedule 31 which specifies protective provisions to the Bill provides inadequate protection to gas undertakers.
- 20 Agreements are being negotiated with the Promoter with a view to better protecting your Petitioner's interests and addressing its concerns through an Asset Protection Agreement, an agreed form of easement and a Diversionary Works Agreement but those Agreements and the agreed form of easement remain to be agreed. Resolution of the outstanding issues and completion of the two Agreements and the agreed form of easement would meet your Petitioner's concerns.
- 21 In addition, your Petitioner objects to the compulsory acquisition of its property under clause 4 (power to acquire land compulsorily) and to acquisition of rights over its property as well as to any extinguishment of any rights such as easements or wayleaves under clause 5 (acquisition of rights in land) of the Bill.
- 22 Your Petitioner needs to understand what land or rights are required by the Promoter. Your Petitioner requires an amendment to the Bill to ensure that any such acquisition needs to be with your Petitioner's consent and any easements need to be on your Petitioner's standard terms.

### **Schedule 31**

- 23 Part 2 of Schedule 31 to the Bill contains protective provisions for the protection of the interests of electricity, gas, water and sewerage undertakers. Your Petitioner is a gas undertaker for the purposes of that Schedule. Your Petitioner is concerned that protection provided by Part 2 of Schedule 31 is not adequate to protect its interests.
- 24 Your Petitioner accepts that the carrying out of the works authorised by the Bill would require the relocation of a wide range of equipment and apparatus installed and maintained in connection with the provision of networks and services by your Petitioner. Your Petition seeks assurances that all necessary consents required in connection with such diversions will be obtained by the Promoter unless your Petitioner elects to obtain any necessary consents.
- 25 It is acknowledged that paragraph 28 of Schedule 31 to the Bill provides for payment of costs incurred in respect of the relocation of apparatus required to facilitate the High Speed Rail project. However, your Petitioner considers that

those provisions do not provide sufficient protection. Specifically the costs that can be recovered are limited to those directly relating to the relocation, alteration or protection of apparatus. It is not clear that the costs of securing rights to suitable alternative sites and land nor the provision of superintendence for works undertaken by the nominated undertaker would be recoverable pursuant to Schedule 31. Paragraph 28 of Schedule 31 also does not provide for recovery of a capitalised sum to cover the cost of maintaining and renewing permanent protective works. Your Petitioner respectfully seeks assurances that such costs would be recoverable or, if no such assurances can be given, ask that the Bill be amended to provide for such recovery.

26 Part 2 of Schedule 31 does not apply to any apparatus that would be regulated by the provisions of Part III of the New Roads and Street Works Act 1991. The New Roads and Street Works Act 1991 contains a principle of cost sharing that will require your Petitioner to shoulder some of the burden of costs of diversion of its apparatus arising from major works carried out as a consequence of the High Speed Rail project. Your Petitioner respectfully seeks assurances that the factor that will decide the percentage of contribution under the New Roads and Street Works Act 1991 will be the major work of the Promoter that has caused the diversionary works to be undertaken and that the major work for the High Speed Rail project is a major transport work.

27 Paragraph 20 of Part 2 of Schedule 31 provides that the nominated undertaker may serve notice on any undertaker requiring the removal of apparatus on 28 days' notice. Your Petitioner is concerned that this time period is too short and respectfully seeks assurances that a longer period of consultation will be provided or Schedule 31 should be amended to provide for a longer period of notice.

28 Paragraph 20(2) of Part 2 of Schedule 31 provides that where it is reasonably practicable to do so the nominated undertaker or the Secretary of State must afford the undertakers the requisite facilities and rights for the construction of any necessary alternative apparatus. Discussions took place with the Promoter before the deposit of the Bill to identify the land required for alternative apparatus. Your Petitioner requires further information and clarity as to what land and rights are being compulsorily acquired and requires that where the acquisition of rights is proposed these will be provided in the form of easements with the necessary restrictions to protect your Petitioner's apparatus based on your Petitioner's standard terms.

- 29 Paragraph 20(4) of Part 2 of Schedule 31 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 Petitioner objects to the inclusion of this paragraph as it fails to impose any obligation on the Promoter or nominated undertaker and is outside the scope of Schedule 31. Your Petitioner submits that this paragraph should be removed. If paragraph 20(4) is to be included, Schedule 31 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 that paragraph.
- 30 Your Petitioner respectfully submits that paragraph 21(2) of Part 2 of Schedule 31 should be removed. 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.
- 31 With regard to paragraph 22(3) and paragraph 23 of Part 2 of Schedule 31, your Petitioner objects to the nominated undertaker carrying out the removal of existing apparatus and the construction of alternative apparatus. Your Petitioner requests that these paragraphs be removed.
- 32 Your Petitioner notes that paragraph 24(2) of Part 2 of Schedule 31 requires facilities and rights to be granted on such terms and conditions as may be agreed or determined in accordance with paragraph 31. Your Petitioner requires that all facilities and rights are granted on your Petitioner's standard terms with the necessary restrictions to ensure that the relocated apparatus and means of access are appropriately protected.
- 33 With regard to notice provisions specified at paragraph 25 of part 2 of Schedule 31, your Petitioner requires that this period be 56 days in order to provide your Petitioner with sufficient time to make provisions for its operational apparatus and request that the Bill be amended accordingly. Further, in respect of sub-paragraph (3) of paragraph 25 your Petitioner requests that the notice period be increased from 14 days to 28 days to provide your Petitioner with adequate time to consider the plans and descriptions given to them and time to provide a comprehensive response.
- 34 With regard to paragraph 25 of Part 2 of Schedule 3 which deals with protection of apparatus to be retained your Petitioner requires the provisions in that paragraph

to include the specific requirements for protection of retained apparatus in your Petitioner's guidance in SSW22 (Gas Pipelines), HSG 47 (Avoiding danger from underground services) and IGE/SR/18 Edition 2 (Safe working practices) or any update thereto to ensure the integrity of gas pipelines and associated installations) and to include a requirement that the protective works are undertaken in accordance with a programme so that they are in place before any other works are undertaken in the vicinity of the retained apparatus.

35 Your Petitioner notes that paragraphs 26 and 27 of Part 2 of Schedule 31 provide 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 or where access is constructed through an alternative means of access. Those paragraphs do not, however, specify how such provision will be made. Your Petitioner requests that easements be granted for this purpose on its standard terms and request that paragraphs 26 and 27 be amended accordingly. Your Petitioner also requests that these paragraphs be amended so that it is clear that this is access not only to the existing apparatus itself, but also to the operational sites. Where it is not reasonably practicable to provide such alternative access these paragraphs should give the undertaker the right to undertake diversion works (either diversion of the existing access route or diversion of the impacted asset) to alleviate the obstruction.

36 Your Petitioner notes that although, in paragraph 29 of Part 2 of Schedule 31, the indemnity only applies to damage caused as a consequence of the construction of the works authorised by the Bill it does not extend to maintenance or any failure of the works or as a consequence of providing alternative apparatus or protective works. Your Petitioner requests that this paragraph be amended accordingly.

37 Your Petitioner notes that a dispute resolution procedure has been included in paragraph 31 of part 2 of Schedule 31 which provides for certain disputes to be "determined by a person appointed by the appropriate Ministers". As a statutory utility subject to licence obligations and statutory duties, your Petitioner's preference is that an independent third party such as an arbitrator is appointed to resolve disputes.

### **Operational Land**

38 The land within the limits of land to be acquired or used, as shown on the deposited plans includes Gas Governor sites and are therefore subject to the power of compulsory acquisition under the Bill as well as access routes across your

Petitioner's apparatus. Your Petitioner needs to understand what land or rights are required. Any acquisition need to be with your Petitioner's consent and should not undermine operational development at these sites in the future. Any easements also need to be on your Petitioner's standard terms and access routes should not cross your Petitioner's apparatus.

### **Financial Standing of the nominated undertaker**

39 Clause 43 of the Bill enables the Secretary of State to appoint a nominated undertaker. Whichever entity is appointed as the nominated undertaker it will receive funds from the Secretary of State in order to pay for works carried out by utilities in diverting and/or protecting apparatus where there is an interface with the planned route. The ability of the nominated undertaker to meet its debts as they fall due is a key consideration for your Petitioner, particularly given the number of contracts that the nominated undertaker will procure throughout the term of the High Speed Line Project.

40 Similar issues have arisen in the context of payments to be made by the Contracts for Difference counterparty under the new Contracts for Difference being introduced through Energy Market Reform. However, under the Energy Act the Department for Energy and Climate Change has statutory duties in relation to ensuring that the Contracts for Difference counterparty can meet its liabilities under the Contract for Difference and also to make regulations for suppliers to pay Contracts for Difference counterparties to enable the counterparty to make payments under Contracts for Difference. These provisions in the Energy Act provide welcome comfort to investors in projects that will hold Contracts for Difference that payments due under those contracts will be made as they fall due. There is no similar comfort currently under the Bill and your Petitioner requests that the Bill should be amended to place a duty on the Secretary of State for Transport to ensure that the nominated undertaker will be fully funded to enable it/them to meet liabilities to third parties as they fall due.

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

42 For the foregoing and connected reasons your Petitioner respectfully submits that, unless the Bill is amended as proposed above, the clauses of and schedules to the

Bill referred to above, so far as affecting your Petitioner, should not be allowed to pass into law.

- 43 There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and its rights, interests and property and for which no adequate provision is made to protect your Petitioner.

YOUR PETITIONER therefore humbly prays 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.

**BERWIN LEIGHTON PAISNER LLP**

Agents for National Grid Gas plc

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PETITION OF

NATIONAL GRID GAS PLC

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