

SCHEDULES

SCHEDULE 4

PROTECTION OF FUEL PIPELINES AND FACILITIES

PART II

Protection of hydrant fuelling systems

2.—(1) Notwithstanding anything in this Order, as shown on the deposited plans, the undertaker shall not pursuant to the powers of this Order acquire the hydrant systems otherwise than by agreement with the participants.

(2) The undertaker shall not exercise the powers in article 4(3)(a) in relation to the hydrant systems except in accordance with the provisions of the hydrant systems lease.

(3) The undertaker shall not exercise the powers in article 6 and article 7 in relation to the hydrant systems.

(4) The undertaker shall not exercise the powers in article 14 and article 15 to take possession of the hydrant systems, otherwise than by agreement with the participants.

3. The undertaker shall use its best endeavours—

- (a) in exercising any of the powers of this Order to avoid or (failing avoidance) to minimise any damage or disruption to the hydrant systems or their operation; and
- (b) without prejudice to paragraph (a) above, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the hydrant systems.

4.—(1) Except in the case of trial holes or alterations, not less than five months before commencing to construct the works, the undertaker shall furnish to the Nominee a programme for the works proposed and a general indication of the nature and location of those works and, if within 28 days from the receipt by the Nominee of that programme and general indication the Nominee gives notice in writing to the undertaker that any part of the works indicated in the programme may in any way affect the hydrant systems, paragraphs 5 and 6 below shall apply with respect to that part of those works.

(2) Upon giving any notice to the undertaker under sub-paragraph (1) above the Nominee shall furnish drawings showing to the best of its knowledge the position and depth of the relevant part of the hydrant systems.

5. Not less than three months before commencing to construct the works or not less than one month before digging trial holes or making alterations to the works in either case may significantly affect the hydrant systems, the undertaker shall furnish to the Nominee plans thereof (together with a programme of the works in the case of trial holes or alterations) and shall have due regard to any representations made by the Nominee relating to such plans or to the programme for the works.

6.—(1) At any time within a period of one month, or a period of 14 days in the case of trial holes or alterations, from the receipt by the Nominee of the plans referred to in paragraph 5 above the Nominee may by notice in writing to the undertaker specify any reasonable temporary or permanent

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works or measures (the “protective works”) which in its reasonable opinion should be carried out or taken by the undertaker before the commencement of or during the construction of the works in order to ensure the stability of the hydrant systems (shown where applicable on the drawings furnished by the Nominee under paragraph 4(2) above) or to protect them from injury (including injury by subsidence) and such protective works shall be constructed by the undertaker at its own expense and under the inspection (if any) of the Nominee.

(2) Except in the case of protective works that the Nominee has informed the undertaker in writing may be carried out during the construction of the works, the undertaker shall not commence the construction of any work within fifteen metres of, or which may in any way affect, the hydrant systems until the protective works relating to that work have been completed to the reasonable satisfaction of the Nominee.

(3) In the case of protective works of which the Nominee has informed the undertaker in writing as mentioned in sub-paragraph (2) above, the undertaker shall comply with all reasonable requirements of the Nominee arising from its inspection under sub-paragraph (1) above as promptly as practicable after the undertaker has been notified of such requirements.

(4) Except in an emergency (when it shall give such notice as may be reasonably practicable) the undertaker shall give the Nominee not less than 14 days' notice of its intention to carry out any works for the repair or maintenance of the protective works in so far as such works may affect or interfere with the hydrant systems.

7.—(1) The undertaker shall from time to time supply the Nominee with all such information as the Nominee may reasonably require in relation to operations relating to or connected with the works which may interfere with any measures to which this sub-paragraph applies.

(2) Sub-paragraph (1) above applies to measures for providing or preserving cathodic protection for apparatus forming part of the hydrant systems which have been taken by any of the participants or upon which the Nominee has consulted the undertaker.

8.—(1) The undertaker shall repay to the Nominee and any participant the reasonable expenses incurred by the Nominee or that participant in or in connection with the preparation of any drawing or notice referred to in paragraph 4(2) or 6(1) above and the watching and inspecting of—

- (a) any protective works relating to the hydrant systems; and
- (b) any of the works (including maintenance works) which are near to or are likely to affect the hydrant systems.

9.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference to the hydrant systems or the operation or use thereof shall be caused or the Nominee or any participant shall carry out any works, take any measures or install any ancillary apparatus (other than additional cathodic protection) which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the undertaker shall pay reasonable compensation to each participant or the Nominee for any loss sustained or additional expense incurred by that person; and
- (b) the undertaker shall indemnify the Nominee and each participant against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by the Nominee or that participant by reason or in consequence of any specified matter.

(2) Nothing in this paragraph shall impose any liability on the undertaker in respect of so much of any damage, loss or additional expenditure as is attributable to—

- (a) the act, neglect or default of the Nominee or any employees or any participant, or contractors of the Nominee or any participant such act, neglect or default to include,

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without prejudice to the generality of that expression, any failure to show upon the drawings furnished under paragraph 4(2) above to the best of the Nominee's knowledge the position and depth of the relevant part of the hydrant systems with sufficient accuracy to have enabled the undertaker by taking reasonable precautions to avoid damage or loss or the need for additional expenditure in respect of those systems; or

(b) any work or operation carried out by or on behalf of the undertaker in accordance with the instructions of the Nominee and without negligence.

(3) The Nominee or, as the case may be, the relevant participant shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

10. The preceding provisions of this Part of this Schedule shall apply in relation to any pipelines and associated equipment lawfully installed by or for the use of the participants after the coming into force of this Order (whether or not in accordance with the hydrant systems lease) as they apply in relation to the hydrant systems.