

**Energy and Climate Change Directorate
Energy Division**

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Dear Mrs Hogben

APPLICATION FOR PIPE-LINE CONSTRUCTION AUTHORISATION UNDER SECTION 1 OF THE PIPE-LINES ACT 1962 AND A DIRECTION UNDER SECTION 5 OF THAT ACT FOR DEEMED PLANNING PERMISSION FOR 7.2KM OF GAS PIPE-LINE LOCATED TO THE WEST OF DUMFRIES BETWEEN CLUDEN AND LOCHFOOT

Application

I refer to the Application dated 14 August 2015, made by RSK Environment Limited on behalf of GNI (UK) Limited (company number 2827969 and having its registered office at 5th Floor, 6 St Andrew Street, London EC4A 3AE (the Company)) seeking a Pipeline Construction Authorisation (PCA) under section 1 of the Pipe-lines Act 1962 and deemed planning permission under section 5 of that Act, for 7.2km of gas pipe-line located to the west of Dumfries between Cluden and Lochfoot. This letter contains the Scottish Ministers' decision on the application.

In 2001 a PCA was granted in favour of Bord Gais Eireann (BGE (UK) Limited) (now known as GNI (UK) Limited) for the construction of a 915mm gas pipe-line from Beattock to Brighouse and a 762mm gas pipe-line from Brighouse to the Solway Firth along a specified route (with a 200m limit of deviation). Phase 1 of the project has been completed. Phase 1 included a 29.6km section of the pipe-line between Beattock and the River Cluden, associated above ground installations, and the landfall pipe-line at Brighouse Bay, which were all constructed in 2002.

Whilst the PCA for Phase 2 of the pipe-line remains in place, the Company identified the need for a re-route of a 7.2km section of the Phase 2 pipe-line to the west of Dumfries, between Cluden and Lochfoot, to address concerns raised by Scottish Water regarding potential impacts on groundwater.

The Pipe-line Works (Environmental Impact Assessment) Regulations 2000, as amended (the 2000 Regulations) apply to an application for a PCA. In accordance with those Regulations, the Company submitted an Environmental Statement in support of the application.

The project has been recognised by the European Commission as a Project of Common Interest (PCI). As a result, Regulation (EU) No 347/2013 of the European Parliament and of the Council of the European Union (known as TEN-E Regulation) also applies to this application.

Consultation

In accordance with the TEN-E Regulation and statutory requirements this application and the accompanying ES must be subject to wide ranging consultation. Ministers are satisfied that these requirements have been met. The principal consultation responses can be summarised as follows:

Dumfries and Galloway Council do not object to the application subject to conditions which are attached to the deemed planning permission at Annex 3. Dumfries and Galloway Council also request that a legal agreement should be submitted to and agreed in writing with Dumfries and Galloway Council Legal Services to the satisfaction of the Planning Authority in consultation with the Roads Authority to address any excessive wear and tear to the road network as a result of abnormal loads.

Scottish Natural Heritage (SNH) does not object and have advised that the mitigation as proposed in the environmental statement would address any concerns relevant to SNH remit. SNH has no requirement for any condition to be imposed.

Scottish Environment Protection Agency (SEPA) do not object, but offered comments regarding regulatory requirements and good management practice expectations to be applied through conditions which are attached to the deemed planning permission at Annex 3.

Historic Environment Scotland does not object.

A summary of the responses from the main interested parties can be found at Annex 4 of this decision letter.

Public Representations

The application was advertised in accordance with paragraph 3 of the First Schedule to the 1962 Act. No public representations either in support of or objecting to this application have been received

Public Local Inquiry

In terms of Paragraph 3(1) (b) of the First Schedule to the Pipe-lines Act 1962, notice of the application was published and served on Dumfries and Galloway Council, the relevant Planning Authority, on 14 August 2015.

Paragraph 4(1) of the First Schedule provides that where an objection is duly made by a local planning authority in accordance with a notice under that paragraph and it is not withdrawn, the Scottish Ministers shall before granting the application either:

(a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry; or

(b) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8A of the First Schedule.

Paragraph 4(2) of the First Schedule provides that where an objection is duly made by a person other than the local planning authority in accordance with a notice under that paragraph and it is not withdrawn the Scottish Ministers shall before granting the application either:

(a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry;

(b) afford to the person making the objection an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose and consider the report of the person so appointed; or

(c) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8 A of the First Schedule

Paragraph 6B of the First Schedule to the 1962 Act allows for Scottish Ministers to cause a public inquiry to be held with respect to an application for the grant of a pipe-line construction authorisation whether or not any objection to the application is made or maintained.

Dumfries and Galloway Council did not object. Scottish Ministers also considered the responses from statutory and non-statutory consultees none of which objected, Scottish Ministers do not consider there is a requirement to call for a PLI to be held.

Scottish Ministers' Considerations

Landscape and Visual issues

While considering the landscape and visual impacts of the Development, Scottish Ministers considered carefully the consultation responses received. Neither Dumfries and Galloway Council nor SNH made any comment on Landscape and Visual issues.

As the project relates to a buried pipe-line, the effects on visual effects and landscape character and designated landscapes will be temporary, indirect and reversible. For the majority of its length, the proposed pipe-line will affect the landscape only in the short-term during construction and for a very short period afterwards.

Environmental Impacts

While considering the environmental impacts of the Development, SNH advised that the planned route would not have any impact on Designated Sites within their remit. Scottish Ministers are not required to carry out Appropriate Assessments.

Further Considerations

As part of the wider Scotland to Ireland Second Gas Interconnector Project (IC"), the pipeline will provide additional capacity and security to supply Ireland with natural gas from the North Sea and other international gas reserves. The re-route of the 7.2km section of the Phase 2 pipe-line is needed to address concerns raised by Scottish Water regarding potential impacts on groundwater.

The interconnection, interoperability and development of trans-European networks for transporting electricity and gas are essential for the effective operation of the internal energy market in particular and the internal market in general. Users should have access to higher-quality services and a wider choice as a result of the diversification of energy sources, at more competitive prices. Closer links should therefore be established between national markets and the EU as a whole. With that in mind, the new Member States are now fully incorporated into the Community TEN-E guidelines.

The twinning of the Southwest Scotland onshore system between Cluden and Brighthouse Bay meets the criteria for Projects of Common Interest under Article 4(1) (a) of the TEN-E Regulation.

On 21st November 2014, the EU Commission published the list of actions selected for receiving EU funding within the CEF-Energy programme. The project was included in the Union list of Projects of common interest (number 5.2) - Priority corridor North-South gas interconnections in Western Europe ("NSI West Gas") in accordance with TEN-E Regulation Article 4(1) (a) and identified as being eligible for funding in the sum of €33,764,185.

Economic Benefit

Dumfries and Galloway has a high dependence on tourism. Any impact on tourism is likely to occur during construction works, particularly in the summer months. However, this is likely to be short term and limited in extent with slight negative impacts due to noise levels and potential dust nuisance, moderate, negative visual impacts and slight to moderate impacts on traffic for a limited period.

Generally, pipe-line construction is only of short-term benefit to the immediate area. However, The Project together with the interconnector is an important part of the Company's long term development proposals providing an important contribution to sustaining and improving the natural gas infrastructure in Ireland.

Principal Policy Issues

National Planning Framework 3

The NPF3 sets the context for development planning in Scotland and provides a framework for the spatial development of Scotland as a whole. It sets out the Scottish Government's development priorities over the next 20 to 30 years and identifies national developments which support the development strategy. The Framework recognises that there are further opportunities for the oil and gas sector.

Scottish Planning Policy 2014

The Scottish Planning Policy (SPP) sets out national planning policies which reflect Scottish Ministers' priorities for the operation of the planning system and for the development and use of land.

SPP introduces a presumption in favour of development that contributes to sustainable development. In particular, the document highlights that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term, the aim is to achieve the right development in the right place and proposals that accord with up to date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising.

Dumfries and Galloway Council - Local Development Plan.

The proposed pipe-line lies wholly within Dumfries and Galloway Council area, and is in accordance with the Dumfries and Galloway Council Local Development Plan Policies.

Public Representations

Scottish Ministers received no public representations either in support of or objecting to the application. There were no objections lodged by local community councils.

Determining issues

Ministers, having taken account of the Application and Environmental Statement, as well as the responses from the Planning Authority and other statutory and non-statutory consultees, consider that the main determining issues are;

- The requirement for the project to be delivered, it having been identified as a Project of Common Interest.

- The extent to which the Development accords with and is supported by EU Policy, Scottish Government policy and the terms of the Dumfries and Galloway Council Local Development Plan.
- Environmental impacts of the Development.

The Scottish Ministers' Determination

The Scottish Ministers grant a Pipe-line Construction Authorisation under section 1 of the Pipe-lines Act 1962 for the pipe-line described in Annex 1.

Subject to the conditions set out in Annex 3, the Scottish Ministers, by virtue of section 5 of the Pipe-lines Act 1962, approve Planning Permission for the development as set out in the Pipe-line Construction Authorisation at Annex 1

In accordance with the TEN-E Regulation, Article 9(7) the Company must update the website with relevant information about the project of common interest and also publicise relevant information by other appropriate means to which the public has open access.

In line with regulation 3(5) of the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 the Company must, no later than 14 days after notification of this decision, publish a notice of the decision in the Edinburgh Gazette and one or more newspapers circulating in the area where the pipe-lines works will be carried out.

Copies of this letter and the Pipe-line Construction Authorisation have been sent to the Planning Authority and the statutory consultees. This letter and the Pipe-line Construction Authorisation have also been published on the Scottish Government Energy Consents website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review of the granting of the Pipe-line Construction Authorisation or the conditions attached, no later than 6 weeks after the decision has been published. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts –

<http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely



Frances Pacitti

Head of Energy Consents

A member of the staff of the Scottish Ministers

Annex 1 Pipe-line Construction Authorisation

The Pipe-Lines Act 1962

Scotland to Ireland
Second Gas Interconnector Project

Scottish Land Pipe-line Cluden to Lochfoot

1. In pursuance of Section 1 of, and Schedule 1 to the Pipe-lines Act 1962, Scottish Ministers hereby authorise GNI (UK) Limited (Company number 2827969 and having its registered office at 6th floor, 6 St Andrew Street, London EC4A 3AE), to execute works in land for the construction of a 914.0mm (36 inches) cross-country pipe-line which is to be for the conveyance of Natural Gas between the National Grid Reference NX932796 796 and ending at the National Grid Reference NX 898 743 along the route delineated by the continuous red line on the map annexed hereto, signed by a person authorised by Scottish Ministers, or within 200 metres therefrom.

2. Scottish Ministers hereby direct, in pursuance of section 5 of the Pipe-lines Act 1962, that, in so far as the execution of the works authorised by, or by virtue of, this authorisation, or any change in the use of land which is involved in the execution of those works, constitutes development within the meaning of the Town and Country Planning (Scotland) Act 1997, permission for that development is deemed to be granted under Part III of that Act, subject to the conditions specified in Annex 3 hereto.

Dated: 21.06.16

Signed: 

Frances Pacitti

An official of the Local Energy and Consents Team

Authorised to act on behalf of Scottish Ministers.

Annex 2

Obligations under the Pipe-lines Act 1962

1. Section 35 of the Act – The Company shall forthwith after the grant of the Pipe-line Construction Authorisation, deposit with the planning authority a copy of the map annexed to the authorisation that shows the route that lies within the planning authority area.
2. Section 36 of the Act - Notice shall be given to Scottish Ministers, within two weeks of;
 - (a) Commencement of use of the pipe-line;
 - (b) The abandonment of the pipe-line;
 - (c) The expiration of three years from the date on which the pipe-line was last used;
 - (d) The resumption of the use of the pipe-line.
3. Section 37 of the Act - Arrangements shall be made in advance whereby various authorities can be given immediate notice of the accidental escape or ignition of anything in the pipe-line, and, if requested, to furnish information and maps to those authorities.
4. Section 38 of the Act – Notice shall be given within three weeks to the Scottish Ministers and every person who is an owner, lessee or occupiers of land in which any part of the pipe-line lies, of a change of ownership of the pipe-line.

Annex 3

Conditions attached to deemed planning permission

1. Except as otherwise required by the terms of Pipe-line Construction Authorisation, the Development shall be undertaken in accordance with the application and the environmental statement lodged in support of the application

Reason: to ensure that the Development is carried out in accordance with the approved details.

2. (1) Prior to any works commencing on site, the Company shall appoint an independent Ecological Clerk of Works (ECoW) with the power to stop and start work as required. The ECoW shall:

- a) Monitor and support compliance with the ecological and hydrological commitments provided in the environmental statement and the Construction and Environmental Management Plan and Habitat Management Plans as approved and any other plans as approved by this authorisation;
- b) Report to and submit a monthly written report to the Company's nominated construction project manager;
- c) Report to the Company's nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- d) Liaise with SEPA when pollution occurs.

(2) The ECoW reports shall be made available to the Planning Authority on request.

(3) The ECoW shall be appointed throughout the period from Commencement of Development throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 3(o)

Reason: to secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

3. (1) Prior to any works commencing on site, a Construction and Environmental Management Plan (CEMP) containing site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, shall be submitted to and approved in writing by the Planning Authority in consultation with SNH, SEPA and Scottish Water.

(2) The CEMP shall include:

- a) A site waste management plan dealing with all aspects of waste produced during the construction period other than peat, including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;

- b) Details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns and any construction compound boundary fencing;
- c) A dust management plan;
- d) Details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities and measures to clean the site entrances and the adjacent local road network;
- e) A pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f) Details of soil storage and management;
- g) A peat management plan, including details of vegetated turf stripping and storage, peat excavation (including volumes), handling, storage and re-use;
- h) A drainage management strategy, demonstrating how all surface and waste water arising during and after development is to be managed and prevented from polluting any watercourses or sources;
- i) A surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- j) All temporary bridges or flumes to be used during construction shall be hydro-logically assessed to ensure there will be no capacity issues in extreme weather events, i.e. 1 in 200 year design peak flow;
- k) Details of sewage disposal and treatment;
- l) Details of temporary site illumination;
- m) Details of the construction of the access into the site and the creation and maintenance of associated visibility splays;
- n) Details of watercourse crossings;
- o) Details of post construction restoration/reinstatement of the working areas including construction access tracks, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- p) A wetland ecosystems survey and mitigation plan;
- q) A felling and tree management plan;
- r) Details of diversions for access to core paths rights of way.

(3) The Development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority in consultation with SNH, SEPA and Scottish Water.

Reason: *to ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agree, are fully implemented.*

4. (1) Prior to any works commencing on site, the terms of appointment by the Company of an independent and suitably qualified environmental consultant as Planning Monitoring Officer ("PMO") shall be submitted to, and approved in writing by, the Planning Authority. The terms of the appointment shall:

- a) impose a duty to monitor compliance with the terms of the deemed planning permission and the conditions attached to it;
- b) require the PMO to submit a monthly report to the Planning Authority summarising works undertaken on site; and
- c) require the PMO to report to the Planning Authority any incidences of non-compliance with the terms of the deemed planning permission and conditions attached to it at the earliest practical opportunity.

(2) The PMO shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works.

Reason: *To enable the development to be suitably monitored to ensure compliance with the planning permission and the conditions attached to it.*

5. Prior to any works commencing on site, a Traffic Management Plan shall be submitted to and approved in writing with the Planning Authority Roads Authority and the Police. The traffic management plan shall include;

- a) Parking provision for construction workers;
- b) The routeing of all traffic associated with the Development on the local road network;
- c) Measures to ensure that the specified routes are adhered to, including monitoring procedures and strengthening of weak roads;
- d) Details of all signage and lining arrangements to be put in place;
- e) Provisions for emergency vehicle access;
- f) Identification of a nominated person to whom any road safety issues can be referred;
- g) A plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width, axle configuration of all extraordinary traffic accessing the site
- h) Details of temporary access points and road crossings

The approved traffic management plan shall be implemented in full, unless otherwise agreed in advance in writing with the Planning authority.

Reason: *in the interests of road safety and to ensure that abnormal loads access the site in a safe manner*

6. Prior to any works commencing on site, a Method Statement shall be produced to limit the spread of American Signal Crayfish. The Method Statement shall assume that all watercourses crossed by the pipe-line will contain American Signal Crayfish and shall detail the following:

- a) The washing and disinfecting of all machinery and footwear entering or leaving watercourses;
- b) Details of designated areas for vehicle wash-down; and
- c) The direction of construction of the pipe-line to progress towards rivers known to be infested.

Reason: *to limit the spread of the highly invasive American Signal Crayfish known to be present in the vicinity.*

7. Prior to any works commencing on site, a programme of archaeological works shall be submitted to the Planning Authority and agreed in writing. The programme of archaeological works shall include measures to be taken to protect and preserve any features of archaeological interest in situ, to record and recover archaeological features which cannot be so preserved, to afford access at all reasonable times for the council archaeologist or a nominated representative and to allow them to observe work in progress.

The approved scheme of archaeological works shall be implemented in full.

Reason: *to comply with Scottish Historic Environment Policy and to ensure that effects are fully mitigated*

8. Prior to any works commencing on site, a tree survey shall be carried out, which clearly identifies all trees potentially at risk from construction of the pipeline and associated works, and clearly identifies all trees (if any) to be removed. The aim shall be to avoid removal of mature trees, but where this is considered unavoidable, clear justification shall be provided as to why alternative routes for the pipeline are unsuitable. In such cases, full details regarding the number, location and long-term maintenance of replacement trees should be provided. Where trees are retained, the tree survey should identify how they will be protected from vehicles and other hazards during construction work.

The tree survey shall be agreed with the Council prior to commencement of works.

Reason: *to minimise the impacts on any large mature trees.*

Definitions

In the decision letter and in Annexes 1 and 2.

"the Application" means the Application submitted by the Company on 14 August 2015

"Commencement of Development" means the date on which development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

"the Company" means GNI (UK) Limited Registered at 5th Floor, 6 St. Andrew Street, London, EC4A 3AE Company Registration Number 2827969, or the person for the time being entitled to the benefit of the pipe-line construction authorisation;

"the Development" means the development described in Annex 1;

"Environmental Statement" means the Environmental Statement submitted by the Company on 14 August 2015

"the Planning Authority" means Dumfries and Galloway Council;

"SEPA" means the Scottish Environment Protection Agency;

"SNH" means Scottish Natural Heritage;

"Site" means the area of land outlined in red on annex 5, attached to this deemed planning permission.

Annex 4

Consultation Summary

Statutory Consultees

Dumfries and Galloway Council has no objections to the application subject to recommended conditions which are attached to the deemed planning permission.

Historic Environment Scotland (HES) do not object to the planning application and are content that the ES is adequate for their requirements.

Scottish Environment Protection Agency (SEPA) do not object, but offer comments regarding regulatory requirements and good management practice expectations to be applied through condition

Scottish Natural Heritage (SNH) has no objection and advised that the mitigation as proposed in the environmental statement would address any concerns relevant to SNH remit.

Non Statutory Consultees

Forestry Commission Scotland is content that the impacts on trees and woodlands are minimal and the developer is proposing an appropriate approach when or if these are encountered.

Hutton Institute no comments

Nith District Salmon Fisheries Board no objections.

RSPB Scotland no comments.

Scottish Water has identified potential risks to aquifers in the vicinity of the pipeline route. They have requested that they are consulted on any Construction Method Statements and Pollution Prevention and Contingency Plans for approval – these are addressed at condition 3

Transport Scotland confirm that the level of traffic generation does not trigger the need for any further assessment of environmental impacts associated with generated traffic on the trunk road network or adjacent receptors. They are also satisfied that there will be no significant air quality or noise impacts associated with the proposed development on the trunk road network.