

From: [BRODRICK Claire](#)
To: [Wrexham Energy](#)
Cc: [GRIFFITHS Richard](#); [David Shakesby](#)
Subject: RE: Wrexham Energy Centre (EN010055) [PM-AC.FID2377210]
Date: 15 May 2017 14:36:57
Attachments: [Wrexham Energy Centre - Part 6 of Schedule 9 of the Draft DCO Protective Provisions for WWU.PDF](#)

Dear Sir/Madam

We act for the Applicant and write in response to the letter dated 8 May 2017 from Giles Scott at DBEIS.

Please find attached the final form of protective provisions in Part 6, Schedule 9 of the draft DCO.

This version of the protective provisions has been agreed with Wales and West Utilities.

David Shakesby of Osborne Clarke is acting for Wales and West Utilities and has been copied into this email.

David – I should be grateful if you would reply to this email and confirm that the attached protective provisions are agreed.

Please note that the Applicant will provide a revised version of the draft DCO (including the attached protective provisions and some amendments required as a result of the Housing and Planning Act 2017) prior to deadline for responses on 24 May 2017.

Yours faithfully

Claire Brodrick
Senior Associate
for Pinsent Masons LLP

D: [+44 20 7490 6230](tel:+442074906230) M: [+44 7469 378 216](tel:+447469378216) I: [816230](tel:816230)

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PART 6

FOR THE PROTECTION OF WALES AND WEST UTILITIES

Application

56. For the protection of Wales and West Utilities as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Wales and West Utilities, have effect.

Interpretation

57. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

(a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which is not required under paragraph 61 of this Schedule; and/or

(b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or

(c) comprise security infrastructure to be located on plot AG11 shown on the land plans and described in the book of reference; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ.

Precedence of 1991 Act in respect of apparatus in streets

58. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in streets subject to temporary prohibition or restriction

59. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Wales and West Utilities is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably

necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

60. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

61.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Wales and West Utilities' apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Wales and West Utilities in accordance with sub-paragraphs (2) to (5).

(1) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Wales and West Utilities written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(4) Wales and West Utilities, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

62.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Wales and West

Utilities than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

63—(1) Not less than 42 days before the commencement of any specified work the undertaker must submit to Wales and West Utilities a plan, section and description of the specified work to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements (including but not limited to the form, location and specification of security infrastructure to be located on plot AGI1 shown on the land plans and described in the book of reference) as may be made in accordance with sub-paragraph (4) by Wales and West Utilities for:

- (a) the alteration or otherwise for the protection of the apparatus, or for securing access to it; and/or
- (b) the alteration or otherwise for the protection of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or
- (c) the provision, construction, installation or erection of any security infrastructure to be located on Plot AGI1 shown on the land plans and in the Book of Reference.

(3) Wales and West Utilities is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If Wales and West Utilities in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 61 and 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified work, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in the event of any specified work necessary to maintain:

- (a) the authorised development (but only after it has been constructed); or
- (b) works undertaken in association with the authorised development on plot AGI1 shown on the land plans and described in the book of reference (but only after such works have been constructed)

in a case of emergency reference but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

64.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities the reasonable expenses incurred by Wales and West Utilities in, or in connection with, the inspection, removal, alteration or protection of any apparatus or security

infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any of any of the works referred to in paragraph (2) or any specified work.

65. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 61(2) or any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (c) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and
- (d) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by the Wales and West Utilities,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Wales and West Utilities, its officers, servants, contractors or agents.

(3) Wales and West Utilities must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.