

Application by Abergelli Power Limited ("APL"), dated 25 May 2018 for development consent under s.37 of the Planning Act 2008 for a gas fired power generation plant of up to 299 Megawatts.

Statement of Common Ground

Statement of Common Ground between **Abergelli Power Limited** and **National Grid Gas plc**

18 March 2019

Revision	Date	Details
Draft 1	12 September 2018	
Draft 2	14 March 2019	

1. INTRODUCTION

Purpose of this Statement of Common Ground

- 1.1 This Statement of Common Ground ("**SOCG**") has been prepared by Abergelli Power Limited ("**APL**") and National Grid Gas plc ("**NGG**"). For the purpose of this SOCG, APL and NGG will jointly be referred to as 'the Parties'.
- 1.2 APL has applied to the Secretary of State under Planning Act 2008 for powers to construct, operate and maintain a Power Generation Plant. The Proposed Development consists of:
- 1.2.1 A new Open Cycle Gas Turbine peaking power generating station, fuelled by natural gas and capable of providing a rated electrical output of up to 299 Megawatts ("**MW**"). The Power Generation Plant comprises:
- (a) Generating Equipment including one Gas Turbine Generator with one exhaust gas flue stack and Balance of Plant (together referred to as the 'Generating Equipment') which are located within the 'Generating Equipment Site';
 - (b) An Access Road to the Project Site from the B4489 which lies to the west, formed by upgrading an existing access road between the B4489 junction and the Swansea North Substation (the 'Substation') and constructing a new section of access road from the Substation to the Generating Equipment Site;
 - (c) A temporary construction compound for the storage of materials, plant and equipment as well as containing site accommodation and welfare facilities, temporary car parking and temporary fencing (the 'Laydown Area'). A small area within the Laydown Area will be retained permanently (the 'Maintenance Compound');
 - (d) Ecological Mitigation Area - area for ecological enhancement within the Project Boundary; and
 - (e) Permanent parking and drainage to include a site foul, oily water and surface water drainage system.
- 1.2.2 A Gas Connection in the form of a new Above Ground Installation (AGI) and underground Gas Pipeline to bring natural gas to the Generating Equipment from the National Gas Transmission System; and
- 1.2.3 An Electrical Connection which will be an underground electrical cable to export power from the Generating Equipment to the National Grid Electricity Transmission System.
- 1.3 The Planning Act 2008 restricts associated development for which consent can be sought under a Development Consent Order in Wales to development that is associated with a generating station with a capacity in excess of 350 MW. As the Power Generation Plant would have related electrical output of up to 299 MW, the Gas Connection and Electrical Connection are not part of the Development Consent Order Application. However, APL is seeking powers of compulsory acquisition over the land required for the Gas Connection and Electrical Connection, and is applying for planning permissions in respect of the Gas Connection and Electrical Connection works.
- 1.4 NGG have the Apparatus listed in their relevant representation dated 27th September and related property rights in respect of their existing apparatus and wish to secure adequate protection of their property rights and apparatus by way of reaching

agreement on the terms of protective provisions and confirmation that a Deed of Consent/Crossing Agreement will be entered into in due course in respect of crossings of Gas Apparatus.

- 1.5 This SOCG relates to matters relating to the Gas Connection, as well as matters relating to the Protective Provisions, and is intended to give a clear position of the state and extent of agreement between the Parties as at the date on which this SOCG is signed and submitted to the Secretary of State.
- 1.6 Preparation of this SOCG has been informed by discussions between the Parties. The purpose of this SOCG is to set out agreed factual information about the Application.
- 1.7 It is intended that this SOCG will provide information to facilitate a smooth and efficient examination process.

2. THE APPLICATION

- 2.1 The Application for the Proposed Development was submitted on 25 May 2018 and accepted by the Secretary of State on 21 June 2018 (PINS reference number EN010069) and was accompanied by an Environmental Statement.
- 2.1 The Application was also accompanied by a Gas Connection Statement prepared to comply with Regulation 6(1)(a)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires the Applicant to provide "a statement of who will be responsible for designing and building the gas pipeline connection to the generating station".
- 2.2 The Gas Connection comprises all the necessary elements to enable gas to be imported to the Generating Equipment at a suitable rate and pressure to produce up to 299 MW, including an underground Gas Pipeline and AGI.
- 2.3 As set out in the Gas Connection Statement, APL will submit a connection application to NGG in 2019 for the MOC (which facilitates the APL pipeline connection to the National Gas Transmission System) to connect the Generating Equipment to the National Gas Transmission System.
- 2.4 Upon submission of the application, NGG will have 6 months to provide APL with a connection offer at which point APL will have a further 3 months to decide whether to accept the terms of the offer. Upon acceptance, APL will enter into a Design and Build Agreement with NGG for the construction of the new MOC.
- 2.5 The MOC will be designed, constructed, owned and operated by NGG.

3. MATTERS NOT IN DISPUTE BETWEEN THE PARTIES

- 3.1.1 Preliminary discussions with NGG have indicated the likelihood of available gas capacity in Feeder 28 for the Power Generation Plant. Capacity is reserved once the Gas Connection Agreement is entered into.
- 3.1.2 APL is satisfied that the powers set out in the draft Development Consent Order and the land and rights shown on the Land Plans and set out in Book of Reference in respect of plots 1, 2, 3, 3A, 3B, 4, 4A, 5, 5A, 5B, 6, 6A, 6B, 7, 7A, 7B and 7C, and the planning permission in respect of the Gas Connection are sufficient for NGG to construct, use and maintain the MOC.
- 3.1.3 APL agrees that NGG's property rights and physical access along the relevant part of the Access Road (between B4489 and NGG's premises) will be maintained at all times for all vehicle types throughout the construction period, and priority will be given to all National Grid employees and vehicles including in respect of access and use of parking spaces.

- 3.1.4 It is agreed that APL will secure the necessary access rights by way of an easement with NGG in respect of the Access Road.
- 3.1.5 The Parties agree that the Outline Construction Traffic Management Plan (Document Reference 6.2, Appendix 3.3a) records this position. APL will make good any damage to the Access Road caused by construction vehicles or AILs to NGG's satisfaction.
- 3.1.6 APL have included land for the MOC in the compulsory acquisition powers within the DCO with the ability to transfer these powers to NGG in order to enable NGG to acquire the land and access rights by compulsion under the DCO, if APL have not previously acquired such rights for NGG's benefit by agreement.
- 3.1.7 The Parties have agreed the Protective Provisions as set out in the Appendix. APL will include the Protective Provisions in the face of the draft Development Consent Order for Deadline 6.

This SOCG is prepared jointly and agreed by the Parties:

Signed by
For and on behalf of **Abergelli Power Limited**

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Date: 21 March 2019

Signed by
For and on behalf of **National Grid Gas plc**

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Date:

APPENDIX
PROTECTIVE PROVISIONS

PART 1
FOR THE PROTECTION OF NATIONAL GRID

Application

17. For the protection of National Grid as referred to in this part 3 of Schedule 11 the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

18. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) electric lines or electrical plant as defined in the Electricity Act 1989⁽¹⁾, belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order or planning permission for the associated works that becomes operational apparatus of the undertaking for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“associated works” means the works permitted pursuant to planning permissions reference 2018/2020/FUL and 2018/2020/FUL each granted by the City and County of Swansea on 6 December 2018;

“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 construction, use and maintenance of the authorised development and the associated works, including the construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of the Order save that for the purposes only of this Part of Schedule 11 operations consisting environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions and receipt and erection of construction plan and equipment shall be included within the meaning of commence and the term “commencement” is to be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interest so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

(1) 1989 c.29.

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaking including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (company no. 2366977) whose registered office is at 1–3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (company no. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require;

“specified works” means any part of the authorised development or any activities taken in association with the authorised development including associated works where such development, activities or works—

- (a) will or may be situated over, under or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise; and/or
- (c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”);

19. Except for paragraphs 20 (apparatus in streets subject to temporary prohibition or restriction), 24 (retained apparatus: protection), 25 (retained apparatus: protection), 26 (expenses) and 27 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or 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.

Acquisition of land

21.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or

override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) Prior to the carrying out of any part of the authorised development or associated works (or in such other timeframe as may be agreed between the undertaker and National Grid) that is subject to the requirements of this Part of this Schedule that causes any conflict with or breach the terms of any existing easement and/or other legal or land interest of National Grid and/or affects the provisions of any existing enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it must be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 24 or 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

22.—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan 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 National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid 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

23.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 in the matter shall be referred to arbitration under paragraph 31 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 43 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

24.—(1) Not less than 56 days before the commencement of any specified work, the undertaker must submit to National Grid a plan and, if reasonably required by National Grid a ground monitoring scheme in respect of those works, the plan to be submitted to National Grid shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(2) The undertaker must not commence any works to which sub-paragraph (1) and (8) applies until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4) or (6);
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraph (1) and (8) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works executed under sub-paragraph (1) or (8) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (8) or as relevant sub-paragraph (3), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (6) and/or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(6) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (8) (except in an emergency).

(7) If National Grid in accordance with sub-paragraph (4) or (6) 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 (1) to (2) and (5) to (6) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The undertaker shall not be required to comply with sub-paragraph (1) where, as part of any specified works, it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (4), (5) and (6) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

(12) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) and (8) and/or paragraph 25(1) must be sent to plantprotection@nationalgrid.com and cc'd to spencer.jeffries@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Retained apparatus: protection of National Grid as Electricity Undertaker

25.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be

submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) (written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) 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 (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

26.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development or associated works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or associated works or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 27 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the promoter, nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order the associated works

or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraph 24 or 25) or any works required by National Grid in respect of their apparatus within and adjoining the Order land in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking.

Access

30. If in consequence of the agreement reached in accordance with paragraph 21(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

