

From: [Stewart, Sophie](#)
To: [North London HPP](#)
Subject: EN010071 - North London Heat and Power Project [DLAP-UKMATTERS.FID3822344]
Date: 22 August 2016 18:18:21

Dear Sirs

Deadline 8 Response on behalf of National Grid - Protective Provisions.

In response to the Examining Authority's Rule 17 letter dated 29 July 2016, National Grid's position is as follows.

Discussions between the Applicant and National Grid have continued to take place and National Grid has been proactive in seeking to find common ground.

The parties had already reached agreement on the principle of an approach to dealing with the impact of the Applicant's DCO on National Grid's already consented North London Overhead DCO - see document AD07.19 Practical Management of Interactions with the National Grid DCO. National Grid does not object to the application for the Order on the basis that there may be a conflict between the two DCOs provided the terms set out in that joint statement are committed to a legally binding agreement between the parties. The form of that agreement is in circulation and is expected to be capable of being completed very shortly. Until then, National Grid must maintain its objection to protect the pre-existing powers that it has been granted by the Secretary of State (SoS) in National Grid's DCO, required in order that it can discharge its statutory functions and duties. Details of National Grid's need for those powers are set out in the needs case and supporting documents before the Secretary of State at the time of determination of that DCO. Elements of the need are also explained with reference to the points that have been advanced in National Grid's written submissions supporting its objection in this case, albeit the statement principally addresses the implications of the Applicant's DCO on its gas assets.

Discussions between the Applicant and National Grid have also been ongoing to agree a form of protective provisions for the Order and we had anticipated reaching agreement with the Applicant. However, agreement has not been reached and the Applicant has indicated that it is not willing to engage further with National Grid and therefore National Grid requests that the Secretary of State includes the form of provisions attached to this email for the benefit of National Grid.

The updated provisions attached have been amended from the version submitted to the Examination for deadline 3 as follows:

1. References to the parties have been updated to "statutory undertaker" and "undertaker" for consistency and at the request of the Examiner;
2. Cross referencing and formatting have been corrected.

We can confirm that the attached provisions have been amended from National Grid's standard template form of protective provisions to remove any protections that are not applicable to the NLHPP works.

National Grid will explain its general approach to seeking and securing protective measures from the promoters of statutory orders:

(a) National Grid is a licenced gas transporter and distributor under the Gas Act 1986 and electricity undertaker under the Electricity Act 1989 with statutory responsibilities for the safe and efficient supply and transmission of gas and electricity through significant assets throughout the UK. National Grid is required to comply with terms of its gas transmission and distribution licences and its electricity licence and is regulated by OfGEM, the Office of the Gas and Electricity Markets and is required to adhere to the terms of network codes to meet the requirements of its licences and statute. As money spent and costs incurred by National Grid is ultimately passed on to consumers in their energy bills, one of National Grid's duties is to ensure that it conducts itself in an efficient and cost effective way. National Grid is therefore also concerned to ensure that it is suitably protected and indemnified by promoters from the financial consequences of the promoter's scheme. This will be of particular importance where works are promoted which may affect higher grade/risk assets such as high and intermediate pressure gas mains where the consequences of damage can be wide ranging and significantly exceed the direct

damage to apparatus (in other words, consequential losses).

(b) National Grid's general approach is to understand at an early stage in the process the implications of major projects having regard to the specific nature and extent of its assets in the area. It considers to what extent it has existing protection (land rights or statutorily) in respect of those assets and considers how its assets will or might be affected by the project promoted under a statutory order.

(c) Given the number of major projects that affect National Grid, it has developed and continues to refine, with the support of its professional advisers, protective measures which it expects to put in place with promoters to effectively manage the otherwise potential adverse effects of the general or wide powers afforded to a promoter in its order(s). National Grid recognises that promoters require a degree of flexibility in the application of its powers where the detailed elements of design of a project will follow the confirmation and the coming into effect of the order. Nonetheless, National Grid requires (which has been the standard approach afforded to statutory undertakers more generally) a sufficient degree of protection from such effects.

(d) National Grid's general position is not however to object to the principle of third party development or hinder its implementation unless necessary and indeed National Grid frequently provides connections to the promoters of major projects requiring electricity and gas supply/transmission as a consequence of its statutory functions.

(e) Rather, National Grid seeks protection that requires promoters to demonstrate in due course that its detailed design (within the Order Land) can be carried out in close proximity to its apparatus safely and/or that its apparatus is sufficiently protected in situ or relocated by diversion.

(f) National Grid therefore coordinates its responses to such projects and proactively manages potential impacts by putting in place arrangements with promoters for the protection of its apparatus and particularly where some element of diversion, isolation and/or re-provision is required by the promoter in order to enable the project to proceed.

(g) Typically, National Grid seeks that protection in the form of a binding agreement – the purpose of which is to provide greater certainty for both parties in terms of the process for managing National Grid's assets in line with expected policies, guidance and required outcomes.

(h) National Grid's rights to retain its apparatus in situ and its rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the Order Land must be maintained at all times and access to inspect such apparatus must not be restricted. National Grid produces and stipulates to third party promoters, guidelines, regulations and specifications for safe-working within the vicinity of its assets – observation of which are requirements of the measures that National Grid seeks to secure, including:

- T/SP/SSW/22 (dated April 2014) in respect of gas apparatus - which provides general guidance when working in proximity to higher pressure gas pipelines;
- EN43-3 (Development near overhead lines);
- HSE's HS(-G)47 note (Avoiding Danger from underground services);
- HSE's guidance note 6 (Avoidance of Danger from overhead lines);
- IGE/SR/18 Edition 2 (Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations); and
- Pipeline Safety Regulations 1996.

In relation to the protective measures to apply to the NLHPP project, at the issue specific hearing held on 5 July 2016 the Examiner expressed his view that it is appropriate for a form of protective provisions particular to National Grid to be included in the order - a point that the Applicant had until that time resisted. At that time National Grid had already put forward its standard form of protective provisions having explained in its written submissions the background to its approach and need for protection of its assets - namely to comply with its statutory and licence requirements as a statutory undertaker and to ensure safe working to, in and around its assets. National Grid is obliged to protect its assets. At the same time, the written submissions explain the basis upon which National Grid does and will consider requests from promoters to consider the particular application of provisions. The extent to which the promoter is promoting wide powers subject to later detailed design has a bearing on how much National Grid can refine its protective provisions. On this occasion, the Applicant has

confirmed to National Grid that it cannot further particularise the rights that it needs or provide detailed plans to show how its works will affect National Grid's apparatus. National Grid is not therefore able to issue prior approval of works at this stage but National Grid has sought to accommodate all requests of the Applicant to date and has been proactive in looking for solutions.

As at today, the Applicant continues to be of the view that it cannot consent to the inclusion of Paragraph 6 in the protective provisions despite attempts between the parties to look at ways to provide the Applicant with some comfort that National Grid does not object to the principle of the exercise of rights as against its interests in land and apparatus, as long as it proceeds to approve works and address any re-provision of land rights under the terms of the protective provisions.

National Grid believes that it is contrary to its statutory functions/duties and licence requirements if it were to accept the deletion of paragraph 6. This would leave the Applicant open to extinguish National Grid's land and apparatus interests and render them subject to monetary compensation, which to do would give rise to serious detriment. It is not sufficient for National Grid to rely on non-binding assurances from the Applicant that it will exercise wide powers of compulsory purchase appropriately or reasonably once the detailed design is known. Hence, National Grid's position in respect of all DCO's that affect its interests is to require the exercise to be subject to its approval - and it provides the means for the Applicant to realise the same through the balance of the protective provisions. Provision 6(1) of the protective provisions therefore modifies the otherwise unfettered powers of compulsory acquisition in respect of all interests (which includes land interests) and apparatus owned by National Grid and requires National Grid's consent to acquire any land, interests or rights.

The Examiner raised a specific question on this point at the issue specific hearing - namely as to why protective provision 6(1) was justified, given it effectively emasculates the powers of compulsory acquisition granted by the Order in relation to National Grid. The explanation above addresses the point in high level terms. This is further explained in more detail with reference to NLHPP below:

Provision 6(1) is required and justified in respect of the NLHPP application for the following reasons:

1. The Book of Reference includes operational land of National Grid (parcel 4 - gas governor). The Book does not distinguish which parcels are subject to compulsory acquisition of land and which are subject to creation of new rights, although the Land Plans do show parcel 4 as being subject to Articles 21 and 23 (extinguishment and creation of new rights). National Grid, as statutory operator of the gas distribution network, cannot allow its operational land to be subject to general compulsory acquisition powers in terms that, subject to submission of detailed plans and method statements, may cause serious detriment to its undertaking. The same is true of its operational apparatus in that land.
2. The Book of Reference includes parcel 16, an extent of Lee Park Way. Again, this is shown on the Land Plans as being subject to Articles 21 and 23. National Grid has a permanent easement along Lee Park Way which is required to access its existing apparatus which lie immediately adjacent to the NLHPP site boundary and which is required to bring forward the already consented North London Reinforcement project. National Grid cannot accept that its right to traverse Lee Park Way may be compulsorily extinguished on a permanent basis. Subject to consideration of detailed plans and method statements, this may cause serious detrimental impact on its abilities to access and service existing apparatus and to exercise its rights under its own DCO.
3. Parcel 18 is an area of land which National Grid currently has permanent rights of access across to maintain the existing pylons and overhead lines running contiguous to the NLHPP site boundary. The application provides that this parcel is intended for temporary possession as a laydown area but NLHPP are seeking the right to permanently extinguish rights over it. Grid cannot lose its access to existing apparatus without giving rise to potential serious detriment to its undertaking and the application of its own DCO.

To be absolutely clear, National Grid's position is not that the Applicant cannot exercise its powers in any circumstances. Rather that the Applicant should be expected to engage National Grid on the detail of those proposals, at a time in which the detail is known, and to agree means by which the Applicant can exercise its powers under the DCO, subject to National Grid having first been provided with that detail so as to approve measures and if necessary surrender its apparatus or rights in favour of the grant of replacement apparatus/rights. That is essentially the function of the balance of the protective provisions. However National Grid's position is that the outcome of that process is that any

alteration in the change of rights and in apparatus is therefore a matter for its agreement under the rest of the protective provisions. We point out that National Grid obliges itself to act reasonably, in a way that National Grid is able to continue to meet the requirements of its undertaking without causing serious detriment. This is and has been National Grid's standard position in respect of DCO's affecting its apparatus and the requirement in 6(1) is routinely adopted by the Secretary of State on other applications for development consent. Some recent examples of the inclusion of provision 6(1) from Orders approved in 2016 are -

- (1) East Midlands Gateway Rail Freight Interchange (which Paul Hudson also presided over)
- (2) York Potash Harbour Facilities
- (3) Meaford Gas Fired Generating Station

This list is not exhaustive.

To re-iterate National Grid's approach, where it is affected by draft DCOs, is to work with the Applicant (if they are prepared to do) earlier than the grant of DCO to understand the extent of likely/potential interference with its interests/apparatus (noting that this may be subject to changes/certainty brought about by later detailed design) and to agree where appropriate, prior to determination of the DCO, matters that can be agreed against the general application of its protective provisions. To provide a very apt example from this case, National Grid has agreed with the Applicant the means by which the Applicant can exercise its DCO notwithstanding the potential interference with National Grid's powers in the North London Overhead Line DCO. This needs to be documented but demonstrates that National Grid is engaged and not simply adopting a principle only position.

National Grid, in its previous submissions (in particular those dated 23 March and 5 April 2016), has set out why it is crucial to its statutory operation and the general safety of the public why robust protective provisions are in place.

In respect of the Applicant's deadline 5 responses to National Grid's protective provisions (Document AD07.08 - 2Q 10.15), we do not intend to address them individually in detail at this stage, given the Examiner's comments at the hearing, that National Grid's provisions should generally be included in the Order. Whilst the intention had been to now submit an agreed set of protective provisions, National Grid is not in a position to respond to the detail of the Applicant's revised form of provisions until they have been submitted and provided to us. At this stage, we know that the Applicant is intending to submit provisions excluding paragraph 6 and in any event, the Examiner has asked that National Grid explains the relevance of its inclusion.

National Grid asks that the Examiner and/or the Secretary of State to afford it the opportunity to comment further on the set of provisions that the Applicant is due to submit for Deadline 8, once it has had the chance to consider them and notwithstanding that the examination period is due to close shortly. National Grid's position throughout has been consistent, fully communicated and has made itself and its professional advisors available at all times during the Examination period and believes that it is appropriate that it is given further opportunity in this regard.

Having entered into detailed discussions with the Applicant and having appeared at the hearing in July for the Examiner to determine that the Applicant should engage National Grid on its protective provisions, we wish to reserve National Grid's position to seek the recovery of its professional fees in pursuing the inclusion of its provisions, to the extent that they are not recovered by agreement with the Applicant, as a separate costs application that will follow within 28 days of the Examination closing.

Yours faithfully

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SCHEDULE [16]

PART [1]

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1. For the protection of the statutory undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and the statutory undertaker, have effect.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

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

“apparatus” means—

(a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that statutory undertaker and any of its entities;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply and any of its entities; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker or any of its entities 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;

“authorised works” has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works;

“commence” has the same meaning as in article 2 of this Order and commencement shall 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 interests 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 the statutory undertaker (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 the statutory undertaker's approval a ground mitigation scheme;

“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 statutory undertaker 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;

“undertaker” means the undertaker as defined in article 2 of this Order;

“statutory undertaker” means, as appropriate—

(c) National Grid Electricity Transmission plc, an electricity undertaker being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

(d) National Grid Gas plc, a gas transporter within the meaning of Part 1 of the Gas Act 1986.

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22;

3. Except for paragraphs 4 (*apparatus in stopped up streets*), 9 and 10 (*retained apparatus: protection*), 11 (*expenses*) and 12 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the statutory undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Undertakers in stopped up streets

4.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (*temporary stopping up of streets and rights of way*), a statutory undertaker will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 17 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the statutory undertaker and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the statutory undertaker or any interruption in the supply of electricity and/or gas, as the case may be, by the undertaker is caused, the undertaker must bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to the statutory undertaker for any loss sustained by it; and
- (b) indemnify the statutory undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that statutory undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a statutory undertaker or its contractors or workmen; and the statutory undertaker will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by the statutory undertaker, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6. (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 may not acquire any land interest or apparatus or override any easement and/or other interest of the statutory undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the statutory undertaker and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the statutory undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the statutory undertaker and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker, and it will 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 authorised works.

(3) The undertaker and the statutory undertaker 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 the statutory undertaker and/or other enactments relied upon by the statutory undertaker 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 the statutory undertaker under paragraph 9 or 10 or any other paragraph of this part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 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 a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraph (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 the statutory undertaker 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 the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by 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 or land secured by 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, the statutory undertaker 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 the statutory undertaker 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 or land secured by 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 the statutory undertaker and the undertaker.

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

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for the statutory undertaker facilities and rights in land for the construction, use, maintenance and protection 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 the statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under paragraph 8(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 the statutory undertaker 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 will be referred to arbitration in accordance with paragraph 16 (*Arbitration*) of this Part of this Schedule and, the arbitrator shall make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to the statutory undertaker a plan and, if reasonably required by the statutory undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the statutory undertaker under sub-paragraph (1) must include a method statement and describe—

- (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; and
- (f) any intended maintenance regimes.

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

(4) Any approval of the statutory undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the statutory undertaker 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.

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

(7) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the statutory undertaker in accordance with sub-paragraphs (5) or (7) 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 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes 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 authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will 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 the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the statutory 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/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) 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 the statutory undertaker 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 11.

Retained apparatus: Protection: Electricity Undertakers

10.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker must submit to the statutory undertaker a plan of the works to be executed and seek from the statutory undertaker 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 to the statutory undertaker under sub-paragraph (1) must include a method statement and describe—

- (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) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (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 ongoing 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 the undertaker'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 (2) or (3) apply until the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker required under sub-paragraphs (2) or (3)—

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

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the statutory undertaker 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker shall 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 the statutory undertaker in accordance with sub-paragraphs (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 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes 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 authorised 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 will 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 the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (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 promote must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by the statutory undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the statutory undertaker as a consequence of the statutory undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); and/or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the statutory undertaker;
- (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 will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part 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, is not determined by arbitration in accordance with article 34 (*arbitration*) 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 the statutory undertaker by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will 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 will 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 a statutory undertaker in respect of works by virtue of sub-paragraph (1) will, 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 the statutory undertaker 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

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 Part of 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 the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the statutory 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 accord with the approved plan.

(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 the statutory undertaker, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

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

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the statutory undertaker and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker 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

14.(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 7(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs (9) or (10), the undertaker shall use its best endeavours to co-ordinate the execution of the works 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 the statutory undertaker’s undertaking and the statutory undertaker shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the

undertaker or the taking of action by the statutory undertaker, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9, 10 and 11(5) any difference or dispute arising between the promoter and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and the undertaker, be determined by arbitration in accordance with article 35 (*arbitration*).

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