



Department for  
Business, Energy  
& Industrial Strategy

3 Whitehall Place  
London  
SW1A 2AW

Telephone : +44 (0) 300 068 5770  
e-mail: [giles.scott@beis.gov.uk](mailto:giles.scott@beis.gov.uk)  
Web: [www.gov.uk/beis](http://www.gov.uk/beis)

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Your Ref:

Our Ref: EN010071

Date: 13 DECEMBER 2016

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Dear Sir/Madam

**Planning Act 2008 (as amended) and the Infrastructure Planning  
(Examination Procedure) Rules 2010 (as amended) –**

**Application by the North London Waste Authority (“the Applicant”) for an  
Order Granting Development Consent for the North London Heat and Power  
Project**

**REQUEST FOR COMMENTS FROM THE APPLICANT, THE NATIONAL GRID AND  
ANY LANDOWNERS AFFECTED BY COMPULSORY ACQUISITION ON THE  
APPLICATION FOR THE PROPOSED NORTH LONDON HEAT AND POWER  
PROJECT- EN010071**

Following the completion of the examination on 24 August 2016, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) on 24 November 2016. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

There are several issues on which the Secretary of State should be grateful if parties identified in bold below could provide an update or further clarification.

**Time Limit for Exercise of Authority to Acquire Land Compulsorily**

The Secretary of State notes that Article 20 of the proposed development consent order for the North London Heat and Power Project (“the proposed Order”) allows the undertaker a period of 7 years, rather than the usual 5 years, to exercise its Compulsory Acquisition powers. The Secretary of State notes the information already provided by the Applicant in the application and during the examination to justify this. However, in order to consider this matter fully, the Secretary of State requests that the **Applicant** provide further project specific detail as to why the 7 year period is

necessary and proportionate in this case. The Secretary of State would also be interested in comments from **any landowners affected by compulsory acquisition** on this point.

### **Plot 21 – New Footpath**

The Secretary of State has considered the relationship between the proposed Order and 'The National Grid (North London Reinforcement Project) Order 2014' ("the North London Reinforcement Order"). The Secretary of State notes the joint analysis of the potential interactions between the DCOs provided by the Applicant and National Grid during the course of the examination. This identified that if the new footpath to be created on Plot 21 comes into existence before the North London Reinforcement Order works are carried out it would need to be temporarily stopped up whilst those works take place. However, the National Grid does not have any express powers in the North London Reinforcement Order to stop up or divert this new footpath. The Secretary of State invites the **Applicant** and **National Grid** to comment on whether, and if so on what terms, a further power should be included within the proposed Order to allow for the new footpath to be temporarily stopped up or diverted on request by the National Grid for a reasonable period sufficient for works under the North London Reinforcement Order to be carried out.

### **Protective Provisions – National Grid**

The Secretary of State is minded to include the protective provisions attached to this letter and to consider that these provide sufficient protection for National Grid's interests. The Secretary of State invites comments from **National Grid** and the **Applicant** on the adequacy of these protective provisions.

**The deadline for any response is 5 January 2017.**

Responses to the points outlined in this letter should be submitted by email to [NLHPP@pins.gsi.gov.uk](mailto:NLHPP@pins.gsi.gov.uk). Please send any hard copy response to North London Heat and Power Project Team, Secretary of State for Business, Energy and Industrial Strategy c/o the Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team.

Your response will be published on the North London Heat and Power project page of the Planning Portal website as soon as possible after 5 January 2017.

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the North London Heat and Power Project, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

**Giles Scott**

Giles Scott  
Head of Energy Infrastructure Planning and Coal Liabilities

# SCHEDULE 13

## PROTECTIVE PROVISIONS

### PART 5

For the protection Protection of National Grid as electricity Electricity and gas undertaker 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 the statutory undertaker for the purposes of electricity supply, transmission or distribution and any of its entities;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply and any of its entities;
- (c) 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 supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;
- (d) “authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this 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;

“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—

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

(b) National Grid Gas Plc as 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 6(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 6(2) or otherwise; and

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

3. Except for paragraphs 4 (apparatus of statutory undertakers ~~in stopped up streets~~), 8 (retained apparatus: protection gas undertakers), 9 (retained apparatus: protection: electricity undertakers), ~~10~~10 (expenses) and ~~11~~11 (indemnity) **of this Part** 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 **Part 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 Statutory Undertakers ~~in stopped up streets~~**

4.—(1) Subject to paragraph 4(2), if as a consequence of the exercise of the powers of this Order access to the apparatus is **to be** materially obstructed, the undertaker must **first give the statutory undertaker 14 days written notice of its intention, and** provide such reasonable alternative means of access to such apparatus as will enable the statutory undertaker to operate, maintain, repair or replace, or use the apparatus.

(2) In the event of an emergency, the statutory undertaker will be at liberty to access and execute and do all such works and things in, upon or under the Order land if it reasonably considers that immediate measures must be taken. In such circumstances, the statutory undertaker must notify the undertaker as soon as reasonably practicable of such emergency measures and must provide details of the emergency measures and any alternative means of access to the relevant part of the Order land so far as is reasonably safe and practicable.

### **Protective works to Buildings**

5.—(1) In relation to plot 4 the undertaker, in exercising the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to materially obstruct 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 gas, as the case may be, by the statutory 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 paragraph 5(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.

### **Removal of apparatus**

6.—(1) If 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~~ or the statutory undertaker has confirmed that no alternative apparatus is required.

(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.

### **Facilities and rights for alternative apparatus**

7.—(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 statutory undertaker and the 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 7(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 15 (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**

8.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to the statutory undertaker a plan of the works to be carried out 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 paragraph 8(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 paragraphs 8(1) and 8(2) apply until the statutory undertaker has given written approval of the plan so submitted, ~~such approval only to be withheld where such works would pose a risk to safety or the integrity of any of the statutory undertaker's apparatus.~~ Subject to compliance with the approval process in paragraph 16 (approval process), if, 56 days after the details set out in paragraph 8(2) have been submitted to the statutory undertaker, the statutory undertaker has not notified the undertaker of its disapproval or grounds of disapproval, the statutory undertaker will be deemed to have approved the details.

(4) Any approval of the statutory undertaker required under paragraph 8(2)—

- (a) may be ~~accompanied by~~ given subject to reasonable ~~recommendations~~ conditions for any purpose mentioned in paragraph 8(5) or 8(7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which paragraphs 8(1) and 8(2) apply, the statutory undertaker may ~~propose reasonable recommendations~~ 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 necessary means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under paragraph 8(1) or as relevant paragraph 8(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 ~~recommendations~~ requirements as may be made in accordance with paragraphs 8(5) or 8(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 (the statutory undertaker to provide confirmation of whether it is satisfied or not within 14 days of the completion of the relevant protective works) 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 paragraphs 8(5) or 8(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 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 paragraph 8(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 paragraphs 8(5), 8(6) or 8(7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 8(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 (indemnity).

### **Retained apparatus: Protection: Electricity 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 of the works to be ~~executed~~carried out and seek from the statutory undertaker details of the underground extent of their electricity tower foundations. The statutory undertaker must provide those details within 14 days of the request

(2) The plan to be submitted to the statutory undertaker under paragraph 9(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 paragraph 9(1) must, in addition to the matters set out in paragraph 9(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 statutory undertaker's engineers; and
- (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 paragraphs 9(2) or 9(3) apply until the statutory undertaker has given written approval of the plan so submitted, ~~such approval only to be withheld where the works would pose a risk to safety or the integrity of any apparatus.~~ Subject to compliance with paragraph 16 (approval process), if, 56 days after the details set out in paragraph 9(2) have been submitted to the statutory undertaker, the statutory undertaker has not notified the undertaker of its disapproval or grounds of disapproval, the statutory undertaker will be deemed to have approved the details.

(5) Any approval of the statutory undertaker required under paragraphs 9(2) or 9(3)—

- (a) may be ~~accompanied by~~given subject to reasonable ~~requirements~~conditions for any purpose mentioned in paragraphs 9(6) or 9(8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which paragraphs 9(2) or 9(3) apply, the statutory undertaker may ~~propose reasonable recommendations~~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 necessary means of access to any apparatus.

(7) Works to which this paragraph applies must only be ~~executed in~~carried out in accordance with the plan, submitted under paragraph 9(1) or as relevant paragraph 9(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 ~~recommendations~~requirements as may be made in accordance with paragraphs 9(6) or 9(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 (the statutory undertaker to provide confirmation of whether it is satisfied or not within 14 days of the completion of the relevant protective works) 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 paragraphs 9(6) or 9(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 6(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 paragraph 9(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 paragraphs 9(6), 9(7) and 9(8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 9(12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker 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

**10.**—(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 reasonably and properly 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~~carrying out of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) in connection with the cost of the carrying out of any diversion work; and
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus; and
- (c) the carrying out of protective works; and
- (d) 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; ~~and~~  
(e) the approval of plans.

(2) There will be deducted from any sum payable under paragraph 10(1) the value of any apparatus removed under the provisions of this Part of this Schedule, 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 35 (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 paragraph 10 (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) must, 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**

**11.—**(1) Subject to paragraphs 11(2) and 11(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 (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 and properly incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker for any other proper and reasonable 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 with the agreement of and on behalf of the undertaker or in accordance with a plan submitted by the undertaker and approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision will not (unless paragraph 11(3) applies), excuse the undertaker from liability under the provisions of paragraph 11(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 paragraph 11(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 paragraph 11(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) The statutory undertaker must give the undertaker reasonable written 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 taking into account undertaker’s representations.

### **Enactments and agreements**

12. 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**

13.—(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 6(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs 8 or 9 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**

14. 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**

### **Arbitration**

15. Any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 3435 (arbitration).

### **Approval Process**

16. When submitting the plans to the statutory undertaker for approval under paragraph 7 or paragraph 8 the undertaker must send the plans to the statutory undertaker (in hard copy ~~only~~) by recorded post ~~to National Grid Plant Protection, Brick Kiln Street, Hinkley, Leicestershire LE10 0NA and the registered office of National Grid (or by email to such other address as National Grid the statutory undertaker may notify the undertaker in writing from time to time) and (by email) to plantprotection@nationalgrid.com~~

and clearly bearing the name of the project, contact details for responses and citing the relevant periods for response pursuant to ~~these protective provisions~~ this Part of this Schedule, unless otherwise agreed with statutory undertaker.