

The Eggborough CCGT Project

Document Ref: 2.13
PINS Ref: EN010081

The Eggborough CCGT (Generating Station) Order

Land at and in the vicinity of the Eggborough Power Station site,
near Selby, North Yorkshire, DN14 0BS

Explanatory Note on Changes to Draft DCO - Deadline 8

The Planning Act 2008



Applicant: Eggborough Power Limited
Date: February 2018

DOCUMENT HISTORY

Document Ref	2.13		
Revision	1.0		
Author	Pinsent Masons (PM)		
Signed	Emma Cottam-Clough	Date	28.02.18
Approved By	Nick McDonald (NM)		
Signed	NM	Date	28.02.18
Document Owner	PM		

THE EGGBOROUGH CCGT PROJECT

RESPONSE TO THE CHANGES PROPOSED TO THE DRAFT DCO BY THE EXAMINING AUTHORITY AND EXPLANATION OF CHANGES MADE TO THE DRAFT DCO SUBMITTED AT DEADLINE 8

Set out below is the Applicant's response to the Examining Authority's proposed changes to the Draft Development Consent Order, as issued on 19 February 2018. The Applicant has added a column to the Examining Authority's table in which to provide the response. The Applicant is also submitting an updated Draft Development Consent Order for Deadline 8 which reflects the position below.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
Page 4	<i>"The application was examined by the Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a)."</i>	<i>"The application was examined by the Examining authority Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a)."</i>	"Examining Authority" should be capitalised	This amendment is accepted and the dDCO has been updated.
PART 1				
Article 2 "Interpretation" "apparatus"	<i>"Has the same meaning as in Part 3 of the 1991 Act save that "apparatus" further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications"</i>	Typographical error	The ExA recommends a consistent use of either commas or semicolons in the text, not both.	This amendment is accepted and the dDCO has been updated.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>equipment and electricity cabinets;</i>			
Article 2 "Interpretation" "Maintain"	<i>"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of the authorised development, to the extent that such activities have been assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;</i>	No changes	The ExA has noted NYCC/SDC submission on this matter at Deadline 5 [REP5-011]. But as <i>"identified"</i> has since been removed, the ExA does not propose any further changes to this definition.	Noted. No change required.
PART 2				
Article 7(1) "Consent to transfer benefit of the Order"	<i>"(1) The undertaker may—"</i>	<i>"(1) Subject to paragraph (4), the undertaker may— "</i>	The ExA considers Article 7(1) should be subject to paragraph (4) – (the power to assign benefit is subject to the approval of the SoS). The ExA recommends the Article is amended as suggested.	This amendment is accepted and the dDCO has been updated.
Article 7(5)(6)(7)(8)		<i><u>"(5) Where the consent of the Secretary of State is not required under paragraph</u></i>	The SoS has in other DCOs required notification of a transfer of benefit if his approval of such action is not required.	The principle of this amendment is accepted however the Applicant has deleted sub-paragraph (6(f)).

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
<p>"Consent to transfer benefit of the Order"</p>		<p><u>(4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).</u></p> <p><u>(6) The notification referred to in paragraph (5) must state—</u></p> <p><u>(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;</u></p> <p><u>(b) subject to paragraph (7), the date on which the transfer will take effect;</u></p> <p><u>(c) the powers to be transferred or granted;</u></p> <p><u>(d) pursuant to paragraph</u></p> <p><u>(3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;</u></p>	<p>The ExA therefore recommends paragraphs 5 through to 8 are added to the Article.</p>	<p>This is required as the document effecting the transfer will usually be a confidential contract containing detailed commercial terms, not relevant to the Secretary of State.</p> <p>The Secretary of State is protected pursuant to sub-paragraph (8), as the notice given in accordance with sub-paragraph (6) must be signed by both the undertaker and the person to whom the benefit is to be transferred.</p> <p>A consequential amendment has been made to include a definition of "working days" in article 2 of the DCO.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<p><u>(e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and</u></p> <p><u>(f) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.</u></p> <p><u>(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.</u></p> <p><u>(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.</u></p>		

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
PART 3				
Article 9 "Power to alter layout, etc., of streets"	<i>"(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—"</i>	<i>"(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—"</i>	<p>The ExA considers paragraph (2) should be subject to paragraphs (3) and (4).</p> <p>There is also a double use of "the undertaker may" in this paragraph, which has not been used elsewhere in the draft DCO. The ExA recommends one is deleted.</p>	This amendment is accepted and the dDCO has been updated.
PART 4				
Article 14(8)(a) "Discharge of water"	<i>"(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(a) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage</i>	<i>"(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency <u>Homes England</u>, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(a) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage</i>	Homes England replaced the Homes and Communities Agency in January 2018.	This amendment is accepted and the dDCO has been updated.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>undertaker or an urban development corporation; and"</i>	<i>undertaker or an urban development corporation; and"</i>		
PART 5				
<p>Article 26(2)</p> <p>"Temporary use of the land for carrying out the authorised development"</p>	<p><i>"(2) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land."</i></p>	<p><i>"(2) Not less than fourteen <u>three months</u> before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry <u>and of the period for which temporary possession of the land is to be taken on the owners and occupiers of the land."</u></i></p>	<p>Article 2(8) dis-applies the Neighbourhood Planning Act 2017(the 2017 Act) to this Article. Nevertheless, the Act makes specific provisions for temporary possessions and the ExA is not clear why such a departure from the 2017 Act is justified. Specifically, timescales for notification period is three months in the 2017 Act, and the notice requires a statement on the period for which the acquiring authority is to take possession.</p> <p>The ExA recommends the time period is changed and "and of the period for which temporary possession of the land is to be taken" is inserted to reflect and align with the 2017 Act.</p>	<p>The Applicant does not consider that these amendments are required.</p> <p>As set out in the Applicant's "Explanatory Note on Changes to the draft DCO" (Document Ref 2.9, submitted for Deadline 5), it is appropriate to dis-apply the relevant provisions of the Neighbourhood Planning Act 2017 as that legislation – whilst made - has not yet come in to force.</p> <p>Furthermore, it is expected that detailed regulations will be required to give effect to the temporary possession provisions; details of which are as yet currently unknown. It is therefore inappropriate to apply the provisions of</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
				<p>legislation which is not yet in force and of which details - such as transitional provisions etc, - are not yet known.</p> <p>The Applicant notes that there is precedent for this approach, with the recently made "M20 Junction 10a Development Consent Order 2017" (as made by the Secretary of State on 1 December 2017 and which came in to force on the 22 December 2017), which did not include these provisions, as well as the A19/A184 Testo's Junction Improvement project which is currently in Examination.</p>
<p>Article 26(9) "Temporary use of the land for carrying out the authorised development"</p>	<p><i>"(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it."</i></p>	<p>Suggested Additional Article <u>"Counter-notice</u> <u>(12) This section applies where an acquiring authority gives a notice of intended entry under section 20 in</u></p>	<p>The 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or</p>	<p>For the reasons as set out above, the Applicant does not consider that these amendments are required.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<p><u>relation to land to a person (the "owner") who—</u></p> <p><u>(a) has a leasehold interest in, and the right to occupy, the land, or</u></p> <p><u>(b) has the freehold interest in the land.</u></p> <p><u>(13) The owner may give the acquiring authority a counter-notice which provides that the total period of time for which the land may be subject to temporary possession is limited to—</u></p> <p><u>(a) 12 months where the land is or is part of a dwelling, or</u></p> <p><u>(b) 6 years in any other case.</u></p> <p><u>(14) If the owner falls within subsection (1)(a), the owner may instead give the acquiring authority a counter-notice which provides that the authority may not take</u></p>	<p>permanent acquisition was desirable.</p> <p>The ExA seeks comments from the Applicant as to whether a counter notice provision/article in the DCO is required. The ExA suggests that such an Article be based on the wording of s21 of the 2017 Act, and added after sub-paragraph (11).</p>	

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<p><u>temporary possession of the land.</u></p> <p><u>(15) A counter-notice under subsection (2) or (3) must be given within the period of 28 days beginning with the day on which the notice of intended entry was given.</u></p> <p><u>(16) On receiving a counter-notice under subsection (2), the acquiring authority must decide whether to—</u></p> <p><u>(a) accept the counter-notice,</u></p> <p><u>(b) withdraw the notice of intended entry, or</u></p> <p><u>(c) proceed as if the land were subject to compulsory acquisition.</u></p> <p><u>(17) On receiving a counter-notice under subsection (3), the acquiring authority must decide whether to—</u></p>		

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<p><u>(a) accept the counter-notice, or</u></p> <p><u>(b) proceed as if the land were subject to compulsory acquisition.</u></p> <p><u>(18) The acquiring authority must give a notice of its decision in response to a counter-notice to the owner within the period of 28 days beginning with the day on which the counter-notice was given.</u></p> <p><u>(19) If the acquiring authority decides to proceed as if the land were subject to compulsory acquisition—</u></p> <p><u>(a) the instrument which authorised temporary possession of the land is to be treated as authorising the compulsory acquisition of the owner's interest in the land (as well as the temporary possession of the land, if</u></p>		

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<p><u>there are other interests in it), and</u></p> <p><u>(b) the authority may proceed as if it had given any notice or taken any step required in relation to the authorisation or confirmation of the instrument.</u></p> <p><u>(20) See Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 for options available to the owner if, in response to a counter-notice under this section, the acquiring authority decides to purchase the owner's interest in part of a house, building or factory.</u></p> <p><u>(21) Nothing in this section prevents an acquiring authority acquiring land compulsorily after accepting a counter-notice or withdrawing a notice of</u></p>		

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<i>intended entry in respect of that land."</i>		
Article 28(1) "Statutory undertakers"	<i>"(1) Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—"</i>	<i>"(1) Subject to article 17(4) and subject to the provisions of Schedule 12 (protective provisions), the undertaker may—"</i>	Article 17(4) excludes article 28, but article 28 does not state that it is subject to article 17(4). The ExA recommends the Article is amended accordingly.	This amendment is accepted and the dDCO has been updated.
SCHEDULE 2				
"Interpretation" "Permitted preliminary works"	<i>"Permitted preliminary works" means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10 to the extent that those are within the area of the existing coal- fired power station, including environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site</i>	<i>"Permitted preliminary works" means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10 to the extent that those are within the area of the existing coal- fired power station, including <u>consisting of</u> environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of</i>	The ExA recommends "including" should be changed to "consisting of" to ensure this permitted preliminary works is exhaustive and cannot be added to.	This amendment is accepted and the dDCO has been updated.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<p><i>security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;"</i></p>	<p><i>enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;"</i></p>		
<p>Requirement 6(1) "Landscaping and biodiversity protection management and enhancement"</p>	<p><i>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until a landscaping and biodiversity protection plan for that part has been submitted to and, after consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority."</i></p>	<p><i>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until a landscaping and biodiversity protection plan for that part has been submitted to and, after consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority."</i></p>	<p>As currently worded, the permitted preliminary works would (PPW) commence prior to a landscape and biodiversity protection plan being submitted to the relevant planning authority. Such PPW works could prejudice biodiversity on the site and could materially undermine, alter or affect the plan required by Requirement 6.</p> <p>The ExA recommends that "save for the permitted preliminary works" be</p>	<p>This amendment is accepted and the dDCO has been updated.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
			<p>deleted from this Requirement. This would require the landscaping and biodiversity protection plan required by Requirement 6 to be submitted prior to PPW works commencing to ensure such works do not prejudice wildlife and their habitat, which would be agreed and regulated by the relevant planning authority.</p> <p>The ExA notes that this position has already been agreed by the Applicant and NYCC/SDC, as the removal of "save for the permitted preliminary works" has been removed in the version contained in the draft SoCG submitted at Deadline 7 [REP7-003].</p>	
<p>Requirement 6(5) "Landscaping and biodiversity protection</p>	<p><i>"(5) The plan submitted and approved pursuant to subparagraph (4) must include details of—</i></p>	<p><i>"(5) The plan submitted and approved pursuant to subparagraph (4) must include details of—</i></p>	<p>The ExA notes revised wording as submitted in the draft SoCG between the Applicant and NYCC/SDC [REP7- 003] and is content to recommend adding "the</p>	<p>This amendment is accepted and the dDCO has been updated.</p> <p>The Applicant further notes that the amendment to sub-</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
management and enhancement"	<p>(a) all new shrub and tree planting;</p> <p>(b) measures to enhance existing shrub and tree planting that is to be retained;</p> <p>(c) measures to enhance biodiversity and habitats;</p> <p>(d) an implementation timetable; and</p> <p>(e) annual landscaping and biodiversity management and maintenance."</p>	<p>(a) <u>implementation and management</u> of all new shrub and tree planting;</p> <p>(b) measures to enhance <u>and maintain</u> existing shrub and tree planting that is to be retained;</p> <p>(c) measures to enhance biodiversity and habitats;</p> <p>(d) an implementation timetable; and</p> <p>(e) annual landscaping and biodiversity management and maintenance."</p>	<p>implementation and management of" to the start of sub- paragraph (a), and "and maintain" to sub-paragraph (b).</p>	<p>paragraph (b) is consistent with that requested by Selby District Council and North Yorkshire County Council.</p>
<p>Requirement 15(1)</p> <p>"Contaminated land and groundwater"</p>	<p>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that</p>	<p>"(1) No part of the authorised development must commence save for the permitted preliminary works until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that</p>	<p>As currently worded, the works to assess ground conditions permitted under 'permitted preliminary works' could be carried out prior to a scheme to deal with the contamination of land as required by Requirement 15. The necessary permitted preliminary ground conditions works could be</p>	<p>The principle of limiting the scope of works which can take place before commencement is accepted by the Applicant.</p> <p>However, the Applicant considers it is appropriate to permit geotechnical surveys and other surveys for the purpose of assessing ground</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority."</i>	<i>part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority."</i>	<p>unregulated and uncontrolled, and could potentially undermine the scheme to deal with land contamination itself. This is of concern to the ExA.</p> <p>The ExA recommends that "save for the permitted preliminary works" be deleted. This would require the scheme to deal with contamination of land required by Requirement 15 to also specifically set out those works required by the applicant as part of the permitted preliminary works, which would be agreed and regulated by the relevant planning authority.</p>	<p>conditions to take place <u>before</u> the discharge of this requirement, so as to enable the necessary surveys required for the purposes of discharging the condition to be undertaken. The dDCO has been updated accordingly.</p>
<p>Requirement 16(1) "Archaeology"</p>	<p><i>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until a written scheme of investigation for that part has been submitted to and, after consultation with North</i></p>	<p><i>"(1) No part of the authorised development must commence save for the permitted preliminary works until a written scheme of investigation for that part has been submitted to and, after consultation with North</i></p>	<p>As currently worded, the archaeological investigation works permitted under 'permitted preliminary works' could be carried out prior to the agreement of a written scheme of investigation (WSI) as required by Requirement</p>	<p>This amendment is accepted and the dDCO has been updated.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority."</i>	<i>Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority."</i>	<p>16. The necessary permitted preliminary archaeological investigation works could be unregulated and uncontrolled, and could potentially undermine the WSI itself. This is of concern to the ExA.</p> <p>The ExA recommends that "save for the permitted preliminary works" be deleted. This would require the WSI required by Requirement 16 to also specifically set out those works required by the Applicant as part of its permitted preliminary works, which would be agreed and regulated by the relevant planning authority.</p>	
<p>Requirement 17(1) "Protected Species"</p>	<p><i>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until further survey work for that part has been carried out to establish whether any</i></p>	<p><i>"(1) No part of the authorised development must commence, save for the permitted preliminary works, until further survey work for that part has been carried out to establish whether any</i></p>	<p>As above, the ExA is concerned that PPW works could undermine the "further survey work" Requirement 17 requires should protected species be identified.</p>	<p>This amendment is accepted and the dDCO has been updated.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development."</i>	<i>protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development."</i>	The ExA recommends "save for the permitted preliminary works" be removed from this Requirement.	
SCHEDULE 11				
Paragraph 4(2)(b) "Appeals"	<i>"(b) The Secretary of State is to appoint a person within twenty business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the "start date" for the purposes of this subparagraph (2);"</i>	<i>"(b) The Secretary of State is to appoint a person within twenty business days of <u>as soon as reasonably practicable after</u> receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the "start date" for the purposes of this subparagraph (2);"</i>	The ExA is not convinced of the enforceability of this paragraph in the event the SoS did not appoint a person within twenty business days, or indeed whether the SoS should be compelled to do so within the time limit specified. The ExA recommends this be amended as suggested. The SoS accepted such wording on the Wrexham DCO.	This amendment is accepted and the dDCO has been updated.
SCHEDULE 12, PART 1				
Paragraph 2(d)	<i>"National Grid" means either— (a) National Grid Electricity Transmission PLC (Company</i>	<i>"National Grid" means either— (a) National Grid Electricity Transmission PLC (Company</i>	Both NGET and NGG are already defined terms in Article 2, and furthermore the suggested definition of	This amendment is accepted and the dDCO has been updated.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<p><i>No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or</i></p> <p><i>(b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH, as the context shall require"</i></p>	<p><i>No. 2366977) whose registered office is at 1-3 Strand, or London, WC2N 5EH; or</i></p> <p><i>(b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH, as the context shall require</i></p>	<p>National Grid is only used in para 5(a).</p> <p>The ExA recommends this definition or is deleted.</p>	
<p>Paragraph 5</p>	<p><i>"5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not—</i></p> <p><i>(a) where the utility undertaker is National Grid, acquire any land interest or apparatus or override any easement and/or other interest otherwise than by agreement; or</i></p> <p><i>(b) in the case of any other utility undertaker, acquire any apparatus otherwise than by agreement</i></p>	<p><i>"5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not—</i></p> <p><i>(a) where the utility undertaker is National Grid <u>NGG or NGET</u>, acquire any land interest or apparatus or override any easement and/or other interest otherwise than by agreement; or</i></p> <p><i>(b) in the case of any other utility undertaker, acquire any</i></p>	<p>See above comments for Schedule 11 Paragraph 2(d).</p>	<p>This amendment is accepted and the dDCO has been updated.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
		<i>apparatus otherwise than by agreement."</i>		
SCHEDULE 12, PART 3				
Paragraph 17(3) "Interpretation"	<i>"(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply."</i>	No changes	The ExA is concerned that the revised wording as suggested by CRT in its response to Deadline 6 [REP6-008] would allow its Code of Practice to override the DCO which would be a statutory instrument, and not provide the SoS with any certainty as to what the DCO would be permitting. The ExA does not recommend the revised wording be changed.	The Applicant notes this position. No amendments to the dDCO are required.
Paragraph 21(1) "Approval of plans, protective works etc"	<i>"(1) The undertaker shall before commencing construction of any specified work including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 14 days of the submission of the plans</i>	<i>"(1) The undertaker shall before commencing construction of any specified work including any temporary works supply to CRT proper and sufficient plans of that work, <u>on CRT forms</u>, and such further particulars available to it as CRT may within 14 days of the submission of the</i>	The ExA is content to add the words "on CRT forms" at the request of CRT [REP6-008] to ensure CRT are not disadvantaged during this process. The suggested additional wording for "application fee etc" is not considered necessary as this	The amendment in respect of information to be provided on CRT forms is accepted and the dDCO has been updated. The Applicant notes the ExA's comments regarding the "application fee", and can confirm to the ExA that this provision had previously been accepted in principle, subject

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration."</i>	<i>plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration."</i>	is set out in Paragraph 30(1)(b).	to understanding details of the fee. The Applicant contacted the CRT on 9 January 2018 to understand the likely amount of the fee however no response has been received. In light of the ExA's explanation set out above, the Applicant is content to accept the ExA's recommendations in this respect and the dDCO has not been amended further.
Paragraph 21(2) "Approval of plans, protective works etc"	<i>"(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub- paragraph (1) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be</i>	<i>"(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub- paragraph (1)) have been supplied to received by CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be</i>	The ExA considers the amendment suggested by CRT [REP6-008] is reasonable for the 35-day time limit should not to commence until the CRT are in receipt of the material. Missing closed bracket at the end of the second reference to "paragraph (1)"	This amendment is accepted and the dDCO has been updated.

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>deemed to have approved the plans as submitted."</i>	<i>deemed to have approved the plans as submitted."</i>		
<p>Paragraph 30(1)(e)</p> <p>"Protected Provisions– Repayment of CRT's fees, etc"</p>	<p><i>"(e) In constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by CRT to ensure the safe navigation of the waterway save that nothing shall require CRT to construct and/or carry out any measures."</i></p>	<p><i>"(e) In constructing and/or carrying out any measures related to any specified works or protective works the authorised development which are is reasonably required by CRT to ensure the safe navigation of the waterway save that nothing shall require CRT to construct and/or carry out any measures."</i></p>	<p>The ExA is content to accept the suggested amendment by CRT [REP6-008] that "the authorised development which is..." replaces "any specified works or protective works which are..." in the interests of clarity.</p>	<p>The Applicant does not consider that this amendment is required.</p> <p>The Applicant notes that this wording – in relation to "specified" and "protective" works was agreed by Ward Hadaway LLP in an email dated 4 January 2018 and the Applicant has not received an explanation as to the reason for the change from that agreed approach.</p> <p>The reference to "specified works" and "protective works" is to ensure consistency with the definitions included in paragraph (17). The Applicant also notes that the inclusion of "protective works" offers greater protection to CRT, as it includes works which may be required, as a result of the</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
				<p>specified works - comprised within Work No 4.</p> <p>These protective provisions are intended to apply to, and will only ever be relevant to, Work No 4 (and any required protective works) and it would therefore be outwith the intended scope of the protective provisions if the CRT was able to recover costs arising from the authorised development as a whole.</p>
<p>Paragraph 30(2)(3)(4)</p> <p>“Protected Provisions – Repayment of CRT’s fees, etc”</p>	<p><i>“(2) If CRT considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), CRT will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—</i></p>	<p><i>“(2) If CRT considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), CRT will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—</i></p>	<p>As Paragraph 30(1) already contains a similarly worded restriction, the ExA accepts the suggestion of CRT [REP6-008] and recommends these sub-paragraphs are not necessary and should be deleted.</p>	<p>As has been explained previously, the Applicant is unable to agree to these amendments.</p> <p>The Applicant does not agree that the wording proposed by CRT - which just limits costs to those “reasonably incurred” – is similar to the provisions contained in sub-paragraphs (2) - (4).</p> <p>These additional paragraphs seek to give the parties an</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<p><i>(a) provide confirmation to CRT that the estimate is agreed and pay to CRT, by the date stipulated, that fee, charge, cost or expense; or</i></p> <p><i>(b) provide confirmation to CRT that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.</i></p> <p><i>(3) CRT must take in to account any representations made by the undertaker in accordance with this paragraph 30 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph</i></p> <p><i>(1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if</i></p>	<p><i>(a) provide confirmation to CRT that the estimate is agreed and pay to CRT, by the date stipulated, that fee, charge, cost or expense; or</i></p> <p><i>(b) provide confirmation to CRT that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.</i></p> <p><i>(3) CRT must take in to account any representations made by the undertaker in accordance with this paragraph 30 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph</i></p> <p><i>(1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the</i></p>		<p>opportunity to agree, and for the Applicant the opportunity to mitigate, those costs before they are demanded. This drafting does not grant the Applicant a right of veto on those costs, nor does it allow the Applicant to avoid paying those costs. The CRT's interests would therefore remain protected; even where the Applicant did not agree the cost (subject to any dispute provisions).</p> <p>The Applicant notes the CRT's written submission at Deadline 6, however does not consider that affording the parties an opportunity to discuss those costs - within the time limits specified – could conceivably have any detrimental impact on the public interest. Firstly the CRT ultimately will be paid its costs, since the Applicant has no right of veto, and secondly there are other paragraphs in</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<p><i>any) and the date by which this is to be paid.</i></p> <p><i>(4) CRT must, when estimating and incurring any charge, cost or expense pursuant this paragraph 30, do so with a view to being reasonably economic and acting as if CRT were itself to fund the relevant fee, charge, cost or expense."</i></p>	<p><i>date by which this is to be paid.</i></p> <p><i>(4) CRT must, when estimating and incurring any charge, cost or expense pursuant this paragraph 30, do so with a view to being reasonably economic and acting as if CRT were itself to fund the relevant fee, charge, cost or expense."</i></p>		<p>the protective provisions which require the CRT's approval to works relating to the CRT's statutory navigation and which therefore protect the public interest.</p>
<p>Paragraph 32(2)(b)</p> <p>"Protected Provisions – Making good of detriment; compensation indemnity, etc"</p>	<p><i>"(b) By reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified and work or protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that CRT shall not be</i></p>	<p><i>"(b) By reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that CRT shall not</i></p>	<p>The ExA is content to make the recommended changes suggested by CRT [REP6-008]; which are to substitute "not be" with "only be" and to insert after "losses" with "which are reasonably foreseeable", to ensure CRT do not incur costs because of such works.</p>	<p>As has been explained by the Applicant previously, the Applicant is unable to agree to this amendment.</p>

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
	<i>entitled to recover any consequential losses from the any undertaker).</i> "	<i><u>only be entitled to recover any consequential losses which are reasonably foreseeable from the undertaker).</u></i> "		
Paragraph 32(6) "Protected Provisions – Making good of detriment; compensation and indemnity, etc"	"(6) The aggregate cap of the undertaker's gross liability shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause."	"(6) The aggregate cap of the undertaker's gross liability shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause."	<p>The ExA notes the Applicant's response [REP5-005] to its further written question CA 2.3 [PD-011] on this matter. However, the ExA considers that if the Applicant does not consider that there is any risk that liability to the CRT will exceed £5 million, then it subsequently follows that imposing an £5 million ceiling is unnecessary. The ExA is not persuaded on the evidence submitted that there should be any liability cap to CRT, and there is no burden of risk by removing it.</p> <p>The ExA recommends that Paragraph 32(6) be deleted.</p>	As has been explained by the Applicant previously, the Applicant is unable to agree to this amendment.
SCHEDULE 13				
Part 2	Tables 12 and 13 co- ordinates	Updated co-ordinates to Tables 12 and 13.	To be revised as per the agreed coordinates between	The Applicant notes this, and refers the ExA to the revised

Reference	Text as set out in draft DCO Version 5.0 [REP6-003]	ExA's recommended amendment	Reason and Notes	EPL's Response
Paragraph 3(4)(b) "Licensed Activities"			the Applicant and the Marine Management Organisation submitted by the applicant at Deadline 7 [REP7-002] and [REP7-004]	Tables 12 and 13 as updated in the dDCO.

REPEATED USE OF "SHALL"				
Article 11 Article 32 Schedule 12 Part 1 Schedule 12 Part 3	A11(8) – replace by "must" A11(9) – replace by "must" (first time) and "is to" (second time) A11(10) – replace by "must" A32(5), (7) and (8) – change to "must" A32(9) - change to "is to" A32(10) – change to "is to" Sch 12 Part 1 Para 2 – I have suggested this be deleted in any case Sch 12 Part 3 para 17(1) – delete "shall" Sch12 Part 3 para 17(2) – replace by "are to"	The Office of Parliamentary Counsel recommends that "shall" is not used in legislation. The ExA requests that this is replaced with "must" or "is/are." The ExA recommends the DCO is amended as set out.	The Applicant has amended the dDCO to take account of these changes, save for those to A11(9), A32(9) Schedule 12, Para 3, and Para 21(2). The context of these articles and the intention of the wording is such that "is to/must" would not be appropriate and the Applicant notes that the original drafting should remain.	

	<p>Sch 12 Part 3 para 18(1), (2), (3), (4), (6), (7) – replace by “<i>must</i>”</p> <p>Sch 12 Part 3 para 18(5) – replace by “<i>must</i>”, and in (5)(a) replace “<i>shall mean</i>” by “<i>means</i>”</p> <p>Sch 12 Part 3 para 19 – replace by “<i>must</i>” Sch 12 Part 3 para 20 (1), (2) – replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 20(3) – replace by “<i>are to</i>” (twice)</p> <p>Sch 12 Part 3 Para 20(4) – replace by “<i>are to</i>”</p> <p>Sch 12 Part 3 Para 21(1) – replace by “<i>must</i>” (twice)</p> <p>Sch 12 Part 3 Para 21(2) – replace by “<i>must</i>” (twice)</p> <p>Sch 12 Part 3 Para 21(3)(b) – replace by “<i>must</i>” (twice)</p> <p>Sch 12 Part 3 Para 21(4) – replace by “<i>must</i>” (first time) and “<i>is to</i>” (second time)</p>		
--	--	--	--

	<p>Sch 12 Part 3 Para 21(5) – replace by “<i>must</i>” (twice) Sch 12 Part 3 Para 22(1) and (1)(b) – replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 23, 24, 25(1), 25(3), 25(4) – replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 25(2) – replace “<i>shall authorise</i>” by “<i>authorises</i>”</p> <p>Sch 12 Part 3 Para 26 – replace by “<i>must</i>” (twice)</p> <p>Sch 12 Part 3 Para 27(1), (2), (2)(b), – replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 28(1) - replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 28(2) - replace by “<i>is to</i>”</p> <p>Sch 12 Part 3 Para 29, 30(1) - replace by “<i>must</i>”</p> <p>Sch 12 Part 3 Para 30(1)(c) - replace by “<i>is</i>”</p> <p>Sch 12 Part 3 Para 30(1)(e) - replace by “<i>is to</i>”</p> <p>Sch 12 Part 3 Para 31 - replace by “<i>is to</i>”</p>		
--	---	--	--

	<p>Sch 12 Part 3 Para 32(1) - replace by “is” (first time) and “must” (second and third times)</p> <p>Sch 12 Part 3 Para 32(2) - replace by “is to”</p> <p>Sch 12 Part 3 Para 32(2)(b) - replace “shall not” by “is not to”</p> <p>Sch 12 Part 3 Para 32(3) - replace “shall not” by “is not to”</p> <p>Sch 12 Part 3 Para 32(3) - replace “shall impose” by “imposes”</p> <p>Sch 12 Part 3 Para 32(5) - replace by “must” (first time) and “is to” (second time)</p> <p>Sch 12 Part 3 Para 32(6) - replace “shall be” by “is”</p> <p>Sch 12 Part 3 Para 33 - replace by “must”</p> <p>Sch 12 Part 3 Para 34 - replace by “is to”</p>		
--	---	--	--