

**From:** [REDACTED]  
**To:** [Immingham OCGT](#)  
**Subject:** EN010097 - VPI Immingham "B" Limited OCGT Project - written representation on behalf of Network Rail Infrastructure Limited - Deadline 2 [ADDGDD-Live.FID3030710]  
**Date:** 11 September 2019 11:41:49  
**Attachments:** [REDACTED]

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Dear Sir/Madam,

We are instructed by Network Rail Infrastructure Limited in relation to the VPI Immingham OCGT DCO application and previously submitted Relevant Representations on our client's behalf.

Please find attached Written Representations submitted on behalf of Network Rail Infrastructure Limited and a set of draft Network Rail Protective Provisions which are referred to in the Written Representations.

Regards,

**Julia Dixon**

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# APPLICATION BY VPI IMMINGHAM B LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE VPI IMMINGHAM OPEN CYCLE GAS TURBINE (OCGT) PROJECT

PLANNING INSPECTORATE REFERENCE: EN010097

WRITTEN REPRESENTATION ON BEHALF OF NETWORK RAIL INFRASTRUCTURE LIMITED  
(Nos. 20022386 & IMMI-SP015 & IMMI-SP016)

## 1 Introduction

1.1 This written representation (**Written Representation**) is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by VPI Immingham B Limited (**Applicant**) for The Immingham Open Cycle Gas Turbine Order 20[x] (**DCO**). The Applicant seeks development consent for the authorised development to be carried out within the Order limits as described in Schedule 1 to the DCO and shown on the works plans (**Proposed Development**) as well as compulsory acquisition powers in relation to a wider area of land which is defined in the DCO as the Order land.

1.2 The Statement of Reasons [1.2] states that:

*"The Existing Gas Pipeline runs from the Existing AGI Site (within the Existing VPI CHP Plant) to an existing tie-in to the National Grid Gas ('NGG') Feeder 9 located to the west of South Killingholme. The Existing Gas Pipeline passes through a variety of areas and uses, including the Phillips 66 Limited refinery, under the A160 (twice), under the public railway (twice) and through a number of agricultural fields. The Applicant is seeking rights to use and maintain this pipeline and it is therefore included within the DCO Order land."*

1.3 Network Rail submitted a section 56 representation [RR-020] on 25 June 2019.

1.4 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (**Network Licence**).

1.5 The Applicant is seeking to compulsorily acquire permanent rights over land owned by Network Rail, which comprises operational railway land that forms part of the Barton Line.

1.6 Network Rail does not object in principle to the DCO. However, Network Rail objects to the compulsory acquisition and extinguishment of its rights in operational land on which it relies for the carrying out of its statutory undertaking.

1.7 Network Rail does not agree to compulsory powers being granted or executed in relation to its operational railway land and asks that the attached protective provisions for the benefit of Network Rail (**Network Rail Protective Provisions**) are included in the DCO. Network Rail is willing to enter into an agreement or agreements with the Applicant to ensure that its interests are protected.

## 2 Impacts of the Proposed Development on the Railway

### **Network Rail's property interest in the DCO and the rights sought by the Applicant in relation to it**

2.1 Network Rail has a freehold interest in, and is the occupier of, Plots 41, 104, 105 and 106 identified in the DCO Book of Reference (**Plots**).

2.2 It is understood that the Proposed Development will not take place on Network Rail's land or affect its apparatus. It is the proposed compulsory acquisition powers in relation to the Plots that will directly affect Network Rail.

2.3 The Applicant seeks compulsory powers to acquire and extinguish the following rights in relation to the Plots:

*"new rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights:*

*1) rights to pass and repass on foot, with or without vehicles, plant and machinery; and*

*2) rights to retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary" (Compulsory Powers).*

2.4 Rights for the existing gas pipeline beneath Network Rail's railway were granted to Immingham CHP LLP (now VPI Immingham LLP) pursuant to a Deed of Easement dated 16 January 2002 (as varied by a Deed of Variation dated 24 April 2003).

2.5 The Applicant is seeking rights from Network Rail to use and maintain the existing gas pipeline on the same terms as the existing Deed of Easement.

#### **Network Rail's objection to the DCO**

2.6 The Plots are operational railway land and Network Rail does not consent to property rights in relation to such land being compulsorily purchased.

2.7 Network Rail is willing to enter into private agreements to agree the extent and scope of the rights to be granted to the Applicant. Without this/ these agreement(s) being in place, Network Rail considers that the Compulsory Powers, if used in relation to the Plot, will have a detrimental impact on the operation of the railway and will prevent Network Rail from operating the railway safely and efficiently and in accordance with its network licence. Until such agreement(s) are in place Network Rail is unable to withdraw its objection to the DCO.

2.8 Unless the Network Rail Protective Provisions are included in the Order, and in the absence of private agreements with the Applicant, Network Rail's interests, including the safety of the operational railway, will not be protected.

#### **Network Rail's statutory duties**

2.9 Network Rail, as noted above, owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993.

2.10 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of rights over the Plots as the Applicant and Network Rail should negotiate matters by private agreement to grant to the Applicant the necessary rights. The Network Rail Protective Provisions provide Network Rail with the necessary protection by providing, at paragraph 67, that compulsory powers must not be exercised in respect of railway property without Network Rail's consent.

#### **How the parties can address Network Rail's concerns**

- 2.9 In order to avoid the compulsory acquisition of rights over the Plots, Network Rail and the Applicant have begun discussions in relation to entry into an Option for an Easement with regard to the existing gas pipeline with the aim that such Option be agreed before the close of the Examination. Network Rail has yet to see a copy of the proposed Option and, accordingly, reserves its right to require entry into such further private agreements as it considers necessary.
- 2.10 In addition, Network Rail will seek to agree with the Applicant the Network Rail Protective Provisions to be included at Part 9 of Schedule 9 to the DCO.

### **3 Conclusions**

- 3.1 Network Rail does not object in principle to the Proposed Development. However it strongly objects to the compulsory acquisition of rights over operational land and asks that the Network Rail Protective Provisions are included in the DCO.
- 3.2 Network Rail considers that the Secretary of State cannot allow the DCO to be granted without amendment as the test in section 127 of the Planning Act 2008 cannot be satisfied. The granting of compulsory acquisition powers to the Applicant in relation to Network Rail's land would result in serious detriment to Network Rail's undertaking and Network Rail does not have any other land available to it which could be used to avoid such detriment.
- 3.3 If Network Rail and the Applicant are able to agree the property agreement[s] referred to in this Written Representation and appropriate protective provisions, Network Rail will be able to withdraw its objection to the DCO.
- 3.4 Network Rail is hopeful that the outstanding matters can be resolved before the close of the Examination.

Addleshaw Goddard LLP 11 September 2019

PROTECTIVE PROVISIONS

PART 9

FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

64 The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 77 any other person on whom rights or obligations are conferred by that paragraph.

65 In this part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

66 (1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

67 (1) The undertaker must not exercise the powers conferred by—

- (a) article 4 (*maintenance of authorised development*);
- (b) article 12 (*access to works*);
- (c) article 15 (*discharge of water*);
- (d) article 16 (*authority to survey and investigate the land*);
- (e) article 18 (*compulsory acquisition of land*);
- (f) article 19 (*power to override easements and other rights*);
- (g) article 21 (*compulsory acquisition of rights etc*);
- (h) article 22 (*private rights*);

- (i) article 24 (*acquisition of subsoil only*);
- (j) article 27 (*temporary use of land for carrying out the authorised development*);
- (k) article 28 (*temporary use of land for maintaining the authorised development*);

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 29 (*statutory undertakers*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

68 (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 42 (*arbitration*).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.



(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

- 69 (1) Any specified work and any protective works to be constructed by virtue of paragraph 68 (4) must, when commenced, be constructed—
- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 68;
  - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
  - (c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, regardless of any approval described in paragraph 69(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

70 The undertaker must -

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

71 Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

72 (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network

Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 68(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 73(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

73 The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 68(3) or in constructing any protective works under paragraph 68(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

74 (1) In this paragraph-

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 68(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)-

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after

formal submission of plans under paragraph 68(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 68(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (d) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (e) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (f) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(g) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(h) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 69.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 77(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 73(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 78 (Arbitration) to the Secretary of State shall be read as a reference to the Institution of Electrical Engineers.

75 If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

76 Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that at least 56 days' prior notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be paid by the undertaker to Network Rail.

77 (1) The undertaker must

- a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of:
- i. the construction or maintenance of a specified work or the failure of such a work; or
  - ii. any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission

(2) the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(4) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

- 78 Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 77) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).
- 79 In the assessment of any sums payable to Network Rail under this Part no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.
- 80 Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.
- 81 The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 39 (*certification of plans etc.*) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.