

KEADBY 3 CARBON CAPTURE POWER STATION

A collaboration between **SSE Thermal** and **Equinor**

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The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order

Land at and in the vicinity of the Keadby Power Station site, Trentside, Keadby, North Lincolnshire

Statement of Common Ground with National Grid Carbon Limited (part of National Grid Ventures) (Deadline 6a)

The Planning Act 2008

Applicant: Keadby Generation Limited

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GLOSSARY

Abbreviation	Description
2008 Act	The Planning Act 2008
AGI	Above ground installation
AIL	Additional Abnormal Indivisible Load
Applicant	Keadby Generation Limited
Application	The application
CCGT	Combined Cycle Gas Turbine
CCP	Carbon Capture Plant
DCO	Development Consent Order
ES	Environmental Statement
ha	hectares
HLCP	Humber Low Carbon Pipelines
HLCPP	The Humber Low Carbon Pipelines Project
HP	High pressure
HRSG	Heat Recovery Steam Generator
MW	megawatts
NGCL	National Grid Carbon Limited
NGG	National Grid Gas
NGV	National Grid Ventures
NLC	North Lincolnshire Council
NSIP	Nationally Significant Infrastructure Project
Order Limits	The Proposed Development Site
Parties	National Grid Ventures
PCC Site	Proposed Power and Carbon Capture Site

Abbreviation	Description
PINS	Planning Inspectorate
Proposed Development Site	Keadby Power Station, Trentside, Keadby, Scunthorpe DN17 3EF
SoCG	Statement of Common Ground
SoS	Secretary of State
The Order	The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order
The Proposed Development	Generating Station
WFD	Water Framework Directive
ZCH	Zero Carbon Humber

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1.0 INTRODUCTION

1.1 Overview

- 1.1.1 This Statement of Common Ground ('SoCG') with National Grid Carbon Limited (NGCL) (part of National Grid Ventures (NGV), a division of National Grid plc) (Application Document Ref. 8.6) has been prepared on behalf of Keadby Generation Limited ('the Applicant') which is a wholly owned subsidiary of SSE plc. It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy (BEIS), under Section 37 of 'The Planning Act 2008' (the '2008 Act').
- 1.1.2 The Applicant is seeking development consent for the construction, operation and maintenance of a new low carbon Combined Cycle Gas Turbine (CCGT) Generating Station ('the Proposed Development') on land at, and in the vicinity of, the existing Keadby Power Station, Trentside, Keadby, Scunthorpe, DN17 3EF (the 'Proposed Development Site').
- 1.1.3 The Proposed Development is a new electricity generating station of up to 910 megawatts (MW) gross electrical output, equipped with carbon capture and compression plant and fuelled by natural gas, on land to the west of Keadby 1 Power Station and the (under commissioning) Keadby 2 Power Station, including connections for cooling water, electrical, gas and utilities, construction laydown areas and other associated development. It is described in Chapter 4: The Proposed Development of the Environmental Statement (ES) (ES Volume I – APP-047).
- 1.1.4 The Proposed Development falls within the definition of a 'Nationally Significant Infrastructure Project' (NSIP) under Section 14(1)(a) and Sections 15(1) and (2) of the 2008 Act, as it is an onshore generating station in England that would have a generating capacity greater than 50MW electrical output (50MWe). As such, a DCO application is required to authorise the Proposed Development in accordance with Section 31 of the 2008 Act.
- 1.1.5 The DCO, if made by the SoS, would be known as 'The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order' ('the Order').

1.2 The Proposed Development

- 1.2.1 The Proposed Development will work by capturing carbon dioxide emissions from the gas-fired power station and connecting into the Humber Low Carbon Pipelines project pipeline network, being promoted by National Grid Carbon Limited (NGCL), for onward transportation to the Endurance storage site under the North Sea.
- 1.2.2 The Proposed Development would comprise a low carbon gas fired power station with a gross electrical output capacity of up to 910MWe and associated

buildings, structures and plant and other associated development defined in Schedule 1 of the draft DCO (APP-005) as Work No. 1 – 11 and shown on the Works Plans (APP-012).

1.2.3 At this stage, the final technology selection cannot yet be made as it will be determined by various technical and economic considerations and will be influenced by future UK Government policy and regulation. The design of the Proposed Development therefore incorporates a necessary degree of flexibility to allow for the future selection of the preferred technology in light of prevailing policy, regulatory and market conditions once a DCO is made.

1.2.4 The Proposed Development will include:

- a carbon capture equipped electricity generating station including a CCGT plant (**Work No. 1A**) with integrated cooling infrastructure (**Work No. 1B**), and carbon dioxide capture plant (CCP) including conditioning and compression equipment, carbon dioxide absorption unit(s) and stack(s) (**Work No. 1C**), natural gas receiving facility (**Work No. 1D**), supporting uses including control room, workshops, stores, raw and demineralised water tanks and permanent laydown area (**Work No. 1E**), and associated utilities, various pipework, water treatment plant, wastewater treatment, firefighting equipment, emergency diesel generator, gatehouse, chemical storage facilities, other minor infrastructure and auxiliaries/ services (all located in the area referred to as the 'Proposed Power and Carbon Capture (PCC) Site' and which together form **Work No. 1**);
- natural gas pipeline from the existing National Grid Gas high pressure (HP) gas pipeline within the Proposed Development Site to supply the Proposed PCC Site including an above ground installation (AGI) for National Grid Gas's apparatus (**Work No. 2A**) and the Applicant's apparatus (**Work No. 2B**) (the 'Gas Connection Corridor');
- electrical connection works to and from the existing National Grid (National Grid Electricity Transmission) 400kV Substation for the export of electricity (**Work No. 3A**) (the 'Electrical Connection Area to National Grid 400kV Substation');
- electrical connection works to and from the existing Northern Powergrid 132kV Substation for the supply of electricity at up to 132kV to the Proposed PCC Site, and associated plant and equipment (**Work No. 3B**) (the 'Potential Electrical Connection to Northern Powergrid 132kV Substation');
- Water Connection Corridors to provide cooling and make-up water including:
 - underground and/or overground water supply pipeline(s) and intake structures within the Stainforth and Keadby Canal, including temporary cofferdam (**Work No. 4A**) (the 'Canal Water Abstraction Option');
 - in the event that the Canal Water Abstraction Option is not available, works to the existing Keadby 1 power station cooling water supply

- pipelines and intake structures within the River Trent, including temporary cofferdam (**Work No. 4B**) (the 'River Water Abstraction Option'); and
- works to and use of an existing outfall and associated pipework for the discharge of return cooling water and treated wastewater to the River Trent (**Work No. 5**) (the 'Water Discharge Corridor');
 - towns water connection pipeline from existing water supply within the Keadby Power Station for potable water (**Work No. 6**);
 - above ground carbon dioxide compression and export infrastructure comprising an above ground installation (AGI) for the Applicant's apparatus including deoxygenation, dehydration, staged compression facilities, outlet metering, and electrical connection (**Work No. 7A**) and an AGI for NGCL apparatus (**Work No. 7B**);
 - new permanent access from the A18, comprising the maintenance and improvement of an existing private access road from the junction with the A18 including the western private bridge crossing of the Hatfield Waste Drain (**Work No. 8A**) and installation of a layby and gatehouse (**Work No. 8B**), and an emergency vehicle and pedestrian access road comprising the maintenance and improvement of an existing private track running between the Proposed PCC Site and Chapel Lane, Keadby and including new private bridge (**Work No. 8C**);
 - temporary construction and laydown areas including contractor facilities and parking (**Work No. 9A**), and access to these using the existing private roads from the A18 and the existing private bridge crossings, including the replacement of the western existing private bridge crossing known as 'Mabey Bridge' over Hatfield Waste Drain (**Work No. 9B**) and a temporary construction laydown area associated with that bridge replacement (**Work No. 9C**);
 - temporary retention, improvement and subsequent removal of an existing Additional Abnormal Indivisible Load Haulage Route (**Work No. 10A**) and temporary use, maintenance, and placement of mobile crane(s) at the existing Railway Wharf jetty for a Waterborne Transport Offloading Area (**Work No. 10B**);
 - landscaping and biodiversity enhancement measures (**Work No. 11A**) and security fencing and boundary treatments (**Work No. 11B**); and
 - minor associated development.
- 1.2.5 The Proposed Development includes the equipment required for the capture and compression of carbon dioxide emissions from the generating station so that it is capable of being transported off-site. NGCL will be responsible for the development of the carbon dioxide pipeline network linking onshore power and industrial facilities, including the Proposed Development, in the Humber Region. That pipeline network does not, therefore, form part of the Proposed

Development and is not included in the Application but will be the subject of separate consent application(s) to be taken forward by NGCL.

- 1.2.6 The Proposed Development is designed to be capable of operating 24 hours per day, 7 days a week, with plant operation dispatchable to meet electricity demand and with programmed offline periods for maintenance. It is anticipated that in the event of CCP maintenance outages, for example, it could be necessary to operate the Proposed Development without carbon capture, with exhaust gases from the CCGT being routed via the Heat Recovery Steam Generator (HRSG) stack.
- 1.2.7 Various types of associated and ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 'Authorised Development' of the draft DCO (APP-005). This, along with Chapter 4: The Proposed Development in the ES Volume I (APP-047), provides further description of the Proposed Development. The areas within which each numbered Work (component) of the Proposed Development are to be built are defined by the coloured and hatched areas on the Works Plans (APP-012).

1.3 The Proposed Development Site

- 1.3.1 The Proposed Development Site (the 'Order Limits') is located within and near to the existing Keadby Power Station site near Scunthorpe, Lincolnshire and lies within the administrative boundary of North Lincolnshire Council (NLC). The majority of land is within the ownership or control of the Applicant (or SSE associated companies) and is centred on national grid reference 482351, 411796.
- 1.3.2 The existing Keadby Power Station site currently encompasses the operational Keadby 1 and Keadby 2 Power Station (under commissioning) sites, including the Keadby 2 Power Station Carbon Capture and Readiness reserve space.
- 1.3.3 The Proposed Development Site encompasses an area of approximately 69.4 hectares (ha). This includes an area of approximately 18.7ha to the west of Keadby 2 Power Station in which the generating station (CCGT plant, cooling infrastructure and CCP) and gas connection will be developed (the Proposed PCC Site).
- 1.3.4 The Proposed Development Site includes other areas including:
- a high pressure gas pipeline to supply the CCGT including a gas compound for NGG apparatus and a gas compound for the Applicant's apparatus;
 - the National Grid 400kV Substation located directly adjacent to the Proposed PCC Site, through which electricity generated by the Proposed Development will be exported;
 - Emergency Vehicle Access Road and Potential Electrical Connection to Northern Powergrid Substation;

- Water Connection Corridors:
 - Canal Water Abstraction Option which includes land within the existing Keadby Power Station site with an intake adjacent to the Keadby 2 Power Station intake and pumping station and interconnecting pipework;
 - River Water Abstraction Option which includes a corridor that spans Trent Road and encompasses the existing Keadby Power Station pumping station, below ground cooling water pipework, and infrastructure within the River Trent; and
 - a Water Discharge Corridor which includes an existing discharge pipeline and outfall to the River Trent and follows a route of an existing easement for Keadby 1 Power Station;
- an existing river wharf at Railway Wharf (the Waterborne Transport Offloading Area) and existing temporary haul road into the into the existing Keadby 1 Power Station Site (the 'Additional Abnormal Indivisible Load (AIL) Route');
- a number of temporary Construction Laydown Areas on previously developed land and adjoining agricultural land; and
- land at the A18 Junction and an existing site access road, including two existing private bridge crossings of the Hatfield Waste Drain lying west of Pilfrey Farm (the western of which is known as Mabey Bridge, to be replaced, and the eastern of which is termed Skew Bridge) and an existing temporary gatehouse, to be replaced in permanent form.

1.3.5 In the vicinity of the Proposed Development Site the River Trent is tidal. Therefore, parts of the Proposed Development Site are within the UK marine area. No harbour works are proposed.

1.3.6 Further description of the Proposed Development Site and its surroundings is provided in **Chapter 3: The Site and Surrounding Area** in ES Volume I (**APP-046**).

1.4 The Proposed Development Changes

1.4.1 The Applicant has submitted a request (the 'Change Request') for the following changes to the Proposed Development, together known as 'the Proposed Development Changes'.

1.4.2 The Proposed Development Changes have resulted from design contractor involvement, which has continued to refine the detail of this 'First of a Kind' Project implementation.

1.4.3 Change No. 1 - Inclusion of riverbed within the Waterborne Transport Offloading Area (Railway Wharf) to be numbered in Schedule 1 of the DCO as Work 10C.

1.4.4 Change No. 2 - not used .

- 1.4.5 Change No. 3 - Increase to the maximum heights of the carbon dioxide absorbers/ stacks, if two are installed.
- 1.4.6 Change No. 4 - Increase to the maximum heights of the carbon dioxide stripper column.
- 1.4.7 Change No. 5 - Increase in proposed soil import volumes to create a suitable development platform.
- 1.4.8 With the Proposed Development Changes, the Proposed Development Site would cover an area of 69.7 hectares (ha) (a minor increase of 0.3ha in the amount of the Applicant's land required).
- 1.4.9 At the time of writing the Examining Authority is minded to accept the Change Request (as submitted at Deadline 5 and modified at Deadline 6) as stated in a letter dated 29 April 2022 (PD-019) but has requested in the same letter that all documents and plans comprising the Change Request are submitted, and/or resubmitted, by the Applicant in a single package at Deadline 6a.
- 1.4.10 It is anticipated that following receipt of this single package the Examining Authority will exercise discretion to accept the Change Request and from this point the Proposed Development Changes would form part of the Proposed Development for the remainder of the DCO examination.

1.5 The Development Consent Process

- 1.5.1 As a NSIP project, the Applicant is required to seek a DCO to construct, operate and maintain the generating station, under Section 31 of the 2008 Act. Sections 42 to 48 of the 2008 Act govern the consultation that the promoter must carry out before submitting an application for a DCO and Section 37 of the 2008 Act governs the form, content and accompanying documents that are required as part of a DCO application.
- 1.5.2 An application for development consent for the Proposed Development has been submitted to and accepted for examination by the Planning Inspectorate (PINS) acting on behalf of the SoS. PINS is now examining the Application and will make a recommendation to the SoS, who will then decide whether to make (grant) the DCO.

1.6 The Purpose and Structure of this Document

- 1.6.1 The purpose of this document is to summarise clearly the agreements reached between the Applicant and NGCL ('the Parties') on matters relevant to the examination of the Application and to assist the Examining Authority. It has been prepared with regard to the guidance in 'Planning Act 2008: examination of application for development consent' (Department for Communities and Local Government, March 2015).

1.6.2 This document summarises the agreements reached between the Parties regarding the matters listed below:

- Carbon Capture and Storage;
- Relationship with, and effect on, the Humber Low Carbon Pipeline, including potential pipeline corridors; and
- Draft Development Consent Order and any relevant Protective Provisions.

1.7 Status of this version

1.7.1 This is the third draft of this SoCG and updates and supersedes the SoCG submitted at Deadline 3. It is signed and represents the final SoCG submitted into the examination.

1.7.2 The document is structured as follows:

- Section 2 – summarises the role of NGCL;
- Section 3 - sets out details of consultation with NGCL to date;
- Section 4 - sets out the matters agreed between the parties in respect of the Application; and
- Section 5 – sets out any matters that are yet to be agreed and where discussions are on-going between the parties and summarises next steps.

2.0 THE ROLE OF NATIONAL GRID CARBON LIMITED (NGCL)

- 2.1.1 NGCL is part of NGV, a division of National Grid plc responsible for both developing and operating energy projects, technologies and partnerships in the UK and US.
- 2.1.2 NGCL, as a NGV business, is proposing to develop the Humber Low Carbon Pipelines (HLCP); the deployment of a terrestrial pipeline network in the Humber region. The HLCPP intends to establish a pipeline network in the Humber Region for the transportation of carbon dioxide (CO₂) and hydrogen (H₂) to facilitate Carbon Capture, Utilisation and Storage, supporting the ambition of the Zero Carbon Humber (ZCH) partnership to create the world's first net zero industrial cluster.
- 2.1.3 The HLCPP involves the construction of long distance carbon dioxide transportation pipelines and requires a separate DCO.
- 2.1.4 NGCL has recently carried out non-statutory consultation on a selection of potential pipeline route corridor options across the area where the HLCPP could be situated and expects to carry out statutory pre-application consultation during 2022.
- 2.1.5 NGCL's interest in The Keadby 3 Carbon Capture Power Station Project relates to the interfaces between the Keadby 3 Carbon Capture Power Station Project and HLCPP, which includes the proposed carbon dioxide pipeline connection arrangement and associated works.
- 2.1.6 NGCL, through NGV, has submitted a Relevant Representation to PINS requesting to be treated as an interested party throughout the Examination process of The Keadby 3 Carbon Capture Power Station Project.

3.0 SUMMARY OF CONSULTATION

3.1.1 NGCL was not formally a consulted party during the S42 or S56 consultation processes as they have not to date held the relevant status under the 2008 Act and associated regulations, and HLCPP is at a slightly earlier stage of development and consultation.

3.1.2 However, the Applicant (including through SSE) has consistently corresponded with NGCL through a series of meetings as part of the ZCH partnership. Notable meetings and their frequencies are listed below:

- Zero Carbon Humber Regulation meetings - Monthly (includes NGV, Drax, Uniper, SSE)
- NGV & SSE Bilateral meeting - Monthly (attended by SSE technical, regulatory, programme, commercial representatives)
- Technical and Consenting Committee meetings – Periodic moving to Monthly (between NGV, Drax, Uniper, SSE)
- Commercial Committee meetings – Periodic (with NGV, Drax, Uniper, SSE)
- East Coast Cluster Emitter Forum – bi-weekly technical forum
- Consenting meetings – Periodic beginning 24 November 2021 (including NGV and the Keadby 3 project team)

3.1.3 NGCL (through NGV) provided a Relevant Representation to PINS (Examination Library Ref. RR-009) requesting treatment as an Interested Party throughout the Examination process of the DCO application for The Keadby 3 Carbon Capture Power Station Project (PINS ref: EN010114). The Relevant Representation also stated NGCL's interest in the Keadby 3 Carbon Capture Power Station Project and its relationship to the HLCPP.

4.0 MATTERS AGREED

- 4.1.1 The sections below set out matters agreed along with a concise commentary of what the item refers to and how it came to be agreed between the two parties.
- 4.1.2 It is agreed that the Keadby 3 Carbon Capture Power Station Project is an emitter that needs to connect to the HLCPP. As stated in the NGV Relevant Representation, “The HLCP network is the proposed infrastructure for transporting the carbon captured at the power station that is the subject of this application to the interface at landfall with the offshore pipelines for onward transportation to the Endurance saline aquifer for storage”.
- 4.1.3 The Keadby 3 Carbon Capture Power Station Project will connect to the HLCPP as detailed in Work No. 7 of the draft Development Consent Order (dCO) [APP-005].
- 4.1.4 In principle, the pipeline route corridor options identified within the ‘Route Corridor Report’ (National Grid, 2021. <https://www.nationalgrid.com/document/143566/download>) are appropriate options, are feasible and will allow the carbon dioxide captured by the Keadby 3 Low Carbon Gas Power Station Project to be transported to the Endurance offshore geological store. It is, however, agreed that the pipeline route options are at an early stage of development and therefore subject to further assessment of feasibility and consultation.
- 4.1.5 The construction of Keadby 3 Carbon Capture Power Station could (subject to the necessary consents being granted and an investment decision being made) start as early as Quarter 4 of 2022 or more likely during 2023. This would in turn allow operation to start in 2027. The HLCPP DCO application is proposed to be submitted in Q4 2022 and to be decided by the end of Q1 2024. KGL therefore welcomes the ambition of NGCL to begin the construction of the pipeline network in 2024, with an earliest construction completion date (for pipeline section north of the Humber) of 2026.
- 4.1.6 NGCL, as a business of NGV, will be the promoter of the HLCPP DCO and therefore it is correct for the Applicant to refer to NGCL (and the limited company with the same name) in relevant defined terms and numbered works in Schedule 1 in the DCO [APP-005].
- 4.1.7 The Applicant agrees to the request by NGCL in its Relevant Representation to be consulted on any approval sought from the relevant planning authority under Requirement 5(7) and updated the DCO at Deadline 2 to secure this [**REP2-003**].
- 4.1.8 The Applicant agreed in a meeting held on 24 November 2021 to consider protective provisions to be supplied by NGCL. Further details of engagement between the parties in relation to protective provisions is set out at paragraphs 4.1.11 – 4.1.15 below.

4.1.9 The Applicant has made updates to the draft DCO at subsequent deadlines and the Draft DCO submitted at Deadline 5 [REP5-002, 003] addresses several points raised by NGCL including:

- Adding the words “and any associated works described in Work No. 7(c)” into Article 6(d) to avoid any doubt arising that NGCL is to have the benefit of these works in connection with Work No. 7B;
- Removing Work 7A and 7B references from Requirement 5(11) of Schedule 2; and
- Including the terms “carbon dioxide storage licence”, “environmental permit” and “development consent” in the interpretation requirement in Schedule 2, such that Requirement 33 of Schedule 2 has greater precision.

4.1.10 The Applicant has sized and sited Work No. 7 based on appropriate assumptions. NGCL has reviewed the sizing and siting of this numbered work. The Applicant and NGCL agree that discussions regarding detailed siting and layout of Work No. 7 will continue as part of the consultation and approval process set out in Requirement 5(7) of the draft DCO.

4.1.11 The parties have engaged in extensive discussions in relation to protective provisions for the benefit of NGCL for inclusion in Schedule 10 of the draft DCO. While we have not managed to agree the full detail of the protective provisions and each present slightly different protective provisions at this deadline, the differences centre on commercial rather than planning matters. Those matters where the parties have been unable to reach agreement, together with the parties’ respective position in relation to those matters, are set out in section 5 of this statement of common ground.

4.1.12 In view of the above, the parties have agreed to append to this statement of common ground two sets of protective provisions. The first, which is set out in Appendix 1, reflects the Applicant’s preferred form of protective provisions. The second, which is set out in Appendix 2, reflects NGCL’s preferred form of protective provisions. For completeness, a comparison has been prepared (see Appendix 3) showing the Applicant’s preferred version of the protective provisions against NGCL’s. Appendices 1 – 3 should be read alongside section 5 of this statement of common ground.

4.1.13 For the avoidance of doubt, the Applicant has included in Part 6 of Schedule 10 to the draft DCO submitted at Deadline 6A its own preferred form of protective provisions for the benefit of NGCL.

5.0 MATTERS NOT AGREED AND NEXT STEPS

5.1.1 Matters not yet agreed:

5.1.2 Table 5.1: Summary of Matters Not Yet Agreed

Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)	NGCL’s Position	Applicant Position
Protective provisions paragraph 3	<p>The parties have agreed that the protective provisions are to be presented as two sections: section A and section B.</p> <p>Section A contains provisions which relate to those aspects of the Proposed Development – namely Work No. 7 – that would interface directly with the proposed NGCL Pipeline Network. That network is to be the subject of a separate application for development consent by NGCL, which if approved would enable the transport of carbon dioxide away from industrial emitters such as the Proposed Development so that it may (subject to the relevant consents being secured) be stored offshore. The parties are in agreement that these provisions should take effect from such date as the Order is</p>	<p>As is acknowledged by NGCL, the proposed draft protective provisions do not follow the industry standard. The Applicant considers that the combination of the Requirements and the draft protective provisions (as amended by the Applicant) provides sufficient safeguards to allow for the future interaction of the proposed development and HLCPP. Currently NGC is also not a regulated utility and does not therefore have the same status as other utility provides as is suggested, some of the issues raised will therefore be addressed through regulation.</p> <p>Given no apparatus currently exists, the Applicant needs certainty, if the protections are to take effect under Section B</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>made by the Secretary of State.</p> <p>Section B contains provisions for the protection of NGCL apparatus. They are intended to protect NGCL’s interests in the apparatus which will be required to construct, operate and maintain the NGCL Pipeline Network and which is to be the subject of the separate application for development consent referred to above.</p> <p>The parties have agreed that Section B of the protective provisions will only take effect from such date as NGCL apparatus has been installed. However, the Applicant seeks (see Appendix 1) to go further by saying that NGCL apparatus must be installed and completed in accordance with an agreed schedule of works between the Applicant and NGCL.</p> <p>NGCL is content to agree that Section B of the protective provisions will only take effect once NGCL has been installed</p>	<p>as to, as to the location and form of apparatus. It is not accepted that the wording proposed by the Applicant acts as any form of veto as is suggested – given it is a matter identified to be agreed between the parties. A collaborative approach is required by both parties to deliver both schemes in an appropriate manner. In the unlikely event that a works schedule cannot be agreed then there is the Arbitration provisions within the protective provisions to resolve any disagreement. Again, it is therefore incorrect to allege that the wording provides the Applicant with a form of veto.</p> <p>The Applicant and NGC are in regular discussions on future commercial arrangements and it is considered this can be further refined as part of those discussions.</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>and completed <i>in accordance with any schedule of works notified to the Applicant by NGCL</i> (see Appendix 2). In NGCL’s view, the distinction between “an agreed schedule of works” (the Applicant’s wording) and “any schedule of works notified to the undertaker” (NGCL’s wording) is an important one.</p> <p>Commercial negotiations between the parties are still at an early stage of progress and there is no certainty that a schedule of works is or will be the appropriate vehicle for recording the parties’ intentions as to the manner in which works to construct the NGCL Pipeline Network should proceed. The Applicant’s drafting proposal limits the parties’ flexibility to agree alternative arrangements in this regard.</p> <p>The Applicant’s drafting proposal also implies that a schedule of works would need to be agreed between NGCL and the Applicant. This could have significant implications</p>	

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>for NGCL, since it suggests that control over the timing of its own works to construct the NGCL Pipeline Network is to be limited and therefore subject to the potential veto of a third party. No equivalent provision requiring an agreed schedule of works appears in the protective provisions for the protection of NGCL in the draft DCO. The Applicant’s only obligation is to keep NGCL informed on its programme of works for the Proposed Development (see paragraph 5(1)(d)).</p> <p>NGCL’s drafting proposal resolves the concerns identified above. The reference to “any schedule of works” leaves room for future discussion and agreement as to the appropriate mechanism for programming works in connection with the NGCL Pipeline Network. Furthermore, the use of the words “notified to” as opposed to “agreed” means that NGCL retains a reasonable and proportionate degree of</p>	

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL's Position</p>	<p>Applicant Position</p>
	<p>control over the future programming of its own works, in keeping with that sought by the Applicant in this case.</p>	
<p>Protective provisions paragraph 18</p>	<p>This paragraph provides protection for NGCL in respect of the expenses and costs of specified matters.</p> <p>NGCL is of the view that, where it proceeds for reasons of the engineering or other expertise it possesses, to construct any work under the draft DCO (including Work No. 7B), the costs of doing so should be met by the Applicant. These works are part of the Proposed Development for which development consent is sought by the Applicant. The Applicant should meet the costs of such works.</p> <p>The Applicant appears to take the view that it should not be responsible for the costs and</p>	<p>The Applicant considers that Paragraph 18 provides NGC with the same level of protection in relation costs and expenses as is comparable to other protective provisions for statutory undertakers in the usual way.</p> <p>The additional wording sought by NGC goes far further that is appropriate in protective provisions. It is seeking to impose a cost burden on the applicant specifically relating to the construction and survey works associated with Works no. 7B. This is a matter for BEIS to confirm the position on.</p> <p>A series of agreements will need to be put in place with NGC which will prescribe allocation of costs and</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>expenses of works undertaken by NGCL. It also appears to say that the expense of carrying out such surveys and tests which may reasonably be required in connection with the works should not be covered by this provision. NGCL does not understand the rationale for this, when substantially the same provisions have been agreed for the benefit of National Grid as electricity and gas undertaker in Part 1 of Schedule 10 to the Protective Provisions.</p> <p>NGCL is therefore seeking (see Appendix 2) a reasonable and proportionate set of provisions to protect itself against the future expense and cost of works which are a product of the Application.</p>	<p>responsibility for construction, on-going maintenance and ownership of land and plant in relation to the interface areas. It is not acceptable to use protective provisions to preempt commercial discussions yet to take place. Accordingly this is matter to be agreed as part of those discussions.</p>
<p>Protective Provisions paragraph 19 –</p>	<p>The parties have been able to reach agreement on most elements of the indemnity in paragraph 19 of the protective provisions. The purpose of this</p>	<p>The Applicant's position is that the indemnity in the protective provisions is appropriate and insulates NGC from costs risk where any loss or damage is as</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>provision is to provide protection against expenses, losses and damage which may be attributable to NGCL apparatus, once installed, as a result of the Proposed Development.</p> <p>The outstanding issue between the parties relates to the matters which trigger the cost and compensation events set out in paragraph 19(1)(a)-(b).</p> <p>The Applicant’s position is that the obligation to indemnify should follow upon loss or damage which is a result of the construction or maintenance of the Proposed Development.</p> <p>NGCL considers that the indemnity should be extended so that it also applies to loss or damage which is a result of the use of the Proposed Development, as well as the construction or maintenance of the Proposed Development.</p> <p>In NGCL’s view, there is no compelling reason to exclude the use of the Proposed</p>	<p>a result of the construction or maintenance of the authorised development. It is unreasonable for the Applicant to be required to provide an indemnity which is not limited in time, in relation to the use or without parameters as to the risk which NGC perceives could arise from the use.</p> <p>It is inappropriate to simply suggest this is standard and rely on other protective provisions in other DCO’s where the circumstances relating to the interaction of other developments with apparatus is not known or, indeed where side agreements are often entered into which seek to limit and/or provide greater detail as to the risk to be covered by the indemnity. The Applicant did originally suggest matters contained in the protective provisions should be dealt with by bilateral agreement with NGC but this was rejected. In the absence of such an agreement the Applicant cannot expose itself to an unquantifiable risk</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL’s Position</p>	<p>Applicant Position</p>
	<p>Development from the indemnity. The consequence of doing so is that NGCL is exposed to the risk that potentially significant expenses, losses or damage will not be recoverable because they relate to the use of the Proposed Development.</p> <p>The Applicant may argue that an indemnity in the form proposed by NGCL exposes it to greater financial risk. However, in the draft DCO submitted at Deadline 4 [REP 4-003] the protective provisions for the protection of National Grid as gas and electricity undertaker included an indemnity for loss, damage and expenses flowing from the construction, use and operation of the Proposed Development (see paragraph 11). This also reflects the position reached in a number of DCOs, including the protective provisions for the protection of National Grid as electricity and gas undertaker in the Drax Power (Generating Stations) Order 2019 and the</p>	<p>exposure for an indefinite period of time.</p> <p>The Applicant has also taken this position with all other indemnities contained within the protective provisions and this has been relayed to NGC as part of the discussions on the indemnity provisions. Northern Powergrid is an example where it has accepted the indemnity does not need to include use of the authorised development.</p> <p>The Applicant's position is therefore that it is inappropriate for the scope of indemnity sought to be included in protective provisions but remains willing to discuss this further as part of the commercial discussions.</p>

<p>Matter Not Yet Agreed (reference should be made to the protective provisions in Appendices 1-3 of this statement of common ground)</p>	<p>NGCL's Position</p>	<p>Applicant Position</p>
	<p>South Humber Bank Energy Centre Order 2021, as well as for Southern Electric Power as electricity undertaker in the Southampton to London Pipeline Order 2020.</p> <p>Fundamentally, NGCL considers that to the extent that a financial risk exists, it is for the Applicant to protect against that risk through insurance or other mechanisms, not simply to seek to expose that risk to third parties.</p>	

6.0 SIGNATURES

6.1.1 This Statement of Common Ground is agreed:

On behalf of National Grid Carbon Limited:

Name Liz Wells

Signature 

Date 10th May 2022

On behalf of the Applicant:

Name Colin Turnbull

Signature 

Date 10 May 2022

Appendix 1

PART 6

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

1. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.
2. The undertaker hereby agrees not to exercise its powers under the Order without fully complying with the provisions of this Part of this Schedule.
3. Section A and paragraph 18 of Section B of this Part 6 of Schedule 10 shall have effect from the date the Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with an agreed schedule of works between the undertaker and NGC.

Interpretation

4.—(1) In this Part of this Schedule—

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

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

“construction” includes execution, placing, installation, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

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

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network DCO” means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” means land on which any NGC apparatus is situated;

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

(a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and/or

(b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 15 or otherwise.

(2) In paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006(), except that references in that section to majority are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

(a) another person (or its nominee) by way of security or in connection with the taking of security; or

(b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

5.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

(a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;

(b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

6. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

7. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the programming, execution,

commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

8.—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

9.—(1) Any approval of NGC required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

(2) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars .

10.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 8(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 8(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

SECTION B

On street apparatus

11. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGC are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

13. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

14.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC in accordance with sub-paragraphs (2) to (4).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

15.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NGC than the facilities and rights enjoyed by it in respect of the NGC apparatus to be removed and the terms and conditions to which those facilities and rights are subject,

the arbitrator must make such provision for the payment of compensation by the undertaker to NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

16.—(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 21.

(3) Any approval of NGC required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

17.—(1) Subject to sub-paragraph (9), any specified work, and all protective or additional works required by NGC under sub-paragraph 16(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and NGC in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 21.

Expenses and costs

18.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or any alternative apparatus which may be required in consequence of the execution of any such works referred to in paragraph 15.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NCG all reasonable costs, charges and expenses which NGC may reasonable incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection works, the specified works or any protective or additional works required by NGC under this Part of this Schedule;

Indemnity

19.—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and
- (b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 87 applies where it is within NGC's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

20. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph 82 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 84 the undertaker must use reasonable 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 the NGC Pipeline Network.

Disputes

21. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

Appendix 2

PART 6

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

1. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.
2. The undertaker hereby agrees not to exercise its powers under the Order without fully complying with the provisions of this Part of this Schedule.
3. Section A and paragraph 18 of Section B of this Part 6 of Schedule 10 shall have effect from the date the Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with any schedule of works notified to the undertaker by NGC.

Interpretation

4.—(1) In this Part of this Schedule—

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

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

“construction” includes execution, placing, installation, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

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

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network DCO” means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” means land on which any NGC apparatus is situated;

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

(a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and /or

(b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 15 or otherwise.

(2) In sub-paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006(), except that references in that section to “majority” are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

(a) another person (or its nominee) by way of security or in connection with the taking of security; or

(b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

5.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

(a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;

(b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

6. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

7. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the programming, execution,

commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

8.—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

9.—(1) Any approval of NGC required under this Schedule —

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

(2) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars .

10.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 8(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 8(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

SECTION B

On street apparatus

11. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGC are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

13. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

14.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC in accordance with sub-paragraphs (2) to (4).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

15.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NGC than the facilities and rights enjoyed by it in respect of the NGC apparatus to be removed and the terms and conditions to which those facilities and rights are subject,

the arbitrator must make such provision for the payment of compensation by the undertaker to NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

16.—(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 21.

(3) Any approval of NGC required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

17.—(1) Subject to sub-paragraph (2), any specified work, and all protective or additional works required by NGC under sub-paragraph 16(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and NGC in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 21.

Expenses and costs

18.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or the construction of the carbon dioxide export connection works or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 15.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NCG all reasonable costs, charges and expenses which NGC may reasonable incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection works, the specified works or any protective or additional works required by NGC under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by NGC which are reasonably required in connection with the construction of the carbon dioxide export connection works or any specified works.

Indemnity

19.—(1) Subject to sub-paragraphs (5) and (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, use or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and
- (b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 19 applies where it is within NGC's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

20. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph 15 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 17, the undertaker must use reasonable 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 the NGC Pipeline Network.

Disputes

21. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

Appendix 3

PART 66

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

1. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.
2. The undertaker hereby agrees not to exercise its powers under the Order without fully complying with the provisions of this Part of this Schedule.
3. Section A and paragraph 18 of Section B of this Part 6 of Schedule 10 shall have effect from the date the Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with ~~any~~an ~~agreed~~ schedule of works ~~notified to~~between the undertaker ~~by~~and NGC.

Interpretation

4. —(1) In this Part of this Schedule—

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

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

“construction” includes execution, placing, installation, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

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

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network DCO” means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” means land on which any NGC apparatus is situated;

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other

(a) 1991 c. 22.

documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

- (a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and /or
- (b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 15 or otherwise.

~~(2)~~ ~~(1)~~ In ~~sub~~-paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006~~(b)~~, except that references in that section to “majority²²” are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

5. —(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;
- (b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

6. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

7. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

8. —(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(b) 2006 c. 46.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

9.—(1) Any approval of NGC required under this Schedule —

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

~~(2)~~ NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars .

10.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 8(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 8(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

SECTION B

On street apparatus

11. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGC are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

13. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

14.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC in accordance with sub-paragraphs (2) to (4).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article ~~44~~44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

15.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NGC than the facilities and rights enjoyed by it in respect of the NGC apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

16.—(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 21.

(3) Any approval of NGC required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

17.—(1) Subject to sub-paragraph ~~(4)~~(9), any specified work, and all protective or additional works required by NGC under sub-paragraph 16(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and NGC in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 21.

Expenses and costs

18.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or ~~the construction of the~~

~~carbon dioxide export connection works or~~ any alternative apparatus which may be required in consequence of the execution of any such works ~~as are~~ referred to in paragraph 15.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NCG all reasonable costs, charges and expenses which NGC may reasonable incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection works, the specified works or any protective or additional works required by NGC under this Part of this Schedule; ~~and~~
- ~~(c) in the carrying out of any surveys or tests by NGC which are reasonably required in connection with the construction of the carbon dioxide export connection works or any specified works.~~

Indemnity

19.—(1) Subject to sub-paragraphs (5) ~~and~~^{to} (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, ~~use~~ or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and
- (b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph ~~1987~~ applies where it is within NGC's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

20. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph ~~15~~[15.82](#) or NGC specifies requirements for the protection or alteration of apparatus under paragraph ~~17~~[17.84](#) the undertaker must use reasonable 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 the NGC Pipeline Network.

Disputes

21. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

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Padding cell	

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