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From: [REDACTED]@bdbpitmans.com>
Sent: 09 May 2023 16:09
To: DraxBECCS
Cc: MCNAMARA Tom
Subject: DRAX BECCS: Deadline 6 - 9 May 2023: Submission on behalf of National Grid Carbon Limited
Attachments: Drax BECCS - Schedule 12 - Protective Provisions for NGCL.DOC
Importance: High
Follow Up Flag: Follow up
Flag Status: Completed
Categories: Deadline

Dear Sir/Madam

We act on behalf of National Grid Carbon Limited (**NGCL**) whose unique Interested Party reference number is 20032281.

As requested by the ExA in its second round of written questions (**CA.2.2**), we are writing to provide a copy of our preferred form of protective provisions for the benefit of NGCL. Please find these enclosed.

As explained in the relevant representation we submitted on its behalf, NGCL is requesting protective provisions be included within the draft Development Consent Order, should the Secretary of State be minded to make it. These provisions are sought to ensure recognition of the future interface between the authorised development and the proposed Humber Low Carbon Pipeline Network. The wording proposed reflects similar provisions which the Secretary of State recently included, to the same purpose, within Part 6 of Schedule 10 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (S.I. 2022/1396).

I would be most grateful if you could acknowledge safe receipt of this Examination submission.

With kind regards.

Sarah


BDB PITMANS

[REDACTED]

For and on behalf of BDB Pitmans LLP
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PROTECTIVE PROVISIONS

PART [*]

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 this Order without fully complying with the provisions of this Part of this Schedule.

3. Section A and paragraph 19 of Section B of this Part [*] of Schedule 12 will have effect from the date this Order is made and the remainder of Section B of this Part [*] of Schedule 12 will have effect from the date that NGC apparatus is installed and completed in accordance with an agreed schedule of NGC apparatus 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(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. 1E to the NGC Pipeline Network and comprising Work No.2;

“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;

(a) 1991 c. 22.

“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 14 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^(a), 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. 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. 2, or any part of it.

(a) 2006 c. 46.

7. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No. 2 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 in accordance with sub-paragraph (c) the undertaker will be permitted to refer such matters to dispute resolution in accordance with 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.

(3) 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) 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 (2) 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 (2) 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 33 (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 41 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, 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 41 (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 (5), 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 NGC all reasonable costs, charges and expenses which NGC may reasonably 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 carrying out any of the surveys or tests by NGC which are reasonably required in connection with the construction of the carbon dioxide export connections work or any specified works.

(3) This paragraph is subject to—

- (a) any contrary provisions made in a charging methodology approved by the Office of Gas and Electricity Markets from time to time (or successor body); or
- (b) such alternative cost apportionment as may be agreed between NGC and the undertaker in a connection agreement (and for the avoidance of doubt the provisions of paragraphs 18(1) and 18(2) are not intended to set a precedent for such cost apportionment terms as may be agreed between the parties) whereupon the relevant parts of paragraph 18 will be of no further effect insofar as such an agreement remains in force.

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, 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 in accordance with 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 (5), 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.

(7) This paragraph is subject to any alternative indemnity provisions as may be agreed between NGC and the undertaker in a connection agreement or operating agreement (and for the avoidance of doubt the provisions of paragraph 19 are not intended to set a precedent for such indemnity terms as may be agreed between the parties) whereupon the relevant parts of this paragraph will be of no further effect.

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 14 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 14 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 41 (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.