

# Gate Burton Energy Park

## EN010131

The Applicant's Response to the Secretary of State's Request for Information dated 29 April 2024  
Application Reference: EN010131  
May 2024

Planning Act 2008  
The Infrastructure Planning (Examination Procedure) Rules 2010

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## 1. INTRODUCTION

### 1.1 Purpose of this document

- 1.1.1 In its request for information letter dated 29 April 2024, the Secretary of State for the Department for Energy Security and Net Zero (the “**Secretary of State**”) has asked Gate Burton Energy Park Limited (as “**the Applicant**”) and other interested parties to provide updates and information in relation to compulsory acquisition and land use matters and EMF in relation to the Gate Burton Energy Park (the “**Scheme**”).
- 1.1.2 Section 2 sets out the Applicant’s updates on compulsory acquisition and land use matters:
- (a) Section 2.2 provides an update in relation to the Applicant’s progress in reaching voluntary agreements;
  - (b) Section 2.2 provides an update in relation to statutory undertakers; and
  - (c) Section 2.3 provides an update in relation to other land interests.
- 1.1.3 Section 3 clarifies the wording in the Outline Design Principles [REP6-009] for Works No.4 in relation to the buried cable position, in line with guidance document ‘Power Lines: Demonstrating compliance with EMF public exposure guidelines: A voluntary Code of Practice’.

## 2. COMPULSORY ACQUISITION AND LAND USE MATTERS

### 2.1 Progress Summary

- 2.1.1 The Applicant has continued to progress negotiations to acquire the relevant freehold interests, new rights and temporary use of land by private treaty, in order to ensure implementation of the Scheme. Since the close of Examination, the Applicant has reached voluntary land agreements with a further nine parties.
- 2.1.2 The Applicant will continue to seek to reach voluntary agreements where possible.

### 2.2 Statutory Undertakers

- 2.2.1 An update from the Applicant in relation to each statutory undertaker as requested by the Secretary of State is provided below.

#### **EDF Energy (Thermal Generation) Limited (“EDF”)**

- (a) The Applicant has been unable to reach agreement with EDF on the commercial terms required to enter into a voluntary land agreement and, despite significant efforts since the close of

Examination, is unlikely to do so before the Secretary of State's decision date on the DCO application. The Applicant can confirm the outstanding matters are purely commercial.

- (b) On this basis, the Applicant continues to require compulsory acquisition and temporary possession powers sought within the DCO application over EDF land to ensure that the Scheme can be delivered without unnecessary delay or disproportionate cost. The Applicant therefore continues to advocate that the powers sought in respect of EDF's land interests are necessary, proportionate and in the public interest and would not cause serious detriment to EDF's undertaking. The Applicant therefore considers that the test at section 127(6)(a) of the Planning Act 2008 is fulfilled.
- (c) The Applicant notes that protective provisions included at Part 15 of Schedule 15 of the draft DCO **[REP6-047]** are substantially agreed with EDF, as confirmed in EDF's Deadline 7 submission **[REP7-004]**. The only provision not agreed is the inclusion of a paragraph which would waive the Applicant's ability to compulsorily acquire or take temporary possession of land or land interests held by EDF, otherwise than by agreement. The Applicant had included a placeholder for this provision, pending voluntary agreement, at paragraph 190(1) of the provisions. As confirmed in paragraph (a) above, the Applicant and EDF have been unable to agree commercial terms for a voluntary agreement, and so the Applicant is unwilling to agree to this waiver.
- (d) Notwithstanding, the protective provisions provide significant protection to EDF to protect its apparatus and statutory undertaking. This includes an absolute right of approval (subject only to reasonableness provisions) of plans of works taking place within 20m of any existing EDF apparatus or which otherwise may adversely affect any such apparatus. It also makes provision for the unlikely scenario of the Applicant requiring removal of EDF apparatus and its subsequent relocation. There are also provisions requiring the Applicant to pay EDF's expenses in relation to the interactions between them on the terms specified, and indemnity provisions including the requirement for necessary insurance to be in place prior to works in the proximity of EDF apparatus. Each of these provisions is well precedented and in a form the undertaker understands is agreed with EDF.
- (e) As acknowledged by EDF in its Deadline 7 submission **[REP7-004]**, the undertaking which EDF has in the Order limits relates to the demolition of a power station and is not an ongoing "operational" statutory undertaking. At paragraph 2.2 of its Deadline 7 submission, EDF states that it needs "full control" over construction and operational activity to ensure safe completion of its demolition works. The Applicant has provided for a robust and legally secured

mechanism for EDF to have such control, by virtue of plans of works to be approved by EDF in accordance with the protective provisions (see paragraph 193 of Part 15 of Schedule 15).

- (f) The Applicant notes that EDF provided an alternative form of protective provisions at Appendix 2 of its Deadline 7 submission [REP7-004], should the provision waiving compulsory powers not be included by the Applicant (as is currently proposed). The Applicant has reviewed those provisions and provided a compromise set of provisions at Appendix 1 of this response. The provisions at Appendix 1 show the changes required from the existing set of protective provisions at Part 15 of Schedule 15.
- (g) The main difference between the provisions included at Appendix 2 of EDF's Deadline 7 response [REP7-004] and the provisions at Appendix 1 are that the Applicant considers that any protections should be to existing assets and demolition works only, and the inclusion of any future development as proposed by EDF leads to unacceptable uncertainty in the development of the Scheme, which itself is a nationally significant infrastructure project and of critical national priority. The Applicant considers no further consultation on these provisions is therefore required, with the Secretary of State ultimately having to determine the appropriate protections to be included within the Order as made.
- (h) The Applicant therefore requests that the compulsory acquisition and temporary possession powers sought within the DCO application are granted, and that the provisions at Appendix 1 of this response are included at Part 15 of Schedule 15 of the draft DCO.

#### **Network Rail Infrastructure Limited (“Network Rail”)**

- (i) The Applicant can confirm that it has reached a commercial agreement with Network Rail which is in substantially agreed form and documents are currently being prepared for signature. The parties will write to the Secretary of State to confirm once the agreement has been signed, provide details of any consequential amendments to the protective provisions and confirm the final position of the parties. The Applicant and Network Rail are working closely to seek to ensure this agreement can be completed by the end of this week. This statement has been agreed with Network Rail.

#### **Trent Valley Internal Drainage Board (“Trent Valley IDB”)**

- (j) The Applicant has been engaged with Trent Valley IDB to seek to agree protective provisions but has not received a substantive response since Friday 3 May. The Applicant has included protective provisions for the benefit of drainage authorities at Part 3 of

Schedule 15 of the final draft DCO [**REP6-047**], which operate to protect Trent Valley IDB's interests and are in standard form. The Applicant therefore considers that the draft DCO should be granted on the terms sought by the Applicant.

#### **Uniper UK Limited (“Uniper”)**

- (k) The Applicant has continued to liaise with Uniper since the conclusion of the Examination of the Scheme but has been unable to reach agreement for bespoke protective provisions. As noted in the Applicant's Closing Submissions [**REP7-001**], standard protective provisions for the protection of electricity, gas, water and sewerage undertakers are included at Part 1 of Schedule 15 of the DCO [**REP6-047**]. The Applicant considers that these well precedented and standard provisions are sufficient to protect Uniper's interests, as explained in the section 127 statement accompanying the Applicant's Closing Submissions [**REP7-001**] and notes that Uniper did not engage on the protective provisions during Examination of the DCO application, despite efforts of the Applicant. Engagement only took place within the final weeks of Examination when there was insufficient time to consider and seek to resolve matters.
  
- (l) Notwithstanding, the Applicant is willing to include a set of bespoke protective provisions as set out at Appendix 2 of this response for the protection of Uniper, as a reasonable compromise. These protective provisions seek to align with the protective provisions provided by Uniper in its submission on 5 March 2024, with amendments considered necessary by the Applicant. Whilst these provisions are not agreed with Uniper, the Applicant considers no further consultation on the form of protective provisions is required, noting that Uniper did not substantively participate in the Examination of the DCO application for the Scheme including on protective provisions. The Applicant requests that the compulsory acquisition and temporary possession powers sought within the DCO application are granted, and that the provisions at Appendix 2 of this response are included in Schedule 15 of the draft DCO. For the avoidance of doubt the Applicant therefore continues to advocate that the powers sought in respect of Uniper's land interests are necessary, proportionate and in the public interest and would not cause serious detriment to EDF's undertaking. The Applicant therefore considers that the test at section 127(6)(a) of the Planning Act 2008 is fulfilled.

#### **Tillbridge Solar Limited**

- (m) Following the submission of the application for the Tillbridge Solar Project (“**Tillbridge**”) on 10 April 2024, the Applicant has set out at Appendix 3 of this response, required changes to the protective

provisions for the protection of Tillbridge Solar Limited at Part 14 of Schedule 15 of the draft Development Consent Order [REP6-047]. Whilst this has not been specifically requested by the Secretary of State, the changes are required to populate existing placeholders in the protective provisions, to reflect the relevant works number that was submitted with the final Tillbridge application.

- (n) The Applicant also wishes to take this opportunity to confirm that whilst the application for Tillbridge was submitted after the Examination for the Scheme had ended, the Tillbridge project has already been appropriately assessed as part of the Scheme's cumulative assessment. For example, see Chapter 16 of the Environmental Statement: Cumulative Effects and Interactions [APP-025] and the Access Updates and Cumulative Impact Assessment [REP2-045]. Therefore, no further assessment is now required to consider Tillbridge's application in the determination of the Gate Burton DCO application.

2.2.2 Please see the Applicant's full statement pursuant to s127 and s138 of the PA 2008 at Appendix 1 of the Applicant's Closing Submissions [REP7-001].

## 2.3 Other land interests

2.3.1 An update from the Applicant in relation to the other land interests as requested by the Secretary of State is provided below.

- (a) **Shaun Kimberley** – The Applicant has continued to engage with this affected person to reach a voluntary land agreement. The affected person's agent has noted that sufficient provisions are now in place to address the affected person's concerns regarding the impacts during construction. As such, the Applicant believes Heads of Terms are agreed and that a signed copy will be returned imminently.
- (b) **Emma and Nicholas Hill** – The Applicant has continued to engage with this affected person but has not been able to reach agreement on the commercial terms for the purposes of entering a voluntary land agreement with this landowner. Negotiations continue with this affected person.

2.3.2 Notwithstanding any outstanding voluntary agreements, the Applicant maintains that it has demonstrated that the land rights being sought are required for the Scheme, are proportionate, and that there is a compelling case in the public interest for compulsory acquisition powers to be granted. All statutory and policy tests for the inclusion of compulsory acquisition powers in the DCO have been met.

### 3. **EMF**

- 3.1 In its request for information, the Secretary of State notes that Works No.4 of the Outline Design Principles [**REP6-009**] currently states “*The 400kV cable trench for open trenching will be a minimum of 0.9 and a maximum of 2.5m deep and 1.42m wide and will be a minimum of 10m from any residential receptors*”.
- 3.2 The Secretary of State has invited the Applicant to clarify these that measurements relate to the cable itself, that minimum depths are measured to the top of the protective tile and that the 0.9 unit for measurement should be meters (i.e. 0.9m).
- 3.3 The Applicant can confirm that the Works No.4 minimum depth measurement is from the top of the cable duct to the ground surface and that the measurement is in meters (i.e. 0.9m). The Outline Design Principles [**document 2.3**] have been updated accordingly with Revision 8 being the version to be certified. The Guide to the Application [**document 1.3**] has also been updated and submitted to ensure the list of certified documents is up to date. Revision 9 is the final version of the Guide to the Application.
- 3.4 An illustration of the open cut trench cross section with relevant dimensions is also provided in Annex D of Environmental Statement Appendix 2-B: Grid Connection Construction Method Statement [**APP-144**] submitted with the Application. This plan shows the depth of 0.9m between the cable duct and ground level.

### 4. **CONCLUSION**

- 4.1 The Applicant has made substantial progress in resolving the few outstanding matters with affected persons and statutory undertakers since close of Examination, as evidenced by this submission.
- 4.2 The Applicant considers that the Secretary of State now has all necessary information before them to positively determine the DCO application on time on the 4 July 2024. Notwithstanding, the Applicant will write to the Secretary of State to confirm when the commercial agreement with Network Rail has completed, and any consequential amendments to the protective provisions.



## APPENDIX 1

### Alternative form of the protective provisions for the protection of EDF Energy (Thermal Generation) Limited to replace Part 15 of Schedule 15 of the draft Development Consent Order

#### PART 15

#### FOR THE PROTECTION OF EDF ENERGY (THERMAL GENERATION) LIMITED

##### Application

**185.**(1) For the protection of EDF as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EDF.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and EDF, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order) –

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between EDF and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to EDF on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to EDF (but without prejudice to 195(3)(b)).

##### Interpretation

**186.** In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than:

(i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means:

general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised development; and (b) after the construction period of the authorised development in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of EDF; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of EDF to cover the undertaker’s liability to EDF to a total liability cap of £50,000,000.00 (fifty million pounds) (granted by an entity and in a form reasonably satisfactory to EDF and where required by EDF, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of EDF to cover the undertaker's liability to EDF for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to EDF);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of EDF to enable EDF to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, or other apparatus as defined in article 2 of this Order, belonging to or maintained by EDF together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of EDF and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

(a) "authorised development" has the same meaning in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use, maintenance and decommissioning of the authorised development and construction of any works authorised by this Schedule;

(b) "commence" and "commencement" has the same meaning as in article 2 of this Order, except in this Part of this Schedule it includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"EDF" means EDF Energy (Thermal Generation) Limited (Company Number 04267569) whose registered office is at 90 Whitfield Street, London, England, W1T 4EZ or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by EDF (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for EDF's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of EDF: construct, use, repair, alter, inspect, renew or remove (including decommission) the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by EDF acting reasonably;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which:

(a) will or may be situated over, or within 20 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 191(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 191(2) or otherwise;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

## **On Street Apparatus**

187. Except for paragraphs 188 (*apparatus of EDF in stopped up streets*), 193 (*retained apparatus: protection*), 194 (*expenses*) and 195 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of EDF, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and EDF are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of EDF in stopped up streets**

188.—(2) Where any street or public right of way is stopped up under article 11 (*temporary stopping up of streets and public rights of way*), if EDF has any apparatus in the street or public right of way or accessed via that street or public right of way EDF has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to EDF, or procure the granting to EDF of, legal easements reasonably satisfactory to EDF in respect of such apparatus and access to it prior to the stopping up of any such street or public right of way but nothing in this paragraph affects any right of the undertaker or EDF to require the removal of that apparatus under paragraph 191 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 193.

(3) Notwithstanding the temporary stopping up or diversion of any street or public right of way under the powers of article 11 (*temporary stopping up of streets and public rights of way*), EDF is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street or public right of way.

### **Protective works to buildings**

189. The undertaker, in the case of the powers conferred by article 18 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of EDF.

## **Acquisition of land**

190. ~~(1) [xxx]~~

~~(12) As a condition of an agreement between the parties in sub-paragraph (1),~~ Prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between EDF and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of EDF or affect the provisions of any enactment or agreement regulating the relations between EDF and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as EDF reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between EDF and the undertaker acting reasonably and which must be no less favourable on the whole to EDF unless otherwise agreed by EDF, and it will be the responsibility of the undertaker to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

~~(23)~~ Save where otherwise agreed in writing between EDF and the undertaker, the undertaker and EDF agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by EDF or other enactments relied upon by EDF as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

~~(34) As a condition of an agreement between the parties in sub-paragraph (1)~~ In the event that the undertaker exercises any powers granted under this Order which relates to taking temporary access rights during construction over EDF's land, EDF may ensure that it retains flexibility to alter any construction routes (within the Order limits) or to limit access for certain time periods, and may require the undertaker to pay any security and maintenance costs involved in the grant of any such rights.

~~(5) Any agreement or consent granted by EDF under paragraph 193 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).~~ **Removal of apparatus**

**191.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of EDF to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of EDF in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to EDF advance 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 EDF reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to EDF to its satisfaction (taking into account paragraph 192(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance, operation and decommissioning of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, EDF may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for EDF to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 EDF and the undertaker.

(5) EDF must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to EDF of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

**Facilities and rights for alternative apparatus**

**192.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for EDF facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and EDF and must be no less favourable on the whole to EDF than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by EDF.

(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 less favourable on the whole to EDF than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 199 (*arbitration*) of this Part of this Schedule and the arbitrator must make such

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

### **Retained apparatus: protection**

**193.**—(1) Not less than ~~60~~56 days before the commencement of

(a) any specified works; or

(b) any of the authorised development or associated activities which may in any way adversely affect the demolition of any apparatus.

the undertaker must submit to EDF a plan of the works to be executed and seek from EDF details of the underground extent of their assets.

(2) In relation to ~~specified works~~ the works described in sub-paragraph (1) the plan to be submitted to EDF under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; ~~and~~
- (g) a ground monitoring scheme, where required; and
- (h) an assessment of the risks to the demolition of EDF's apparatus from the works.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until EDF has given written approval of the plan so submitted.

(4) Any approval of EDF required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, EDF may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, including for the purpose of minimising disruption to the wider demolition works. for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and EDF and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by EDF for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EDF will be entitled to watch and inspect the execution of those works.

(7) Where EDF requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to EDF's satisfaction prior to the commencement of any specified works for which protective works are required and EDF must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If EDF in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 185 to 187 and 190 to 192 apply as if the removal of the apparatus had been required by the undertaker under paragraph 191(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan,

instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to EDF notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order, the undertaker must comply with EDF's HSEQ Requirement for Contractors (document reference DD\_STND\_HAS\_001 and any document that replaces or supersedes it).

(12) The undertaker will no later than 56 days following receipt of written notice from EDF in accordance with this sub-paragraph, cease any works referred to in sub-paragraph (1) and vacate EDF land during planned explosive and demolition events or if EDF, acting reasonably, considers the works constitute a risk to demolition works. EDF must give written notice to the undertaker of its requirement for any such explosive or demolition events at least 56 days' prior to the event.

## Expenses

**194.**—(1) Save where otherwise agreed in writing between EDF and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to EDF within 30 days of receipt of an itemised invoice or claim from EDF all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by EDF in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by EDF in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by EDF as a consequence of EDF;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 191(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting EDF;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 199 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved

if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to EDF by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(5) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(6) Any amount which apart from this sub-paragraph would be payable to EDF in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on EDF any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Indemnity

**195.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of EDF, or there is any interruption in any service provided, or in the supply of any goods, by EDF, or EDF becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from EDF the cost reasonably and properly incurred by EDF in making good such damage or restoring the supply; and
- (b) indemnify EDF for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EDF, by reason or in consequence of any such damage or interruption or EDF becoming liable to any third party other than arising from any default of EDF.

(3) The fact that any act or thing may have been done by EDF on behalf of the undertaker or in accordance with a plan approved by EDF or in accordance with any requirement of EDF or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless EDF fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(4) Nothing in sub-paragraph (1) is to impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of EDF, its officers, servants, contractors or agents; or
- (b) any authorised development or any other works authorised by this Part of this Schedule carried out by EDF as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph 195(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 195; or
- (c) any consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(5) EDF must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.



(6) EDF must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(7) EDF must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within EDF'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 EDF's control and if reasonably requested to do so by the undertaker EDF must provide an explanation of how the claim has been minimised, where relevant.

(8) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by EDF or in respect of which EDF has an easement or wayleave for its apparatus or any other interest or to carry out any works within 20 metres of EDF's apparatus until the following conditions are satisfied:

- (a) unless and until EDF is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of ~~the authorised development such works to the completion of those works~~) and EDF has confirmed the same to the undertaker in writing; and
- (b) unless and until EDF is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to EDF that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of ~~the authorised development such works to the completion of those works~~) and EDF has confirmed the same in writing to the undertaker.

(9) In the event that the undertaker fails to comply with sub-paragraph (7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent EDF from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

## Enactments and agreements

**196.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between EDF and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and EDF in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## Co-operation

**197.—**(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EDF requires the removal of apparatus under paragraph 191(2) or EDF makes requirements for the protection or alteration of apparatus under paragraph 193, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of EDF's undertaking and EDF shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EDF's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

## Access

**198.** If in consequence of ~~the agreement reached in accordance with paragraph 190(1) or~~ the powers granted under this Order the access (with or without vehicles, plant or machinery) to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable EDF to maintain or use the apparatus no less effectively than was possible before such obstruction.



**Arbitration**

**199.** Save for differences or disputes arising under paragraph 191(2), 191(4), 192(1) and 193 any difference or dispute arising between the undertaker and EDF under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EDF, be determined by arbitration in accordance with article 42 (*arbitration*).

**Notices**

**200.** Notwithstanding article 45 (*service of notices*), any plans submitted to EDF by the undertaker pursuant to paragraph 193 must be submitted to EDF addressed to the company secretary and copied to the land and estates team and sent to 90 Whitfield Street, London, England, W1T 4EZ or to such other address as EDF may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## APPENDIX 2

### The Applicant's proposed protective provisions for the benefit of Uniper UK Limited to be included at Part 17 of Schedule 15 of the draft Development Consent Order

#### PART 17

##### FOR THE PROTECTION OF UNIPER UK LIMITED

1. For the protection of Uniper as referred to in this Part of this Schedule, the following provisions will, unless otherwise agreed in writing between the undertaker and Uniper, have effect.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus to the satisfaction of Uniper to enable Uniper to fulfil its functions in a manner no less efficient than previously;

“apparatus” means:

- (i) any fixed and moveable items, which forms, or may form, part of Uniper's system, including cavities, chambers, pipelines, valves, ventilators, pumps, compressors, pumping or compression systems, control systems and any associated cables (including high voltage, low voltage and datacoms) and any equipment in which electrical conductors are used, supported, or otherwise form, or may form, part of the system, cathodic protection systems, roads, compounds and equipment owned by Uniper;
- (ii) any other equipment or apparatus belonging to or maintained by Uniper or apparatus and such other equipment or apparatus constructed that becomes operational for the purposes of Uniper's functions including any structure in which equipment or apparatus is, or will be, lodged or which gives, or will give, access to apparatus;
- (iii) any replacement equipment or apparatus as required or determined by Uniper;

“as-built” records” means each as-built record or document prepared by the undertaker or delivered to the undertaker by its subcontractors or any other person carrying out the specified works;

“authorised development” has the same meaning as in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing or proximity agreement, deed of easement, deed of variation or new deed of grant agreed between the parties;

“emergency works” has the meaning given to it in section 52 of the 1991 Act;

“good industry practice” means exercising the degree of skill, diligence, prudence, foresight and care reasonably expected of a skilled and experienced solar developer, which includes obtaining all necessary permits and compliance with any safety rules;

“functions” includes powers and duties;

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

“including” or “include” are to be construed without limitation, and such general words are not to be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and references to “such as” or “for example” must be construed accordingly;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Uniper including retain, lay, construct, use, maintain, repair, protect, access, alter, inspect, renew, replace, enlarge, decommission or remove the apparatus or alternative apparatus;

“Order” means the Gate Burton Energy Park Order 202[\*];

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and mitigation measures (including but not limited to integrity reports), earthing philosophies, proposed land and road crossings and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“representative” means Uniper’s directors, officers, employees, agents, consultants and advisers;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, under, across, along, upon or within 15 metres measured in any direction of any apparatus
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 8(2) or otherwise.

“undertaker” has the same meaning as in article 2 of the Order; and

“Uniper” means Uniper UK Limited incorporated in England with company number 2796628 and whose registered office is at Compton House 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE.

3. Except for paragraphs 4 (apparatus of Uniper in stopped up streets), 7 (retained apparatus), 8 (removal or replacement of apparatus), 9 (expenses) and 10 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Uniper, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Uniper are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of Uniper in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to Uniper elsewhere in the Order, where any street is stopped up under the Order, if Uniper has any apparatus in the street or accessed via that street Uniper will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Uniper, or will procure the granting to Uniper of, legal easements reasonably satisfactory to Uniper in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of streets and public rights of way), Uniper will be at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

## **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers in accordance with paragraph 7 of this Part of this Schedule, so as not to obstruct or render less convenient the access to any apparatus or alternative apparatus without the written consent of Uniper.

## **Acquisition of land**

6.— (1) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of streets and public rights of way), Uniper is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

## **Retained apparatus**

7.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Uniper at the address stated in paragraph 14, a plan in respect of those works.

(2) The plan to be submitted to Uniper under sub-paragraph (1) must include all comprehensive risk assessments (including any quantitative risk assessments) and any method statement describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to within 15 metres measured in any direction of any such apparatus;
- (f) any changes to the land drainage systems, temporary crossing designs, traffic management plans, health and safety management plans, emergency response plans, planned changes or rerouting of any assets and their corresponding design codes, earth schedules and earthing risk assessments;
- (g) any recommendations or mitigation measures to avoid interference with, or loss or damage to the apparatus (including damage caused by passing over the apparatus by heavy construction machinery) and related remedies should such mitigation measures fail;
- (h) any intended maintenance regimes; and
- (i) a programme of the works, including any proposed start dates and the anticipated duration of the works.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Uniper has given written approval of the plan so submitted. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by Uniper, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(4) Any approval of Uniper required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub- paragraph (5); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker will provide any additional information or documentation as reasonably requested by Uniper and Uniper may require modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against

interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraphs (4) and (5), as approved or as amended from time to time by agreement between the undertaker and Uniper and in accordance with all conditions imposed under subparagraph 4(a) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper (or its representative) will be entitled to attend any meetings related to the specified works and watch, monitor and inspect the execution of those works.

(7) Where Uniper requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Uniper's satisfaction (acting reasonably) prior to the commencement.

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan;

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works, provided that it must give to Uniper notice as soon as is reasonably practicable by calling Uniper's emergency telephone line on 0800 389 4795 or such other telephone number notified by Uniper to the undertaker in writing and as soon as is reasonably practicable give to Uniper a plan of those works and must—

(a) comply with sub-paragraphs (5) and (6) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(10) At all times when carrying out any works authorised under the Order the undertaker must comply with, and use reasonable endeavours to procure compliance by any party acting on its behalf with, all applicable law and good industry practice. The undertaker must procure that any party carrying out any works on the land on its behalf has knowledge of the apparatus, its location (including as illustrated by a site map) and procure that the obligations contained in this Part of this Schedule are adhered to by such parties working on the land on its behalf.

(11) The undertaker must prepare, and keep up-to-date, a complete set of red-lined "as-built" records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. The undertaker must submit to Uniper, no later than twenty (20) business days after the completion of the specified works, all "as-built" records. Uniper may specify the number of copies of any "as built" records acting reasonably.

### **Removal or replacement of apparatus**

8.—(1) The undertaker is not permitted to remove, move or replace any apparatus in land without the prior written consent of Uniper (such consent not to be unreasonably withheld or delayed).

(2) If, in the exercise of the powers conferred by the Order, the undertaker has exercised its compulsory purchase powers to acquire any interest in or possesses temporarily any Order land in which any apparatus is placed and has the power to move, replace or remove that apparatus, it must not do so under this Part of this Schedule and any right of Uniper to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Uniper in accordance with sub-paragraphs (3) to (6) inclusive.

(3) If, for the purpose of executing any specified works in, on, under or over any land held, appropriated or used under this Order pursuant to exercising its compulsory purchase powers the undertaker requires the replacement or removal of any apparatus placed in that land it must give to Uniper no less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and where applicable, the proposed replacement apparatus or the position of any alternative apparatus to be provided or constructed and in that case provided that where:

- (a) the undertaker requires the replacement of any apparatus placed in that land, it must be replaced with identical apparatus, provided that if identical apparatus is not available, it must be either:
  - (i) replaced with apparatus on a similar or equivalent basis (i.e. like-for-like basis); or
  - (ii) where it cannot be replaced on a similar or equivalent basis, then it must be replaced with enhanced apparatus. For the avoidance of doubt, no apparatus will be replaced with anything less advanced than the apparatus being replaced;
- (b) the undertaker requires the removal of any apparatus placed in that land (or if in consequence of the exercise of any of the powers conferred by this Order Uniper reasonably needs to remove any of its apparatus) Uniper must, subject to sub-paragraph (4), secure any necessary consents for the alternative apparatus and afford to Uniper to its satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by Uniper and subsequently for the maintenance of that apparatus,

and prior to any removal or any replacement of the apparatus pursuant to this paragraph 8, the parties must agree the value attributable to such apparatus or alternative apparatus, prior to any replacement or removal. If such value cannot be agreed between the parties, such value will be determined in accordance with paragraph 13 (arbitration).

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must take all steps required in the circumstances to assist Uniper to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Any alternative apparatus to be constructed in land of or land secured by 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 the undertaker and Uniper.

(6) Uniper must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written agreement having been entered into between the parties and the grant to Uniper of any such facilities and rights as are referred to in sub-paragraph (3) or (4), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## **Expenses**

**9.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Uniper within 30 days of receipt of an invoice, all charges, costs and expenses reasonably anticipated or incurred by Uniper in, or in connection with, the inspection, removal, relaying or replacing, alteration, repair, remediation or restoration of or protection of any apparatus or alternative apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any powers conferred on the undertaker, pursuant to the Order (including in the execution of any authorised development as is referred to in this Part of this Schedule) including without limitation—

- (a) in connection with the cost of the carrying out of any assessment of Uniper's apparatus under P.S.R 1996 and G.S.M.R reasonably necessary as a consequence of the authorised development;
- (b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised development;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) For the purposes of calculating the sums payable pursuant to sub-paragraph (1) above, in the case of the replacement or removal of apparatus, the following applies:

- (a) where apparatus is removed under the provisions of this Part of this Schedule and which will not be used as part of the apparatus or alternative apparatus, there will be excluded from any sum payable under sub-paragraph (1) the value of the apparatus being removed; and

- (b) subject to sub-paragraph 8(3)(a), when replacing existing apparatus, there will be deducted from any sum payable under sub-paragraph (1) the value of that apparatus being removed under the provisions of this Part of this Schedule and which is not re-used as part of the apparatus or alternative apparatus, except that the value of any apparatus or alternative apparatus used to replace the apparatus being removed will be included in the sum payable under sub-paragraph (1), such value being agreed between the parties (or as determined in accordance with paragraph 13 (arbitration) prior to any removal or replacement of the apparatus,

provided that, in each case, all charges, costs and expenses reasonably incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with the works required for the removal or replacement of such apparatus will be included in the sum payable under sub-paragraph (1).

(3) If, in accordance with sub-paragraph 9(2) of this Part of this Schedule, any existing apparatus is replaced with enhanced apparatus where the undertaker's consent has not been obtained by Uniper (or where disputed in accordance with paragraph 13 (Arbitration), decided not to be necessary), then, if the construction expenses for this replacement surpass the construction expenses that would have been paid for similar or equivalent apparatus then any excess costs will be borne by Uniper, except that where it is not possible in the circumstances to obtain similar or equivalent apparatus, full costs will be payable by the undertaker.

(4) Any amount which apart from this sub-paragraph would be payable to Uniper in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Uniper any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development any loss or damage is caused to any apparatus, alternative apparatus or property of Uniper, or there is any interruption in any services provided, or in the supply of any goods, or in the use of the apparatus or alternative apparatus (as applicable) by Uniper, the undertaker must—

- (a) bear and pay the costs reasonably incurred by Uniper in making good such loss or damage or in restoring the supply or its use;
- (b) make compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper, by reason or in consequence of any such loss, damage or interruption; and
- (c) indemnify Uniper for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Uniper, by reason or in consequence of any such damage or interruption or Uniper becoming liable to any third party (an "Indemnity Claim").

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to:

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Uniper or its representatives; or
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(3) Uniper must give the undertaker reasonable notice of an Indemnity Claim and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Uniper must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Uniper'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 Uniper's control and if reasonably requested to do so by the undertaker Uniper must provide an explanation of how the claim has been minimised, where relevant.

### **Co-operation**

**11.**—(1) Where in consequence of the proposed construction of any of the authorised development, Uniper makes requirements for the protection or alteration of apparatus under paragraphs 7(5) or 7(7), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient

and economic execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of Uniper’s apparatus and Uniper must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Uniper’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by Uniper or the taking of action by Uniper, it must not be unreasonably withheld or delayed.

### **Access**

**12.**—If in consequence of the agreement reached in accordance with paragraph 6(1) of this Schedule or otherwise as granted by this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Uniper (or representative) in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Uniper (or its representative) to maintain or use the apparatus no less effectively than was possible before such obstruction. For the avoidance of doubt, Uniper (or its representative) will be entitled to access its apparatus in the land at all times.

### **Arbitration**

**13.**—Any difference or dispute arising between the undertaker and Uniper under this Part of this Schedule must be determined by arbitration in accordance with article 42 (arbitration).

### **Notices**

**14.**—Any notice, statement, request, plan or any other written communication (including the plan to be provided at paragraph 7) to be given or made in respect of this Part of this Schedule by the undertaker must be given or made in writing to the address stated below or such other address as Uniper may have notified to the undertaker from time to time.

Name	Uniper Pipelines Team
Address	Pipelines Office, Uniper Killingholme Power Station, Chase Hill Road, Killingholme, North Lincolnshire, DN40 3LU
Contact	Lead Pipeline Engineer
E-mail	pipelinesuk@uniper.energy



### **APPENDIX 3**

#### **Changes to the protective provisions for the protection of Tillbridge Solar Limited at Part 14 of Schedule 15 of the draft Development Consent Order**

1. Remove the square brackets around the protective provisions at Part 14 of Schedule 15.
2. Remove all references to “Work No. [XX]” and replace with references to “Work No. 4E”.