

From: [Toby Yeates](#)
To: [Gate Burton Solar Project](#)
Cc: [REDACTED]
Subject: RE: Gate Burton Energy Park EN010131: Applicant response to SoS request for information issued on 29 April 2024 (1 of 3) [PM-AC.FID4855943]
Date: 17 May 2024 16:39:46
Attachments: [image001.png](#)
[image002.png](#)
[2024 05 17 PM L+ Letter to the Secretary of State.pdf](#)

Good afternoon,

Please see the attached letter for the attention of the Secretary of State.

This letter is submitted further to the Applicant's response to the Secretary of State's request for information dated 29 April 2024 (as submitted by Ali below).

We would be grateful if you could please confirm receipt.

Kind regards,
Toby

Toby Yeates
Associate

[REDACTED]
 [REDACTED]

For Pinsent Masons LLP

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FAO: The Secretary of State c/o the Planning Inspectorate

Our Ref: 701763.07000

Department for Energy Security and Net Zero Energy
Infrastructure Planning
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E [REDACTED]@pinsentmasons.com

17 May 2024

Dear Mr Wheadon

GATE BURTON ENERGY PARK (EN010131)

Gate Burton Energy Park Limited (the "Applicant") has submitted an application for a development consent order ("DCO") for the Gate Burton Energy Park (the "Scheme") under the Planning Act 2008. A decision on the application is due from the Secretary of State for Energy Security and Net Zero (the "Secretary of State") on or before 4 July 2024.

On 29 April 2024, the Secretary of State issued a letter to the Applicant and other interested parties requesting further information (the "Rule 17 Request"). The deadline for responses was 23:59 on 13 May 2024. The Applicant submitted 'The Applicant's Response to the Secretary of State's Request for Information dated 29 April 2024' (the "Rule 17 Response") on Monday 13 May 2024.

As a follow up to its Rule 17 Response, the Applicant wishes to submit this letter to the Secretary of State to provide an update on outstanding matters:

Network Rail

Further to paragraph 2.2.1(i) of the Rule 17 Response, the Applicant can confirm that the commercial agreement agreed between the Applicant and Network Rail has now been signed. As a result of this agreement, a consequential amendment to the draft DCO [REP6-047] is required. The Applicant therefore requests that the wording at Appendix 1 of this letter is included at paragraph 116 of the protective provisions for the protection of railway interests in Part 10 of Schedule 15 of the draft DCO in replacement of the existing placeholder.

Subject to the wording at Appendix 1 of this letter being included in the DCO, the protective provisions at Part 10 of Schedule 15 are fully agreed between both parties. The Applicant considers that through the protection afforded by the agreed protective provisions, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of Network Rail's statutory undertaking.

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The Applicant understands Network Rail is also writing to the Secretary of State today to confirm the withdrawal of its objection on that basis.

Uniper UK Limited (“Uniper”)

The Applicant notes that Uniper made a submission to the Secretary of State on Thursday 16 May 2024 (“**Uniper’s Submission**”), three days after the deadline for responses to the Rule 17 Request. This includes a set of Uniper’s preferred protective provisions.

As referred to at paragraphs 2.2.1 (k) to (l) of the Rule 17 Response, the Applicant considers that the well preceded and standard provisions at Part 1 of Schedule 15 of the draft DCO are sufficient to protect Uniper’s interests. The Applicant first shared these standard proposed protective provisions to Uniper on 30 August 2023 and subsequently followed up for comments during October, November and December 2023. Despite these efforts, the Applicant only first received comments back from Uniper on Saturday 16 December 2023. As the Applicant was required to submit its final draft DCO on Thursday 21 December 2023, there was insufficient time remaining for a bespoke set of PPs to be negotiated and included in the final draft DCO.

In this context, it is not appropriate for Uniper to only seek to engage meaningfully on the protective provisions after the close of the Examination and more recently during the Secretary of State’s determination period – that is not the purpose or function of the determination period.

Notwithstanding the above, the Applicant has continued to engage with Uniper to seek to agree bespoke protective provisions. As confirmed at paragraph 2.2.1(l) of its Rule 17 Response, the Applicant has subsequently requested that the Secretary of State includes a bespoke set of protective provisions for the protection of Uniper, for the purposes of the Scheme. This represents a reasonable compromise between Uniper’s preferred protective provisions and the standard and well-precedented protective provisions for the benefit of gas undertakers at Part 1 of Schedule 15 of the draft DCO.

The Applicant has moved quite significantly from the standard provisions at Part 1 of Schedule 15 of the draft DCO and has achieved substantial common ground with Uniper. For example, at paragraphs 1.7 and 1.8 of Uniper’s submission dated 5 March 2024, Uniper referred to the need to include “*detailed provisions concerning the submission and approval of plans*”. Such provisions have been accommodated by the Applicant, as evidenced by paragraph 7(2) of the protective provisions at Appendix 2 of the Rule 17 Response. Whilst paragraph 1.9 of Uniper’s Submission also requests “*specific provisions regarding insurance and indemnity*”, these are commercial non-standard provisions which are not agreeable to the Applicant.

In light of the above, the Applicant considers that the Secretary of State has all of the information before her to make a decision. Namely, the Applicant’s proposed set of protective provisions at Appendix 2 of the Rule 17 Response and Uniper’s preferred protective provisions in Uniper’s Submission. The Applicant continues to advocate for its proposed set of protective provisions, as offering robust protection for Uniper’s apparatus.

We should be grateful if you would acknowledge receipt of this letter.

Yours faithfully

Pinsent Masons LLP



APPENDIX 1

PARAGRAPH 116 OF THE PROTECTIVE PROVISIONS FOR THE PROTECTION OF RAILWAY INTERESTS AT PART 10 OF SCHEDULE 15

- 116.** (1) The undertaker must not exercise the powers conferred by—
- (a) article 3 (Development consent etc. granted by this Order);
 - (b) article 5 (Power to maintain the authorised development);
 - (c) article 16 (Discharge of water);
 - (d) article 19 (Authority to survey and investigate the land);
 - (e) article 20 (Compulsory acquisition of land);
 - (f) article 22 (Compulsory acquisition of rights);
 - (g) article 23 (Private rights);
 - (h) article 24 (Acquisition of subsoil only);
 - (i) article 25 (Power to override easements and other rights);
 - (j) article 29 (Temporary use of land for carrying out the authorised development);
 - (k) article 30 (Temporary use of land for maintaining the authorised development);
 - (l) article 31 (Statutory undertakers);
 - (m) article 38 (Felling or lopping of trees and removal of hedgerows);
 - (n) article 39 (Trees subject to tree preservation orders);
 - (o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
 - (p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
 - (q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
 - (r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;
- in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.
- (2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.
- (3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 31 (Statutory undertakers), article 25 (power to override easements and other rights) or article 23 (Private rights) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.
- (4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.
- (5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.
- (6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).
- (7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.