

**APPLICATION BY WEST BURTON SOLAR PROJECT LIMITED FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE WEST BURTON SOLAR PROJECT**

DCO REFERENCE: EN010132

FURTHER REPRESENTATIONS

ON BEHALF OF UNITED KINGDOM ATOMIC ENERGY AUTHORITY



**UK Atomic
Energy
Authority**

Carter Jonas

APRIL 2024

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INTRODUCTION

1. These further written representations are made on behalf of the United Kingdom Atomic Energy Authority ('UKAEA') in accordance with rule 10 of the Infrastructure Planning (Examination Procedure) Rules 2010 ('Further Representations').
2. These Further Representations follow, and should be read together with, the representations made on behalf of the UKAEA ('Representations') on 15 March 2024 in accordance with Deadline 4A (REP5-005). The purpose of these Further Representations are as follows:
 - a. Provide to the Examining Authority's ('ExA') the protective provisions which the UKAEA will seek to be secured through the development consent order ('DCO') in the event that a voluntary agreement cannot be reached with the Applicant.
 - b. Provide further background information as to UKAEA's objection to the use of compulsory acquisition ('CA') powers over land at West Burton Power Station in which it holds an interest. The UKAEA considers that this information will assist the ExA in understanding the UKAEA's objection prior to its attendance at the compulsory acquisition hearing on 23 April 2024 and provide context for the protective provisions sought.
 - c. To comment briefly on the ExA written Question 1.4.7 and EDF Energy (Thermal Generation) Limited's ('EDF') response to this question, which was submitted on 9 January 2024 in accordance with Deadline 3 (REP3-052).

RELEVANT BACKGROUND

3. As explained in the UKAEA's Representations, the UKAEA holds an interest in land at West Burton Power Station pursuant to an Option with EDF dated 3 October 2022. The background to the UKAEA's statutory functions is set out in section 2 of the Representations and is not repeated in detail here. At paragraph 2.4 of the Representations, it was explained that the UKAEA's interest in land at West Burton Power Station was the result of a nationwide site selection process, by which it sought a suitable site for the delivery of its ground-breaking Spherical Tokamak for Energy Production ('STEP') prototype fusion energy plant. The nature of that process provides context for the importance of this particular site to the UKAEA's functions and the delivery of its STEP programme, and therefore the need for protective provisions in the form sought by the UKAEA.

Site Selection Process

4. The site selection process was launched by the Secretary of State in December 2020 and ran for a period of nearly two years. The process sought nominations of sites to host the STEP plant from site owners and stakeholders. A total of fifteen sites were put forward, including the site at West Burton, which was nominated by a team led by Nottinghamshire County Council. A shortlist of five sites was produced, which were subject to a more detailed evaluation. The evaluation included a range of criteria such as technical and operational feasibility, the potential for the delivery of socio-economic benefits for the region, and alignment with national policies and priorities. The evaluation demonstrated that, whilst all five sites were feasible as locations for STEP, the West Burton site had significant advantages over the other short-listed sites and presented fewer risks to delivery.
5. In October 2022, the Secretary of State announced that the West Burton site had been selected for the STEP programme.

Early Site Investigations

6. In the period of some 18 months since the announcement and conclusion of the option agreement with EDF, the UKAEA has established an operational base at the site from which it has been carrying out site characterisation and due diligence. Studies carried out to date have demonstrated that outside the existing power station, the site has ecological and biodiversity sensitivities that will have to be managed in the development. Geotechnical and geophysical studies, which will provide full geological mapping of the site, are ongoing. Geological stability is essential for the project and the early geological studies will identify and characterise geological features which will impact the layout and design of the plant. The final location of the STEP plant within the West Burton site will depend on the results of these ground investigations.
7. The early investigations have demonstrated that the site is constrained in a number of respects. In addition to the geological and ecological constraints referred to above, this includes cultural heritage assets within the site, flood defence requirements and the presence of other site users. In particular, the layout of the site will continue to be constrained by the 400kV and 132kV National Grid substations and need for other users to access these substations. Other users of the site who require access include West Burton Energy, Severn Trent Water, Trent Valley Internal Drainage Board and the Environment Agency. In addition, new projects in the area (including solar projects

such as the West Burton Solar Project) which require access and easement rights. EDF does and will continue to require access by contractors to carry out the commercial extraction of ash on site. The need to take into account the requirements of all these co-users and new projects place further constraints on the STEP development.

8. Baseline study work will continue over the next two years to inform the masterplanning of the site. The UKAEA currently anticipates that major engineering and construction partners will join the project in early 2026, at which point the project will receive a significant injection of resources and an increase in the rate of project development.
9. At present, therefore, there can be no certainty about the location of the plant within the site. Early masterplan sketches have indicated that the plant may be situated to the north of the site, however, no final decision can be taken until the baseline studies have been completed to inform option selection studies. It is anticipated that the footprint of the plant and the layout of the site will not be fixed before approximately 2027. It should also be noted that even if the plant is located to the north of the site, the southern area will be required for construction areas (laydown areas, offices, contractor facilities, etc).
10. Until such a time that the option selection studies have been completed, it is essential that the UKAEA retains flexibility to situate the plant in the most suitable location within the site in order to reduce long term risks to the project. The UKAEA seeks to avoid a situation in which other statutory undertakers' apparatus constrains the future siting of the plant and ultimately conflicts with its optimal positioning. It is for this reason that the UKAEA seeks protective provisions to safeguard its future operations at the site, as explained further below.
11. Finally, the UKAEA notes that the ExA has sought clarification from EDF in its written questions as to the impact of the scheme on its undertaking. In its response, EDF referred to the future development of the site and explained as follows:

“The West Burton A site has also been selected by the UK Atomic Energy Authority for the development of the UK’s first Nuclear Fusion Plant, with the potential to yield significant quantities of low carbon energy, generate employment opportunities and encourage investment in the region. EDF wishes to facilitate the implementation of this project and any other potential future development opportunities at the site. It is therefore imperative that the proposed cable route for the Project does not sterilise development land or detract from future development plans.”

12. The UKAEA endorses and echoes EDF's concerns about the effect of the cabling on constraining development of the site for the reasons explained above.

PROTECTIVE PROVISIONS

13. The UKAEA does not object in principle to the scheme. The UKAEA recognises the benefits of the scheme and supports the principle of delivering renewable energy generation projects. The UKAEA has already worked with other developers in the area to facilitate similar solar projects which require easement rights.

14. However, the UKAEA considers it necessary for the protection of the future delivery of the STEP programme that protective provisions be included within the draft DCO. It is the UKAEA's position that in the absence of a voluntary agreement with the Applicant, protective provisions are necessary and reasonable to avoid an adverse impact on and serious detriment to the UKAEA's future operations.

15. The UKAEA has been engaging with the Applicant as to the form and content of the proposed protective provisions but to date, the draft DCO does not contain agreed protective provisions for the protection of the UKAEA to its satisfaction. The draft protective provisions enclosed with these Further Representations are accompanied by a comparison version which shows the amendments UKAEA seeks to those draft protective provisions proposed to UKAEA by the Applicant. The amendments suggested are modest, and the justification for the changes is set out within the appended documents. Further engagement will take place with the Applicant, and an update can be provided during the Compulsory Acquisition Hearing.

16. The key issue that it is expected will not be resolved is the inclusion of paragraph 5 of the enclosed protective provisions, which would provide that the Applicant's powers of CA could not be exercised over land in which UKAEA has an interest, without the UKAEA's agreement. The Applicant indicates that would only be agreeable once it has reached agreement with EDF (the current freeholder). It is UKAEA's case that the rights sought by the Applicant are available on a voluntary basis, and CA powers are not therefore justified. If they are to be justified, this paragraph 5 should be included as a minimum reasonable safeguard for its future use of the site by the UKAEA, for the reasons outlined above.

APPENDIX A: COMMENTS ON THE PROTECTIVE PROVISIONS

SCHEDULE [●]
PROTECTIVE PROVISIONS

PART [●]
FOR THE PROTECTION OF THE UK ATOMIC ENERGY AUTHORITY

Application

1. (1) Subject to sub-paragraph (2), for the protection of UKAEA as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and UKAEA.

(2) Unless otherwise agreed in writing between the undertaker and UKAEA, the paragraphs 6 and 7 of this Part of this Schedule will apply for the protection of UKAEA from the point that UKAEA is the owner of the UKAEA Land.

Interpretation

2. In this Part of this Schedule—

“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:

a third party liability insurance policy effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of indemnity of not less than £20,000,000.00 (twenty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be approved by UKAEA. Such insurance shall be maintained during the construction period of the authorised development and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

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

(ii) 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;

“authorised development” has the same meaning in article 2(1) of this 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 Part of this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring and ground work operations;

“functions” includes powers and duties;

“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;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development within the West Burton Power Station;

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

Commented [BS1]: The UKAEA has existing facilities within the wider West Burton site, and it is therefore essential that the provisions of this part which relate to access to that site being maintained are effective immediately.

It is accepted that the provisions relating to “specified works” need not apply until the UKAEA has taken its interest in the land affected by the DCO.

Para 1 has been amended accordingly, alongside variations to the definitions of West Burton Power Station and the new term UKAEA Land.

“UKAEA” means the United Kingdom Atomic Energy Authority, or any successor in its functions;

“UKAEA Land” means the land within plots [10-183, 10-183a, 10-183b, 10-183c, 10-183d, 10-184, 10-185 and 10-194a] as shown on the Land plan and described in the book of reference; and

“West Burton Power Station” means the land at West Burton Power Station, Gainsborough Road West Burton, Retford and outlined red in the UKAEA’s option agreement dated 22 October 2022 in respect of that land.

Streets subject to temporary prohibition or restriction of use and public rights of way

3. Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 11 (temporary prohibition or restriction of use of streets and public rights of way), UKAEA 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 street or public right of way as may be reasonably necessary or desirable to enable it to access the West Burton Power Station in the same way as it was able prior to the prohibition or restriction of use or diversion of that street or public right of way.

Protective works to buildings

4. 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 buildings at the West Burton Power Station without the written consent of UKAEA.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of or entry to the West Burton Power Station or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of UKAEA otherwise than by agreement.

Specified Works

6.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKAEA a plan of the works to be executed and request from UKAEA details of the underground extent of any apparatus or assets belonging to UKAEA which UKAEA must provide to the undertaker as soon as reasonably practicable and within 36 days of the submission of such request.

(2) In relation to specified works the plan to be submitted to UKAEA 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 any assets and apparatus belonging to UKAEA;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus or assets; and
- (f) any intended maintenance regimes.

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

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

Commented [CB2]: As it is unlikely that the EDF voluntary agreement will be concluded prior to the end of the Examination, the Applicant cannot agree to this restriction on the use of CA powers. However, if a voluntary agreement is reached prior to the SoS making a decision then we would be willing to agree to the wording in brackets being included in the Order.

Commented [BS3R2]: It is essential to UKAEA that this provision is included. It should not be prejudiced by the Applicant’s failure to concluded commercial negotiations prior to the close of examination, when it is understood that in principle all relevant parties are willing to grant the necessary rights on a voluntary basis.

(b) must not be unreasonably withheld and must be provided within 42 days of submission of the plan under sub-paragraph (1).

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

(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 UKAEA and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by UKAEA for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the UKAEA Land, and UKAEA will be entitled to watch and inspect the execution of those works.

(7) Where UKAEA 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 UKAEA's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and UKAEA 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) 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 specified works, 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.

(9) 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 UKAEA 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.

Expenses

7.—(1) Save where otherwise agreed in writing between UKAEA and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKAEA within 30 days of receipt of an itemised invoice or claim from UKAEA all charges, costs and expenses reasonably and properly incurred by UKAEA in consequence of the execution of the specified works including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; or
- (c) 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.

Indemnity

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works 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 them) 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 property of UKAEA or UKAEA 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 UKAEA the cost reasonably and properly incurred by UKAEA in making good such damage; and

(b) indemnify UKAEA for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from UKAEA, by reason or in consequence of any such damage or interruption or UKAEA becoming liable to any third party other than arising from any default or negligence of UKAEA.

(2) The fact that any act or thing may have been done by UKAEA on behalf of the undertaker or in accordance with a plan approved by UKAEA or in accordance with any requirement of UKAEA 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 UKAEA 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 or as otherwise agreed between the undertaker and UKAEA.

(3) 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 UKAEA, its officers, servants, contractors or agents; or

(b) 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.

(4) UKAEA 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.

(5) UKAEA 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.

(6) UKAEA 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 and if reasonably requested to do so by the undertaker UKAEA must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of any specified works unless and until UKAEA is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with UKAEA (acting reasonably) provided evidence to UKAEA that it shall maintain such acceptable insurance for the construction period of specified works from the proposed date of commencement of construction of specified works) and UKAEA has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent UKAEA from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

9. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKAEA 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 the owner of the UKAEA Land on the date on which this Order is made.

Co-operation

10.—(1) The undertaker and UKAEA must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

(2) For the avoidance of doubt whenever UKAEA'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

11. (1) If in consequence of the powers granted under this Order the access to the West Burton Power Station is materially obstructed, the undertaker must provide such alternative means of access to the West Burton Power Station as will enable UKAEA to access the West Burton Power Station no less effectively than was possible before such obstruction.

(2) In the event that access by the undertaker to the West Burton Power Station is materially obstructed by UKAEA, UKAEA must provide such alternative means of access to the West Burton Power Station as will enable the undertaker to access the West Burton Power Station no less effectively than was possible before such obstruction.

Arbitration

12. Any difference or dispute arising between the undertaker and UKAEA under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKAEA, be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

13. Notwithstanding article 45 (*service of notices*), any plans submitted to UKAEA by the undertaker pursuant to paragraph 9 must be submitted to UKAEA addressed to the company secretary and copied to the land and estates team and sent to [] or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.

APPENDIX B: PROPOSED AMENDMENTS TO THE PROTECTIVE PROVISIONS

SCHEDULE [●]
PROTECTIVE PROVISIONS

PART [●]
FOR THE PROTECTION OF THE UK ATOMIC ENERGY AUTHORITY

Application

1. (1) Subject to sub-paragraph (2), for the protection of UKAEA as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and UKAEA.

~~(2) 1.~~—Unless otherwise agreed in writing between the undertaker and UKAEA, the provisions paragraphs 6 and 7 of this Part of this Schedule will apply for the protection of UKAEA from the point that UKAEA is the owner of the ~~West Burton Power Station~~UKAEA Land.

Interpretation

2. In this Part of this Schedule—

“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:

a third party liability insurance policy effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of indemnity of not less than £20,000,000.00 (twenty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be approved by UKAEA. Such insurance shall be maintained during the construction period of the authorised development and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

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

(ii) 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;

“authorised development” has the same meaning in article 2(1) of this 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 Part of this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring and ground work operations;

“functions” includes powers and duties;

“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;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development within the West Burton Power Station;

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

“UKAEA” means the United Kingdom Atomic Energy Authority, or any successor in its functions;
~~and~~

Burges Salmon [BS1] April 10, 2024
09:36 AM

The UKAEA has existing facilities within the wider West Burton site, and it is therefore essential that the provisions of this part which relate to access to that site being maintained are effective immediately.

It is accepted that the provisions relating to “specified works” need not apply until the UKAEA has taken its interest in the land affected by the DCO.

Para 1 has been amended accordingly, alongside variations to the definitions of West Burton Power Station and the new term UKAEA Land.

~~“West Burton Power Station UKAEA Land”~~ means the land within plots [10-183, 10-183a, 10-183b, 10-183c, 10-183d, 10-184, 10-185 and 10-194a] as shown on the Land plan and described in the book of reference: and

“West Burton Power Station” means the land at West Burton Power Station, Gainsborough Road West Burton, Retford and outlined red in the UKAEA’s option agreement dated 22 October 2022 in respect of that land.

Streets subject to temporary prohibition or restriction of use and public rights of way

3. Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 11 (temporary prohibition or restriction of use of streets and public rights of way), UKAEA 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 street or public right of way as may be reasonably necessary or desirable to enable it to access the West Burton Power Station in the same way as it was able to prior to the prohibition or restriction of use or diversion of that street or public right of way.

Protective works to buildings

4. 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 buildings at the West Burton Power Station without the written consent of UKAEA.

Acquisition of land

5. ~~(1) [Not used]~~ Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of or entry to the West Burton Power Station or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of UKAEA otherwise than by agreement.

Specified Works

6. ~~a) (1)~~ Not less than 56 days before the commencement of any specified works the undertaker must submit to UKAEA a plan of the works to be executed and request from UKAEA details of the underground extent of any apparatus or assets belonging to UKAEA which UKAEA must provide to the undertaker as soon as reasonably practicable and within 36 days of the submission of such request.

(2) In relation to specified works the plan to be submitted to UKAEA 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 any assets and apparatus belonging to UKAEA;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus or assets; and
- (f) any intended maintenance regimes.

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

(4) Any approval of UKAEA 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 and must be provided within 42 days of submission of the plan under sub-paragraph (1).

(5) In relation to any work to which sub-paragraph (2) applies, UKAEA may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing any apparatus or

Pinsent Masons [CB2] March 4, 2024
02:59 PM

As it is unlikely that the EDF voluntary agreement will be concluded prior to the end of the Examination, the Applicant cannot agree to this restriction on the use of CA powers. However, if a voluntary agreement is reached prior to the SoS making a decision then we would be willing to agree to the wording in brackets being included in the Order.

Burges Salmon [BS3] April 10, 2024
09:19 AM

It is essential to UKAEA that this provision is included. It should not be prejudiced by the Applicant’s failure to concluded commercial negotiations prior to the close of examination, when it is understood that in principle all relevant parties are willing to grant the necessary rights on a voluntary basis.

assets against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to the ~~West Burton Power Station~~[UKAEA Land](#).

(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 UKAEA and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by UKAEA for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the ~~West Burton Power Station~~[UKAEA Land](#), and UKAEA will be entitled to watch and inspect the execution of those works.

(7) Where UKAEA 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 UKAEA's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and UKAEA 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) 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 specified works, 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.

(9) 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 UKAEA 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.

Expenses

7. ~~b)~~[\(1\)](#) Save where otherwise agreed in writing between UKAEA and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKAEA within 30 days of receipt of an itemised invoice or claim from UKAEA all charges, costs and expenses reasonably and properly incurred by UKAEA in consequence of the execution of the specified works including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; or
- (c) 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.

Indemnity

8. ~~e)~~[\(1\)](#) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works 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 them) 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 property of UKAEA or UKAEA 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 UKAEA the cost reasonably and properly incurred by UKAEA in making good such damage; and
- (b) indemnify UKAEA for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from UKAEA, by reason or in consequence of any such damage or interruption or UKAEA becoming liable to any third party other than arising from any default or negligence of UKAEA.

(2) The fact that any act or thing may have been done by UKAEA on behalf of the undertaker or in accordance with a plan approved by UKAEA or in accordance with any requirement of UKAEA 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 UKAEA 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 or as otherwise agreed between the undertaker and UKAEA.

(3) 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 UKAEA, its officers, servants, contractors or agents; or
- (b) 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.

(4) UKAEA 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.

(5) UKAEA 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.

(6) UKAEA 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 and if reasonably requested to do so by the undertaker UKAEA must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of any specified works unless and until UKAEA is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with UKAEA (acting reasonably) provided evidence to UKAEA that it shall maintain such acceptable insurance for the construction period of specified works from the proposed date of commencement of construction of specified works) and UKAEA has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent UKAEA from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

9. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKAEA 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 the owner of the ~~West Burton Power Station~~[UKAEA Land](#) on the date on which this Order is made.

Co-operation

10.—(1) The undertaker and UKAEA must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

(2) For the avoidance of doubt whenever UKAEA'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

11. (1) If in consequence of the powers granted under this Order the access to the West Burton Power Station is materially obstructed, the undertaker must provide such alternative means of access to the West Burton Power Station as will enable UKAEA to access the West Burton Power Station no less effectively than was possible before such obstruction.

(2) In the event that access by the undertaker to the West Burton Power Station is materially obstructed by UKAEA, UKAEA must provide such alternative means of access to the West Burton

Power Station as will enable the undertaker to access the West Burton Power Station no less effectively than was possible before such obstruction.

Arbitration

12. Any difference or dispute arising between the undertaker and UKAEA under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKAEA, be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

13. Notwithstanding article 45 (*service of notices*), any plans submitted to UKAEA by the undertaker pursuant to paragraph 9 must be submitted to UKAEA addressed to the company secretary and copied to the land and estates team and sent to [] or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.

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Embedded Excel	0
Format changes	0
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