

# West Burton Solar Project

## The Applicant's Comments on Responses to the Secretary of State's Request for Information

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## Issue Sheet

**Report Prepared for: West Burton Solar Project Ltd.  
Decision Stage – Request for Information**

### The Applicant's Comments on Responses to the Secretary of State's Request for Information

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## **1 Introduction**

- 1.1.1 This document responds to the request made by the Secretary of State (SoS) for responses to the submissions made in response to the SoS issued by way of a Request for Information ('Rf1') letter on 19 September and ('Rf12') on 15 October 2024.
- 1.1.2 As the only information submitted for Rf1 was from the Applicant, this submission only includes the Applicants comment on responses submitted by Interested Parties at Rf12.

## 2 Applicant's Comments on Responses to the Secretary of State's Second Request for Information

Para	Respondent	Request	Response	Applicant's Comment
<b>Compulsory Acquisition and Land Use Matters</b>				
4	EDF Energy (Thermal Generation) Limited	<b>EDF Energy (Thermal Generation) Limited</b> , and the Applicant, are invited to update as to whether Voluntary Property Agreement(s) and Protective Provisions at Schedule 16, Part 18 of the DCO have been agreed and whether the objection can be withdrawn. Please also confirm the correct cross-referencing at Part 18 paragraph 239(5).	EDF continues to negotiate with the Applicant; however, as of 29 October 2024, no Voluntary Land Agreement has been agreed, and the Applicant has not yet been able to provide the reassurance that EDF requires to ensure there will be no serious detriment to its undertaking in lieu of such Agreement. The correct cross-referencing at Schedule 16, Part 18, paragraph 239(5) should be to paragraph 242. It therefore remains EDF's position that its preferred protective provisions submitted at Deadline 7 (REP7-027), which restrict the usage of compulsory acquisition powers without an agreement, must be included in the DCO instead of the protective provisions currently proposed by the Applicant at Schedule 16, Part 18 of the DCO. If the DCO were granted without EDF's preferred wording, this would result in a serious detriment to EDF's undertaking. Accordingly, EDF maintains its objection.	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant set out that the terms of a voluntary agreement are almost agreed with the only outstanding item being the commercial term where the commercial values requested by EDF remain much higher than those offered by the Applicant.  This remains the latest position.  The Applicant set out the reasons why there would be no serious detriment to EDF's undertaking as a result of the use of compulsory acquisition powers in [REP7-018]. In summary, this is because the protective provisions require the Applicant to obtain EDF's approval before undertaking any works. The ability to use compulsory acquisition powers is required to ensure the deliverability of the Scheme as EDF will not currently enter into a

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				voluntary agreement on reasonable commercial terms.
5	Emma and Nicholas Hill	<b>Emma and Nicholas Hill</b> , and the Applicant, are invited to update as to whether Voluntary Land Agreement(s) have been agreed and whether the objection can be withdrawn.	Emma and Nicholas Hill land owners and owners of [redacted] Have definitely not come to a voluntary Agreement and will definitely not be withdrawing our objections.	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant set out that the landowner will not accept professional representation from an independent third party. The landowner has also suggested that the Applicant changes its professional representation as he does not agree with the valuation provided. The Applicant continues to offer a voluntary agreement based on professional and standard valuation techniques.  This remains the latest position.
6	Neil Elliot	<b>Neil Elliot</b> , and the Applicant, are invited to update as to whether Voluntary Land Agreement(s) have been agreed and whether the objection can now be withdrawn	We are writing to inform you that our Land Agent, Nick Sharpe of Perkins George Mawer & Co received a response from Island Green on 11 April 2024 stating that as we are not prepared to sign the Heads of Term Contract due to the fact we feel the matters raised had not been resolved AT ALL. , They stated in this email that the Company will then proceed forward , without our signature and then will issue us with the Compulsory Purchase Order!!! Therefore, yet again, not a satisfactory measured negotiation at all. A strong statement made to our Agent to be	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant set out that the Applicant remains willing to enter into a voluntary agreement, however the landowner's agent has confirmed that the landowner is still refusing to enter into a voluntary agreement.  This remains the latest position.

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			forwarded onto ourselves. We have not heard from Island Green for quite a number of months. Our Land Agent had also not heard anything from Island Green for well over a year, prior to receiving their email in April 2024. We, therefore, are still very unhappy how this has been dealt with. We wish to state we still are continuing with the objections as stated.	
8	Northern Powergrid Yorkshire PLC	<b>Northern Powergrid Yorkshire PLC</b> , and the Applicant, are invited to confirm whether the objection can be withdrawn.	Our client has now reached agreement with the Applicant in respect of an Asset Protection Agreement and protective provisions to be inserted into the DCO. The agreed protective provisions have been inserted into the final draft DCO and the Asset Protection Agreement has been completed. NPG therefore withdraws its objection to the Order as issued to PINS on 8 June 2023. Please treat this letter as formal notice of this objection being withdrawn. We respectfully ask that the Examining Authority places no weight on any of the withdrawn representation accordingly.	The Applicant notes that Northern Powergrid Yorkshire plc has withdrawn its objection.
9	Parochial Church Council of the Parish of Stow-with-Sturton	<b>Parochial Church Council of the Parish of Stow-with-Sturton</b> , and the Applicant, are invited to confirm whether the	Our objection cannot be withdrawn. I outline our reasons below.  By way of introduction, HM Land Registry's Practice Guide 66 defines Chancel Repair Liability as "the liability of the owner of the land to pay for the repair of the chancel of a parish church.....In England the Parochial Church Council....have the right to collect	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant refers to references PCC-05 and PCC-06 in 8.1.2 Responses to Relevant Representations <b>[REP1-050]</b> . The Applicant notes the Parochial Church Council (PCC)'s concerns; however, it reiterates its view that the powers within Article 23 of draft

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		objection can be withdrawn.	<p>the money. ... These owners are known as lay-rectors."</p> <p>At this point in time, we have had no dialogue with the applicant to seek satisfactory clarification to our concern regarding rights over land expressed in our letter to the Land Referencing Team at Dalfour Maclaren dated 27th July 2022. We note that in The Applicant's Responses to Relevant Representations (November 2023) at PCC-05 that the applicant considers that Article 23 of the draft Development Consent Order "broad enough to include Chancel Repair Liability" (p251) but considers it "unlikely that the powers in the DCO would extinguish any chancel repair liability" (p252). This suggests uncertainty on behalf of the applicant. This uncertainty is further evidenced as they continue "in the event that the exercise of the compulsory acquisition powers did result in the chancel repair liability ceasing...". Within PCC-06 in The Applicant's Responses to Relevant Representations (November 2023). The applicant regret's failure to respond to a telephone request by the churchwarden on behalf of the PCC (p252). Despite this regret there is no recorded attempt by the applicant to enter dialogue with the Parochial Church Council at any further point in the application process. We note, however, that in the document "5.13 Consultation Report - Appendix 5.13" that the</p>	<p>Development Consent Order [DEC/WB3.1_I] are proportionate and necessary.</p> <p>Article 23(1) provides the power to extinguish private rights and, if this occurs, the holder of the right is automatically entitled to compensation. However, Article 23(6) enables the undertaker to elect not to extinguish specific rights.</p> <p>Articles 23(2) and (3) provide the power for private rights to cease or be suspended but only to the extent that the exercise of the private right is inconsistent with the Scheme.</p> <p>Article 23(4) states that compensation will be determined by the Upper Tribunal (Lands Chamber) if it is not agreed.</p> <p>These are standard provisions for DCOs and the Applicant does not consider that there is any uncertainty regarding the process.</p> <p>The Applicant notes that section 106 of the Planning Act 2008 states that the SoS may disregard any representations that relate to compensation for the compulsory</p>



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			<p>applicant has "entered into a lease agreement with the landowner for West Burton 3" (p483). Despite this, compulsory acquisition powers "are being sought" (p483), and on p484 the following text appears "In the event that compulsory acquisition powers are exercised in respect of West Burton 3, Article 23(6) of the draft DCO enables [my emphases] the Applicant to notify the holder of a right that the powers to extinguish or suspend rights do not apply in respect of that right. The Applicant would therefore notify PCC that power did not apply to the chancel repair liability." It is clear from the wording of this text, that notification would only be made after the "compulsory acquisition powers are exercised", whereas the Draft DCO itself at 23(6) clearly indicates that notice must be given before [my emphasis]. There is no confidence that due process would be followed. Evidence, to date, of the lack of communication with the PCC compounds our uncertainty about the preservation of the Chancel Repair Liability attaching to the land at Stow Park. Furthermore, uncertainty is compounded by the applicant not only entering a lease agreement but also reserving powers to compulsory acquire land.</p> <p>Even if the Chancel Repair Liability was not extinguished, Article 23 (3) of the draft Development Consent Order states that "all private rights or</p>	<p>acquisition of an interest in or right over land.</p> <p>The Applicant's position is that PCC's representation relates to compensation. A chancel repair liability is a right to payment and is capable of being adequately compensated for under the Compensation Code in the unlikely event that it is extinguished or suspended.</p> <p>Without prejudice to the Applicant's position above, the Applicant is not able to provide written confirmation at this stage as the extent of the PCC's interest that may be affected by the Scheme, if any, will not be known until the detailed design has been completed. At that time, the Applicant anticipates that if it exercises any of compulsory acquisition powers or when it enters into a lease, it would specifically exclude the PCC's right to chancel repair contribution from acquisition or extinguishment. In respect of land that may be subject to the acquisition of new rights or temporary possession, the Applicant does not consider that there is any inconsistency between the chancel repair liability and the purposes for which</p>

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			<p>restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable" If this applies to the Chancel Repair Liability it has the potential to have a serious and deleterious effect on the maintenance of an internationally renowned and significant Anglo-Saxon building that is the Grade 1 listed St Mary's Church, Stow (also known as Stow Minster).</p> <p>Turning to the issue of compensation, the applicant has failed to adequately address this stating only "in the event that the exercise of the compulsory acquisition powers did result in the chancel repair liability ceasing to have effect, any loss would be reflected in the calculation of compensation due under Article 23(4)" (Applicant's Responses to Relevant Representations (November 2023) at PCC-05, page 252). Article 23(4) of the draft Development Consent Order determines that compensation is payable in "accordance with the terms of section 152" of the Planning Act 2008. No response has been made in respect to the existing legislation that addresses the compounding of the liability for the repair of chancels, the amended Ecclesiastical Dilapidations Measure 1923, which we would expect to be used in the event of any assessment for compensation. We would expect that an</p>	<p>the new rights or temporary possession may be taken, and that the PCC's right would therefore not cease or be suspended.</p> <p>Notwithstanding the above, in the event a chancel repair liability was extinguished, the PCC would be automatically entitled to compensation for this. The value of the compensation would be calculated in accordance with the Compensation Code. If the amount of compensation cannot be agreed, it will be determined by the Upper Tribunal (Lands Chamber).</p> <p>This remains the latest position.</p>

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			<p>acknowledgement that use of this measure would be part of and form the basis of the calculation of compensation (should it become necessary) to be made prior to the issue the Development Consent Order.</p> <p>Finally, we would respectfully point out that the Government's own guidance on implementation of the Planning Act 2008 "Guidance related to procedures for the compulsory acquisition of land" published in 2013 by the then Department for Communities and Local Government, states in paragraph 8, "The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate." In our opinion, as explored above, the applicant has failed "to demonstrate to the satisfaction of the Secretary of State" by i) failing to adequately address our concerns about the impact of the proposed development of the West Burton Solar project on our right to payment upon request from the landowner of land which carries the Chancel Repair Liability, ii) failing to enter into dialogue</p>	

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			<p>directly with the Parochial Church Council for the Parish of Stow-with-Sturton, and iii) suggesting that Chancel Repair Liability would be suspended and unenforceable and thus not recognising the implications of such action. It is also the opinion of the Parochial Church Council that the national guidance issued on implementation of the Planning Act 2008 in relation to compulsory acquisition is deficient in addressing Chancel Repair Liability and updated guidance would be helpful not only to the present application but for future infrastructure planning projects which may involve land over which other Parochial Church Councils have rights to Chancel Repair Liability.</p> <p>In conclusion, we seek a categorical statement that the Chancel Repair Liability attaching to land at Stow Park, some of the land is to be used within the proposed West Burton 3 facility, will be unaffected by the proposed development, and that the uncertainties that are within the Applicant's responses to our concern are clarified. Until this matter is resolved our objection cannot be withdrawn.</p>	
10	SNED Ltd, SNSE Ltd and SNSEM Ltd	<b>SNED Ltd, SNSE Ltd and SNSEM Ltd</b> , and the Applicant, are	I have checked the position on with Will Bridges the development manager for RES' Sturton Solar Scheme regarding your question on progress on a cooperation agreement, setting out how each	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant set out that negotiations are ongoing with SNSE regarding a voluntary agreement.

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		invited to update as to whether a Cooperation Agreement has been agreed.	developer would act to ensure any conflicts are minimised so that the two projects can co-exist. Will Bridges (who I have copied into this email) has confirmed on 23rd October 2024: "I sent IGP comments on their Cooperation agreement on the 1st August 2024 and haven't received anything back as yet." Whilst writing I would also bring to your attention on that we have not had substantive response from IGP addressing our client's concerns in relation on to the easement agreement for the cable running through our client's land, and connecting into West Burton Power Station. Our last contact with IGP to reach a negotiated position on with them was on 19th September 2024 (in relation on the commercial terms we had sent to them under cover of our email dated 23rd March 2023). To date we have not had any response from them. We would be happy to elaborate further on any specific points arising.	<p>In respect of the Cooperation Agreement between the Applicant and RES regarding the Steeple Renewables Project, the Applicant has been in email communication with RES since the close of the Examination. Comments on the draft agreement were returned to RES on 11 November 2024. RES responded on 28 November 2023 with some minor amendments which the Applicant returned on 4 December 2024. The Applicant is confident that the Cooperation Agreement will be in agreed form soon as there is only one point outstanding.</p> <p>Discussions are ongoing with Aggregate Industries regarding the use of the access road during construction and the cable under the road. The amount of compensation is not currently agreed as the commercial point of value used by landowner and Applicant are very far apart.</p>
11	The Canal and River Trust	<b>The Canal and River Trust</b> , and the Applicant, are invited to confirm	The Trust and applicant have continued negotiations, and the Trust is confident it will enter a negotiated agreement for the rights the applicant needs in respect of our dredging tip infrastructure (parcel 07-	The Applicant notes that the Canal & River Trust has confirmed that the protective provisions are in an agreed form. In its letter dated 29 October 2024 in response

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		whether the objection can be withdrawn.	121) and is content with the protective provisions agreed with the applicant at Deadline 4, included in the draft DCO submitted at the final examination deadline (Deadline 7).	to the SoS' RfI2, the Applicant sets out that discussions are ongoing with the Canal and River Trust regarding commercial terms in respect of the property agreement.  This remains the latest position.
12	Uniper UK Limited	<b>Uniper UK Limited</b> , and the Applicant, are invited to update as to whether Protective Provisions at Schedule 16, Part 14 of the DCO have been agreed and whether the objection can be withdrawn.	In response to your letter dated 15 October 2024 with reference EN010132, I can confirm on behalf of Uniper UK Limited that the form of protective provisions included in Part 14 of Revision I of the Applicant's draft DCO published on 21 October 2024 are agreed by Uniper UK Limited.	The Applicant notes that Uniper UK Limited has confirmed that the protective provisions are in an agreed form.
<b>Electro-Magnetic Fields ("EMF") Impact Risk Assessment</b>				
13	Natural England	<b>Natural England</b> is invited to comment on whether it is satisfied with the methodology and	Natural England have reviewed the 'Risk Assessment of EMF Impacts to Fish' provided by the applicant. It is noted that this assessment was produced to review impacts of EMF from Cottam Solar project, West Burton Solar Project, Tillbridge Solar project, and Gate Burton Solar Project, due to the shared cable crossing	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant provided the follow clarification in relation to the rationale for the proposed minimum depth:

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		conclusions of the Applicant's 'Risk Assessment of EMF Impacts on Fish' at Appendix 1 of Applicant Response to Written Representations Part 1 [REP3-034].	point. It is clear that evidence surrounding the impacts of EMF from buried cables upon migratory species such as Lamprey is limited, although the referenced research is noted. Overall, based on the information provided within the assessment, the proposed approach to ensure the cable is a minimum of 5m below the riverbed appears to be precautionary. Natural England consider the likelihood of a significant effect upon migratory Lamprey as a result of EMF to be low.	<i>"The proposed minimum depth for the cable of 5m below the bottom of the riverbed was agreed with the Canal and River Trust, in line with the depth agreed for the Gate Burton Energy Park, in order to prevent risk of any scour exposing cable. This depth was then used for the EMF Impact Risk Assessment [REP3-034]."</i>
<b>EMF Monitoring in Outline Operational Environment Management Plan</b>				
15	Natural England	The Applicant is requested to revise Table 3.3 in the oOEMP to ensure that the programme of EMF monitoring is approved by the Environment Agency in consultation with Natural England. <b>Natural England</b> is invited to confirm if they are	Natural England are content with this request.	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant updated the oOEMP <b>[DEC/WB7.14_E]</b> to reflect the requested changes to EMF monitoring of fish in the River Trent. In direct response to paragraph 16, this includes updating Table 3.3 to include Natural England as a recipient of regular EMF monitoring survey result.

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		content with this request.		
16	Natural England	The Applicant is requested to revise the oOEMP to provide for results of the surveys to also be relayed to <b>Natural England</b> on a regular basis for the purposes of informing best practice and assessments of EMF impacts on fish in the future.	Natural England would welcome receipt of all monitoring data to inform best practice and assessments of EMF impacts on fish in the future.	Please see the Applicant's comment above.
13-17	Environment Agency	N/A	In response to this, whilst the Environment Agency has no comments to make (and note we have not been asked to comment), we do wish to confirm that the possibility of mitigation measures if adverse effects on fish are found would be good. However, our latest position is we are not insisting on this in connection with this solar scheme or others nearby and we do feel this matter should be dealt with consistently.	The Applicant notes this comment. The Applicant supports the EA's position that the requirements relating to EMF monitoring for fish should be the same for the Cottam and West Burton solar projects (and other projects sharing the cable route below the River Trent) to ensure that a consistent approach is taken particularly



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				when the parties are discharging their respective DCO requirements.
<b>Requirement 22, Long Term Flood Risk Assessment</b>				
21	Lincolnshire County Council	Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council, Bassetlaw District Council and the Environment Agency are requested to comment on the following amendment to Requirement 22: 22.—(1) No submission seeking the discharge of requirements 5, 7, 8, 10, 11, or 14 may be made to the relevant planning	It is requested that the proposed additional wording, set out in red below, is added in and with the addition of this wording the Council is content with the drafting of requirement 22  22.—(1) No submission seeking the discharge of requirements 5, 7, 8, 10, 11, or 14 may be made to the relevant planning authorities and no part of the authorised development may commence until an updated flood risk assessment of the flood risk arising from the River Trent in respect of the continued operation of Work Nos. 1 to 3 for 60 years from the date of final commissioning has been submitted to and approved by the Environment Agency <b>following consultation with the Lead Local Flood Authority.</b>	In its letter dated 29 October 2024 in response to the SoS' RfI2, the Applicant has set out their response to the proposed drafting of Requirement 22. In summary the Applicant considers that the proposed drafting is likely to cause delays to the delivery of the Scheme that it believes are unintentional given the urgent need for renewable energy generation identified in National Policy Statement EN-1.  The Applicant does not agree with the proposed addition by Lincolnshire County Council. Requirement 22 is included in the recently made Cottam Solar Project Order 2024, with the Environment Agency being responsible for the approval of the updated flood risk assessment for the River Trent with no consultation requirement. The Applicant submits that consistency between the projects is to be prioritised in relation to the discharge of requirements in order to minimise the administrative burden on the discharging

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		<p>authorities and no part of the authorised development may commence until an updated flood risk assessment of the flood risk arising from the river Trent in respect of the continued operation of Work Nos. 1 to 3 for 60 years from the date of final commissioning has been submitted to and approved by the Environment Agency.</p>		<p>authorities arising from minor differences between the solar projects in Lincolnshire. In this respect, the Applicant also notes that in its comments relating to potential differences between the solar projects relating to effects of EMF on fish (as set out above), the Environment Agency made its view clear that matters should be dealt with consistently between the solar projects. The Applicant submits that this same approach should apply to Requirement 22, particularly as it will be the Environment Agency responsible for discharging this Requirement for both the Cottam and West Burton projects.</p>
21	West Lindsey District Council	As above	In response to the DESNZ letter dated 15th October 2024, West Lindsey District Council has reviewed the amendment to Requirement 22 and has no further comments, or objections.	Please see the Applicant's comment above to Lincolnshire County Council.
21	Environment Agency	As above	The Environment Agency's response to this is we have no comments on the suggested wording and agree that a Flood Risk Assessment (FRA) must be	Please see the Applicant's comment above to Lincolnshire County Council.



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			submitted regarding the works which will extend the lifetime of the development beyond what has been assessed in the previous FRA.	