

APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE BYERS GILL SOLAR SCHEME
PLANNING INSPECTORATE REFERENCE NUMBER: EN010139
REGISTRATION IDENTIFICATION NUMBER: 20048738
WRITTEN REPRESENTATION

submitted on behalf of National Grid Electricity Transmission plc

1 Introduction

1.1 This written representation is submitted on behalf of National Grid Electricity Transmission plc (NGET) in response to the application by RWE Renewables UK Solar and Storage Limited (Promoter) for a development consent order (DCO) for the Byers Gill Solar scheme (Proposed Development).

2 NGET infrastructure

2.1 As set out in NGET's relevant representation dated 17 May 2024, NGET has a number of assets that form an essential part of the electricity transmission network in England and Wales either within, or in close proximity to, the Proposed Development. This includes the existing Norton substation, various overhead lines and underground apparatus.

2.2 Additionally, NGET is bringing forward overhead line works to facilitate a connection between Norton substation and the England Green Link 1 project (EGL1), a 2GW subsea High Voltage Direct Current Link (HVDC) between Torness in East Lothian and Hawthorn Pit in County Durham which provides a major reinforcement to the electricity network by increasing the transmission capacity between Scotland and northern England. These works will comprise works to an existing overhead line, the upgrading of an existing overhead line and the replacement of one electricity tower along with ancillary works (EGL1 Connection Works).

2.3 A compulsory purchase order for the EGL1 project was made on 12 January 2023 and was confirmed by the Secretary of State for Energy Security and Net Zero on 1 August 2024. The EGL1 Connection Works are critical infrastructure to enable the transmission of electricity to the national network. As such, these works cannot be prejudiced by the Proposed Development.

3 Protective provisions

3.1 In light of the above, NGET require protective provisions to be included within the DCO to ensure that its existing and future assets and interests are adequately protected, as well as to ensure compliance with relevant safety standards.

3.2 In particular, NGET seeks to secure a set of protective provisions based on those included in the recently granted Awel y Môr Offshore Wind Farm Development Consent Order (the AYM DCO). The protective provisions secured in the AYM DCO ensured the protection of existing and future NGET infrastructure at the Bodelywddan substation. In that case, NGET was bringing forward a project to upgrade the existing Bodelywddan substation comprising extending the substation itself as well as associated overhead line works to the south of the existing substation to enable the connection of multiple projects in this location. The AYM DCO project was just one of the connecting projects and therefore specific protective provisions were included in the AYM DCO to avoid those future NGET works from being prejudiced by the AYM DCO project.

3.3 Although this is a different substation, the circumstances are the similar to those of the AYM DCO in that NGET needs to ensure that the EGL1 Connection Works (and any other future connectee projects) are not disadvantaged by the Proposed Development. As such, NGET considers that it is reasonable and appropriate for the safeguards and protections secured for NGET's benefit in the AYM DCO should be reflected here. This is particularly important from NGET's perspective to ensure that the future works set out above are not prejudiced by the Proposed Development.

3.4 For completeness, we include a copy of the AYM DCO at Appendix 1. The protective provisions for NGET's benefit form Part 3 of Schedule 9 of the AYM DCO.

4 Status of negotiations

NGET's solicitors Addleshaw Goddard LLP have been engaging with the Promoter's solicitors and await comments on the protective provisions that have been sent to them. Until satisfactory agreement has been reached with the Promoter, NGET must continue to reserve the right to make further submissions to the examination at a later date.

Addleshaw Goddard LLP on behalf of NGET

29 August 2024

APPENDIX 1

The Awel y Môr Offshore Wind Farm Order 2023

PART 3 For the protection of National Grid

Application

20. The provisions of this Part have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

21.—(1) In this Part—

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

“apparatus” means:

(a)

electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid together with any replacement apparatus; and

(b)

such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and

(c)

any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid for the purposes of the construction, operation and maintenance of the

Bodelwyddan Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid (“Bodelwyddan apparatus”);

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

“Bodelwyddan Project” means the proposed extension of the Bodelwyddan substation, diversion of gas pipeline and overhead electricity line upgrade to be undertaken by National Grid and any temporary construction compound and laydown area for such works;

“Bodelwyddan Site” includes—

(a)

land on which any Bodelwyddan apparatus is situated; and

(b)

land on which Bodelwyddan apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Bodelwyddan Project (in so far as the same has been notified by National Grid in writing to the undertaker);

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“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;

“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;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor company;

“National Grid connection works” means any part of Work Nos. 36, 39, 39A, 40 and 41 as described in Schedule 1 of this Order (authorised development);

“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; and

“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 15 metres measured in any direction of, any apparatus the removal of which has not been required by the undertaker under paragraph 31(2) or otherwise;

(b)

may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 31(2) or otherwise; or

(c)

includes any of the activities that are referred to in National Grid’s publication “Development near overhead lines “ENA 43-8 and HSE’s guidance note 6 “Avoiding Danger from Overhead Lines” and HSE’s guidance note HSG47 “Avoiding danger from underground services”.

Interaction with the Bodelwyddan Project

22. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development and the Bodelwyddan Project. For the purposes of this paragraph, “reasonable endeavours” means—

(a)undertaking consultation on the detailed design and programming of the National Grid connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid connection works does not unreasonably impede or interfere with the Bodelwyddan Project;

(b)having regard to the proposed programme of works for the Bodelwyddan Project as may be made available to the undertaker by National Grid and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the National Grid connection works and the Bodelwyddan Project;

(c)providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d)keeping National Grid informed on the programme of works for the authorised development.

National Grid connection works

23. The undertaker must not except with the agreement of National Grid carry out the National Grid connection works, or any part of it.

24.—(1) Before beginning to construct any National Grid connection works, or any part of it, the undertaker must submit to National Grid plans of the relevant National Grid connection works (or part of it) and such further particulars available to it as National Grid may request within 21 days of receipt of the plans reasonably requested.

(2) Any National Grid connection works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.

25.—(1) Any approval of National Grid required under this Schedule—

(a)must not be unreasonably withheld or delayed;

(b)in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c)may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the

Bodelwyddan Project or otherwise for the protection of Bodelwyddan apparatus, provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 39. (2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

26.—(1) The undertaker must give to National Grid not less than 14 days' notice in writing of its intention to commence construction of any National Grid connection works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the National Grid connection works is constructed otherwise than in accordance with paragraph 24(2) above National Grid may by notice in writing identify the extent to which the National Grid connection works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 24(2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 39.

On Street Apparatus

27. Except for paragraphs 28 (apparatus of National Grid in streets subject to temporary stopping up), 33 (retained apparatus: protection of National Grid as electricity undertaker), 35 (expenses) and 35 (indemnity) of this Schedule, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

28.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (temporary restriction of use of streets), if National Grid has any apparatus in the street or accessed via that street National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 31 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 33.

(2) Notwithstanding a temporary restriction under article 12 (temporary restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such street or 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 stopping up or diversion is in that street.

Protective works to buildings

29. The undertaker, in the case of the powers conferred by article 16 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or to the Bodelwyddan Site without the written consent of National Grid which will not unreasonably be withheld.

Acquisition of land

30.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not (a) acquire or take temporary possession of any land interest or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid acquire any land forming part of the Bodelwyddan Site (such agreement not to be unreasonably withheld or delayed).

(3) 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 National Grid 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 National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure 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.

(4) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(5) Any agreement or consent granted by National Grid under paragraph 33 or any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph 30(1).

Removal of apparatus

31.—(1) If, in the exercise of the powers conferred by this Order the undertaker acquires any interest in or possesses temporarily any Order land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of National Grid 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 National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development 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 National Grid a minimum of 56 days' 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 National Grid 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 National Grid to its satisfaction (taking into account paragraph 32(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 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances 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 National Grid 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 must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid 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 National Grid 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.

Facilities and rights for alternative apparatus

32.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to or secures National Grid 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) 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 National Grid 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 under paragraph 39 (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 44 (arbitration) applies.

Retained apparatus: Protection of National Grid as Electricity Undertaker

33.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) which involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation and 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) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more adjacent electricity towers which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trench supporting structures;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until National Grid has given

written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);

(b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Bodelwyddan Project; and

(c) and must not be unreasonably withheld or delayed.

(6) In relation to a work to which sub-paragraph (2) or (3) applies, National Grid 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (2) or (3) must only be executed in accordance with the plan submitted under sub-paragraph (1) or as relevant sub-paragraph (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of its requirement for such works from the date of submission of a plan in line with this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) 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, sub-paragraphs 1 to 3 and 6 to 8 applies as if the removal of the apparatus had been required by the undertaker under paragraph 31(2).

(10) 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 apply to and in respect of the new plan.

(11) The undertaker is not 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6), (7) and (8) in so far as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA 43-8 and the Health and Safety Executive's guidance note 6 "Avoiding danger from overhead power lines".

Expenses

34.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid:

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 31(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid.

(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; and

(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.

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

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

(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 settled by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part 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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where 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.

(4) 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.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid 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 National Grid 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

35.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part 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 it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part 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 purpose of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid 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 National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1), unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) will 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 National Grid, its officers, employees, contractors or agents; and

(b) any authorised development or any other works authorised by this Part carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 6 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”) any works yet to be executed and not falling within this sub-paragraph (b) are subject to the full terms of this Part including this paragraph in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

(5) National Grid 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.

Enactments and agreements

36. Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between the undertaker and National Grid, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

37.—(1) Where in consequence of the proposed construction of any part of the authorised development the undertaker or National Grid requires the removal of apparatus under paragraph 31(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 33, 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 and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid’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 is required, it must not be unreasonably withheld or delayed.

Access

38. If in consequence of the agreement reached in accordance with paragraph 30(1) or the powers granted under this Order the access to any apparatus or the Bodelwyddan Site is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or the Bodelwyddan Site as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

39. Save for differences or disputes arising under paragraphs 31(2), 31(4), and 33 any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

Notices

40. The plans submitted to National Grid by the undertaker pursuant to this Part must be submitted to <https://lsbud.co.uk/> or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.