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Bramford to Twinstead Reinforcement

Volume 8: Examination Submissions

Document 8.7.8 (D): Applicant's Protective Provisions and Commercial Side Agreements Tracking List

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The Infrastructure Planning (Examination Procedure) Rules 2010 Regulation 8(1)(k)

Version History

Date	Issue	Status	Description / Changes
December 2023	A	Final	First Issue for Deadline 5.
December 2023	B	Final	Second Issue for Deadline 6.
January 2024	C	Final	Third Issue for Deadline 7.
<u>February 2024</u>	<u>D</u>	<u>Final</u>	<u>Fourth Issue for Deadline 8.</u>

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1. Introduction

1.1 Overview

- 1.1.1 This document, which is submitted in accordance with Procedural Decision 9 of the Examining Authority's (ExA) Rule 6 Letter dated 7 August 2023 [**PD-002**], provides:
- a tracking list of commercial side agreements and contracts proposed and/or entered into between the Applicant and Interested Parties or other persons for reasons associated with the Bramford to Twinstead Reinforcement (the project); and
 - a tracking list of Protective Provisions included in the draft DCO (**document 3.1 (G)**), noting the requirement set out in Annex A (Examination Timetable) of the Rule 8 Letter dated 19 September 2023 [**PD-003**] for the Applicant to submit, at Deadline 5, final agreed Protective Provisions with all relevant statutory undertakers.
- 1.1.2 It is anticipated that this document will evolve and be updated as the Examination progresses.
- 1.1.3 The Applicant does not currently envisage that any planning obligations under the Town and Country Planning Act 1990 (TCPA 1990) or other legislative provisions relevant to planning are required and therefore has not included a tracker for these.

2. Commercial Side Agreements and Protective Provisions

2.1 Commercial Side Agreement Tracking List

- 2.1.1 The tracking list set out below provides a list of all relevant commercial side agreements under preparation (or agreed) between the Applicant and Interested Parties / other persons, identifying the subject matter(s) for which a commercial side agreement is being (or has been) prepared and its current status.
- 2.1.2 As is common with commercial side agreements, specific details under negotiation are subject to confidentiality provisions preventing public disclosure. Therefore, an outline summary of the subject matter is all that it is possible for the Applicant to provide.
- 2.1.3 The Applicant will update the ExA on the progress of each commercial side agreement through updates to this tracking list issued into the Examination at relevant deadlines.

Table 2.1 – Commercial side agreement tracking list

Parties	Subject Matter	Status	Likelihood of Resolution
(1) National Grid Electricity Transmission Plc and (2) Eastern Power Networks plc (UKPN)	Overarching agreement containing the main commercial and construction terms, ways of working and overall programme for the interaction between National Grid and UKPN for the BTNO project.	Agreed subject to final internal governance. Final stages. Negotiation of NEC terms (which are included in the "Overarching Agreement" is the main outstanding action) with a small number of points remaining to be agreed. This remains the position as at Deadline 87 (9 February 17 January).	The Applicant anticipates resolution by the close of the Examination.
(1) National Grid Electricity Transmission Plc and (2) Anglian Water Services Limited (AWSL)	An Interface Agreement which it is anticipated will make provision for managing construction-related interfaces capable of arising as between the Bramford to Twinstead Reinforcement and AWSL's Bury St Edmunds to Colchester Pipeline Scheme.	Updated draft Heads of Terms (HoTs) were provided to AWSL for review in December 2023. AWSL's confirmation that the draft HoTs can be agreed is awaited. A draft Interface Agreement has also been sent to AWSL for approval. This remains the position as at Deadline 8 (9 February). <u>Negotiations between the parties in respect of the draft Cooperation Deed and Construction Interface are at an advanced stage.</u>	The Applicant anticipates resolution by the close of the Examination.

Parties	Subject Matter	Status	Likelihood of Resolution
(1) National Grid Electricity Transmission Plc and (2) Network Rail Infrastructure Limited (NRIL)	A Basic Asset Protection Agreement (BAPA) which relates to the design and construction of underground electric cable works and 132kV overhead line removal works forming part of the project both beneath and above the Sudbury Branch Line near Lamarsh. The Applicant understands from NRIL's Written Representation [REP2-028] that a further commercial agreement may be needed in order to regulate the carrying out of works in proximity to the Sudbury Branch Line, and the grant of rights in relation to the same.	The BAPA has been completed and remains in force. The Applicant is continuing to seek to engage with NRIL in relation to the commercial and land agreements mentioned in NRIL's Written Representation. The rate of progress has, however, slowed considerably whilst discussions continue between the parties regarding the need for certain substantive provisions in those agreements. <u>Further detail regarding those provisions in dispute is set out in the Applicant's Application under Section 127 Planning Act 2008 – Network Rail Infrastructure Limited (Document 8.10.7).</u> <u>That submission must be read alongside Part 4 of Schedule 14 to the draft DCO (Document 3.1 (G)) and the Applicant's Schedule of Changes to the draft DCO (Document 8.4.2 (F)).</u>	The BAPA has been completed and remains in force. Whilst the Applicant remains—had been hopeful of reaching resolution in relation to the commercial and land agreements by the close of the Examination, this <u>outcome is now considered unlikely.</u> <u>Reference is therefore made to the Applicant's Application under Section 127 Planning Act 2008 – Network Rail Infrastructure Limited (Document 8.10.7) submitted at Deadline 8, ultimately dependent on substantive engagement from NRIL being forthcoming.</u> <u>Further engagement with NRIL is anticipated during January 2024.</u> <u>Therefore, the Applicant intends to revisit its position at Deadline 8 and, if necessary, make submissions pursuant to sections 127 and 138 of the Planning Act 2008.</u> <u>The Applicant will continue to keep the ExA fully updated in this respect.</u>
(1) National Grid Electricity Transmission Plc, (2) Essex County Council (ECC) and (3) Suffolk County Council (SCC)	A Framework Highways Agreement which it is anticipated will make provision for the carrying out by or on behalf of the Applicant of various highway works which it is intended will be authorised by the Development Consent Order.	<u>Initial Heads of Terms (HoTs) were produced by the Applicant.</u> Comments were provided by SCC on 6 November, and ECC had <u>initially</u> been due to provide comments at Deadline 5 (1 December). <u>As at Deadline 7 (17 January), comments from ECC are still awaited.</u> <u>Notwithstanding the continued absence of comments from ECC, updated HoTs have been issued by the Applicant in order to take account of those</u>	Subject to timely receipt of comments from <u>both SCC and</u> ECC, the Applicant anticipates <u>that HoTs are capable of being agreed</u> by the close of the Examination.

Parties	Subject Matter	Status	Likelihood of Resolution
		<p>earlier comments provided by SCC.</p> <p>The Applicant is continuing to engage with both SCC and ECC through regular highways thematic meetings.</p> <p>This remains the position as at Deadline 8 (9 February).</p>	
(1) National Grid Electricity Transmission Plc and (2) Pivoted Power LLP	An Interface Agreement which it is anticipated will make provision for ensuring that access rights are maintained over the section of shared access road running between the public highway at Bullen Lane and the Applicant's Bramford Substation site, for the benefit of both the project and Pivoted Power LLP's Bramford Battery Energy Storage System project.	<p>Heads of Terms have been agreed with Pivoted Power LLP.</p> <p>Commercial negotiations between the Applicant and Pivoted Power LLP in relation to the Interface Agreement are at an advanced stage.</p> <p>This remains the position as at Deadline 7 (17 January).</p> <p>This remains the position as at Deadline 8 (9 February).</p>	The Applicant anticipates resolution by the close of the Examination.
(1) National Grid Electricity Transmission Plc, (2) East Anglia THREE Limited (EA3) and (3) Scottish Power Renewables UK Limited (SPR)	An Interface Agreement which it is anticipated will make provision for managing construction and other related interfaces capable of arising as between the Bramford to Twinstead Reinforcement and the East Anglia Three project.	<p>Heads of Terms (HoTs) for the Interface Agreement are in the process of being negotiated between the Applicant and EA3/SPR.</p> <p>This remains the position as at Deadline 8 (9 February).</p>	The Applicant anticipates resolution by the close of the Examination.
(1) National Grid Electricity Transmission Plc and (2) Cadent Gas Limited	A Side Agreement which it is anticipated will make provision for certain commercial matters raised in Cadent's Relevant Representation [RR-024] and Written Representation [REP2-020].	<p>The Side Agreement is now in agreed form.</p> <p>Engrossments are expected to be issued for sealing shortly.</p> <p>This remains the position as at Deadline 8 (9 February).</p>	The Applicant anticipates resolution by the close of the Examination.
TC East Anglia One OFTO Limited	An Interface Agreement which it is anticipated will make provision for managing construction-related interfaces capable of arising as between the Bramford to Twinstead Reinforcement and the operational East Anglia One Project.	<p>The parties are engaged in discussions regarding the HoTs with the intention that an Interface Agreement will be entered into once commercial terms have been agreed.</p> <p>This remains the position as at Deadline 8 (9 February).</p>	The Applicant anticipates resolution by the close of the Examination.

2.2 Protective Provisions Tracking List

- 2.2.1 The table below provides an update on the current status of all relevant protective provisions.
- 2.2.2 The Applicant will update the ExA on the progress of these Protective Provisions throughout the Examination, with updates to this tracking list issued into the Examination at each relevant deadline (where applicable).

Table 2.2 – Protective provisions tracking list

Statutory undertaker	Status Update	Likelihood of resolution
Network Rail Infrastructure Limited (NRIL)	<p>Protective provisions for the benefit of NRIL have been included in Part 4 of Schedule 14 to the draft Development Consent Order <u>(Document 3.1 (G))</u>.</p> <p>The protective provisions have been agreed between the Applicant and NRIL. Certain amendments to the protective provisions have been made by the Applicant at Deadline 8 <u>(Document 3.1 (G))</u>.</p> <p><u>The Applicant's Schedule of Changes to the draft DCO (Document 8.4.2 (F))</u> explains the nature of the changes made, and should be read alongside <u>the Applicant's Application under Section 127 Planning Act 2008 – Network Rail Infrastructure Limited (Document 8.10.7)</u>.</p>	<p>No disagreement, but please note the submission made above in Table 2.1.</p> <p>It may therefore be necessary for the Applicant to revisit the protective provisions in Part 4 of Schedule 14 in parallel to any submissions made pursuant to sections 127 and 138 of the Planning Act 2008, should such submissions become necessary. The Applicant has made NRIL aware of the changes required to be made to the protective provisions at Deadline 8.</p> <p><u>Whilst the Applicant had been hopeful of reaching resolution in relation to the commercial and land agreements by the close of the Examination, this outcome is now considered unlikely.</u></p> <p><u>Therefore, the Applicant does not expect that it will be possible to reach agreement with NRIL on the form of protective provisions before the close of the Examination</u></p>
UK Power Networks (UKPN)	<p>Protective provisions for the benefit of electricity undertakers (which also includes gas, water and sewerage undertakers) have been included within Part 1 of Schedule 14 to the draft Development Consent Order [REP6-003] <u>(Document 3.1 (G))</u>.</p> <p>The content of these protective provisions is not in dispute with UKPN.</p>	No disagreement.
Anglian Water Services Limited (AWSL)	<p>Protective provisions for the benefit of AWSL have been included in Part 3 of Schedule 14 to the draft Development Consent Order [REP6-003] <u>(Document 3.1 (G))</u>.</p>	No disagreement.

Statutory undertaker	Status Update	Likelihood of resolution
Cadent Gas Limited (Cadent)	<p>The protective provisions have been agreed between the Applicant and AWSL.</p> <p>The Applicant was made aware of Cadent’s requirement for bespoke protective provisions through its Relevant Representation [RR-024]. Protective provisions for the benefit of Cadent have been included in Part 5 of Schedule 14 to the draft Development Consent Order [REP6-003] (Document 3.1 (G)).</p> <p>The protective provisions in Part 5 have been agreed between the Applicant and Cadent, subject to completion of the Side Agreement referred to in Table 2.1.</p>	No disagreement, subject to completion of the Side Agreement referred to in Table 2.1.
Gigaclear	<p>Protective provisions for the benefit of operators of Electronic Communications Code Networks have been included within Part 2 of Schedule 14 to the draft Development Consent Order [REP6-003] (Document 3.1 (G)).</p> <p>The content of these protective provisions is not in dispute with Gigaclear.</p>	No disagreement.
Virgin Media Limited	<p>Protective provisions for the benefit of operators of Electronic Communications Code Networks have been included within Part 2 of Schedule 14 to the draft Development Consent Order [REP6-003] (Document 3.1 (G)).</p> <p>The content of these protective provisions is not in dispute with Virgin Media Limited.</p>	No disagreement.
Vodafone Limited	<p>Protective provisions for the benefit of operators of Electronic Communications Code Networks have been included within Part 2 of Schedule 14 to the draft Development Consent Order [REP6-003] (Document 3.1 (G)).</p> <p>The content of these protective provisions is not in dispute with Vodafone Limited.</p>	No disagreement.
BT Group Plc (BT Openreach)	<p>Protective provisions for the benefit of operators of Electronic Communications Code Networks have been included within Part 2 of Schedule 14 to the draft Development Consent Order [REP6-003] (Document 3.1 (G)).</p>	No disagreement.

Statutory undertaker	Status Update	Likelihood of resolution
East Anglia THREE Limited	<p>The content of these protective provisions is not in dispute with BT Group Plc (BT Openreach).</p> <p>Protective provisions for the benefit of electricity undertakers (which also includes gas, water and sewerage undertakers) have been included within Part 1 of Schedule 14 to the draft Development Consent Order {REP6-003} (Document 3.1 (G)).</p> <p>The Applicant is not currently aware that East Anglia THREE Limited has any concerns with the protective provisions included within Part 1 of Schedule 14.</p> <p>East Anglia THREE Limited is, however, currently reviewing the same and hence there is a potential that the output of that review process may necessitate further changes to Schedule 14 after Deadline 78 (9 February) 17 January.</p>	No known disagreement, subject to East Anglia Three Limited completing its review of the Applicant's proposed protective provisions.
TC East Anglia One OFTO Limited	<p>Protective provisions for the benefit of electricity undertakers (which also includes gas, water and sewerage undertakers) have been included within Part 1 of Schedule 14 to the draft Development Consent Order {REP6-003} (Document 3.1 (G)).</p> <p>TC East Anglia One OFTO Limited is currently reviewing the same and hence there is a potential that the output of that review process may necessitate further changes to Schedule 14 after Deadline 78 (9 February) 17 January.</p>	No known disagreement, subject to TC East Anglia One OFTO Limited completing its review of the Applicant's proposed protective provisions.

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