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To: [Richborough](#)
Cc: [Elsenaar, Marnix](#)
Subject: FW: RCP - Deadline 3 - Ref EN020017 - Network Rail Infrastructure Limited
Date: 04 August 2016 17:03:00

Dear All

We act for Network Rail Infrastructure Limited. We confirm that Network Rail will not be represented nor wish to speak at the remaining Issue Specific Hearings on the draft Development Consent Order.

Should the Panel have any questions for Network Rail then we will be very happy to respond at the appropriate Deadline.

Network Rail's response to the Applicant's Deadline 2 submissions, specifically in relation to the Applicant's response to the First Written Questions 1.4.23, 1.5.58 and 1.5.16 (statutory undertakers' land see document 8.5.5) is attached.

A Statement of Common Ground has been agreed and will be submitted by the Applicant.

Kind regards

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Application by National Grid Electricity Transmission Plc for an Order granting Development Consent for Richborough Connection Project

Network Rail Infrastructure Limited's Deadline Three Submission - Response to Deadline Two Submissions

Planning Inspectorate Reference No: EN020017 Richborough Connection Project

Representation No. 30

Network Rail Infrastructure Limited's Deadline Three Submission - Response to Deadline Two Submissions

Question	National Grid Response	Network Rail Response
<p><u>1.4.23</u> Network Rail Infrastructure Limited [RR-030]- The Applicant is requested to specifically respond to this relevant representation.</p>	<p>Network Rail has indicated that it does not object in principle to the Proposed Development but has raised concerns about the proposed grant of powers of compulsory acquisition over its interests in land and the carrying out of works in the vicinity of operational railway land without first securing appropriate protections for Network Rail's statutory undertaking. The Draft DCO (Doc 2.1) as applied for contained proposed protective provisions for the benefit of Network Rail. Network Rail has intimated that it does not consider those provisions to be adequate and further, that it will not withdraw its objection to the proposed Connection unless and until sufficient protection is put in place for the operational railway and National Grid agrees not to exercise compulsory acquisition powers over its interests in land. National Grid's response to these matters is as follows:</p> <p>Adequacy of the Protective Provisions At the time of making the application, National Grid awaited the decision of the Secretary of State for the Energy and Climate Change, as regards its application, made in 2014, for the National Grid</p>	<p>Network Rail welcomes the changes suggested to the protective provisions by the Applicant. However, these changes do not go far enough to sufficiently protect the operational railway and Network Rail do not agree that there is no reason for the ExA ' <i>to distinguish the circumstances in this case from those which applied in the context of the Hinkley Point C</i> '.</p> <p>Each case must be assessed on its own facts and merits. Network Rail summarise at paragraph 2.2 of its Written Representation reasons why the Applicant cannot be allowed to exercise compulsory acquisition powers and goes on to explain the reasons why the amended protective provisions put forward by Network Rail, are necessary to protect the parts of the railway impacted by the RCP.</p> <p>Network Rail's Written Representation sets out the amendments sought by Network Rail to the Protective Provisions included in the Order and the reasons for the amendments sought. We reiterate the points made in the Written Representation detailing why these amendments are necessary. We note that some of these changes have been caught by the Applicant's updated Protective Provisions (Appendix J to the Applicant's response to the First Written Questions document 8.2.1) but some remain</p>

Question	National Grid Response	Network Rail Response
	<p>(Hinkley Point C Connection Project) Development Consent Order. In the context of that application, National Grid and Network Rail were unable to agree the form of protective provisions that should apply for Network Rail's benefit. Each made written representations as regards what would constitute an appropriate and adequate form of protection for the benefit of operational railway affected by the proposed construction of an electricity transmission line. A number of points remained in dispute between them and accordingly, each presented their preferred form of protective provisions to the Secretary of State for consideration. Shortly after National Grid made its application for a DCO to authorise the Richborough Connection Project, the Secretary of State for Energy and Climate Change decided to make the National Grid (Hinkley Point C Connection Project) Development Consent Order 2016 (S.I.2016/49). In doing so, the Secretary of State considered the representations made by both parties and issued her decision as to what form protective provisions for the benefit of Network Rail should take. National Grid considers that there is no reason to distinguish the circumstances in this case from those which applied in the context of the Hinkley Point C Connection project. Accordingly, National Grid proposes to update the protective provisions included within</p>	<p>outstanding and are show on Appendix 1 to this response. The key outstanding points being paragraph 29 (restriction on compulsory powers) and the amendments to the indemnity provisions at paragraph 40</p>

Question	National Grid Response	Network Rail Response
	<p>Schedule to reflect those recently issued by the Secretary of State. A copy of the updated draft protective provisions can be found within Appendix J of this document which forms part of National Grid's response to question 1.5.58. National Grid has recently met with Network Rail and intimated its view that the protective provisions should accord with the Secretary of State's recent decision. Network Rail's response as regards this proposal is awaited. Exercise of compulsory acquisition powers National Grid agrees with Network Rail that it would be preferable if the parties were able to reach agreement as regards the acquisition by National Grid of the interests in land it requires to deliver the Proposed Development and in respect of which Network Rail enjoys an existing interest. National Grid will continue to work towards reaching agreement with Network Rail and discussions between the parties continue. However, National Grid does not agree that it should be precluded from exercising compulsory acquisition powers in the event that agreement does not prove possible. National Grid's view is that the protective provisions proposed within the draft DCO provide sufficient protection for the operational railway and that it is not necessary or appropriate to preclude the exercise of the powers of compulsory acquisition being sought to achieve this. The Secretary of State agreed</p>	

Question	National Grid Response	Network Rail Response
	with National Grid in respect of this matter in issuing her decision on the National Grid (Hinkley Point C Connection Project) Development Consent Order 2016 (S.I.2016/49).	
<p><u>1.5.58</u></p> <p>Please provide a draft of the protective provisions proposed for Schedule 14 of the DCO and an update on negotiations on the protective provisions.</p>	<p>Schedule 14 of the draft DCO includes standard protective provisions for the protection of electricity, gas, water and sewerage undertakers, operators of electronic communications code networks, highways and traffic and railways interests. With respect to parties not listed below, a Statement of Commonality (Doc 8.4) was submitted at Deadline 2. This document confirms, amongst other matters, the latest position in relation to Statements of Common Ground with Interested Parties, which includes status of negotiations in relation to protective provisions where applicable. In respect of the parties identified in this question, please see below.</p> <p>Network Rail Infrastructure Limited</p> <p>In its response to written question 1.4.23, National Grid has provided an update on negotiations and the protective provisions for the benefit of Network Rail. A copy of the updated</p>	<p>Please see response above</p>

Question	National Grid Response	Network Rail Response
	<p>protective provisions proposed by National Grid can be found at Appendix J of doc 8.2.1 (Response to Examining Authority's First Written Questions Appendices (A to S)) submitted at deadline 2.</p>	
<p><u>1.5.16</u></p> <p>How have the tests in s127 and s138 PA2008 been considered in respect of this article (s127: which statutory undertakers have made representations, was the affected land/right acquired, and is used, for the purposes of their undertaking and can the powers in the article be granted to the Applicant without serious detriment to the undertaking; s138: that the extinguishment of the right or removal of the apparatus is necessary to carry out the development)</p>	<p>National Grid has submitted in accordance with the examination timetable at Deadline 2 various documents (listed below) confirming how the tests in sections 127 and 138 have been satisfied.</p> <p>This also includes a list of the statutory undertakers who have submitted a relevant representation. Applications under sections 127 and 138 of the Planning Act 2008:- South East Water (Doc 8.5.1); Southern Water Services Limited (Doc 8.5.2); Richborough Connection Project – National Grid's Responses to the Examining Authority's Written Questions of 16/06/2016 Final 132 July 2016 Ref No. Respondent: Question: Southern Gas Networks (Doc 8.5.3); Environment Agency (Doc 8.5.4); and Network Rail (Doc 8.5.5)</p>	<p>Despite the Applicant's response, it remains Network Rail's position that the tests in s127 and s138 PA 2008 have not been met and that the longstanding principle that compulsory acquisition powers are not granted in respect of railway property is maintained in the Proposed DCO by the inclusion of paragraph 29 of the Protective Provisions (see Appendix 1). For the reasons already set out in Part 2 of Network Rail's Written Representation, an absence of such protection for Network Rail will have a serious detrimental effect on Network Rail's ability to carry out its statutory function and safely operate the railway network.</p> <p>The Applicant states that it is still seeking compulsory powers in case any (as yet unidentified) landowners come forward that would not be bound by any agreement and/or would refuse to enter into an agreement. However, (as the Applicant confirms) <i>'due and diligent enquiry to establish all persons with an interest in land has been undertaken'</i>. This is therefore, an unlikely scenario and it is Network Rail's position that this should not put the safety of railway users and the ability of Network Rail to exercise its statutory functions at risk.</p> <p>The Applicant also raises concern about</p>

Question	National Grid Response	Network Rail Response
		inflexibility of any agreement. However, Network Rail would be happy to agree to a provision which allows amendments to agreements and or rights, if these are shown to be necessary for the Proposed Development to be carried out and will not cause any serious detriment to its ability to carry out its statutory functions. The agreement would also be subject to dispute resolution measures to ensure a 'stalemate' position would not occur.

APPENDIX 1

SCHEDULE 14

Article 43

PROTECTIVE PROVISIONS

PART 4

PROTECTION FOR RAILWAY INTERESTS

26. The following provisions of this Part have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 41, any other person on whom rights or obligations are conferred by that paragraph.

27. In this Part—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of ~~the~~his powers ~~in~~under section 8 of the Railways Act ~~1993(a);~~1993;

"Network Rail" means Network Rail Infrastructure Limited ~~(registered company number 2904587)~~ and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes; and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 ~~(b)~~) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means—~~(a)~~ any railway belonging to Network Rail; ~~and~~

- ~~(b)~~ any station, land, works, apparatus and equipment belonging to Network Rail ~~and~~ or connected with any such railway; and
- ~~(c)~~ any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; ~~and~~

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

28. (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use ~~its~~ their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

29. (1) The undertaker must not exercise the powers conferred by—

- (a) article 16 (discharge of water);
- (b) article 18 (authority to survey and investigate the land);
- (c) article 19 (authority to override easements and other rights);
- (d) article 22 and 25 (compulsory acquisition of rights);
- (e) article 23 and 24 (power to override easements and other rights);
- (f) article 26 (acquisition of subsoil only)

- (g) article 29 and 30 (temporary use of land for carrying out the authorised development);
- (h) article 31 (temporary use of land for maintaining the authorised development);
- (i) article 33 (statutory undertakers);
- (j) article 41 (felling or lopping of trees or shrubs)
- (k) article 42 (trees subject to tree preservation orders)
- (l) or the powers conferred by section 11(3) of the 1965 Act,
in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

30. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which ~~the~~such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written

notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker and if ~~7~~ by the expiry of the further 28 days period specified in the written notice the engineer has not intimated his approval or disapproval, ~~the engineer is~~ he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans ~~7~~ the engineer may specify any protective works (whether temporary or permanent) which in ~~the~~ his opinion ~~of the engineer must be~~ should he carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using ~~them~~ the same (including any relocation ~~7~~ de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified ~~work~~ works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works ~~must~~ are to be carried out at the expense of the undertaker in either case with all reasonable dispatch ~~7~~ and the undertaker must not commence the construction of the specified ~~work~~ works until the engineer has notified the undertaker that the protective works have been completed to ~~the engineer's~~ his reasonable satisfaction.

31. ~~30.~~(1) Any specified work and any protective works to ~~be~~ he constructed by virtue of paragraph 30(4) must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~4~~ 30;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction ~~is~~shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. ~~31.~~ The undertaker must ~~—~~ —

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as ~~the engineer~~he may reasonably require with regard to a specified work or the method of constructing it.

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them. —

34. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of ~~12~~24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be

specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work, and the undertaker must, notwithstanding any such approval of a specified work under paragraph ~~430~~(~~43~~), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph ~~935~~(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing ~~the~~such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

35. ~~34.~~ The undertaker must ~~pay~~repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph ~~430~~(3) or in constructing any protective works under the provisions of paragraph ~~430~~(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by ~~the engineer~~him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, ~~signalmen, guards~~signalmen, watchmen and other persons whom it ~~is~~shall he reasonably

necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, ~~need~~require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution ~~or~~of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

36. ~~35.~~(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of ~~signalling~~signaling or other communications.

(2) This paragraph applies to EMI only to the extent that ~~the~~such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 430(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 430(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented ~~only~~ by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but ~~Network Rail may, in its reasonable discretion, select~~ the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 430(1) ~~has~~ have effect subject to ~~this~~ the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to ~~subparagraph~~ sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of ~~the~~ such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing ~~the~~ such EMI until all measures necessary have been taken to remedy ~~the~~ such EMI by way of modification to the source of ~~the~~ such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred ~~—~~ =

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of ~~the~~ such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of ~~the~~ such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or ~~the~~such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to ~~subparagraphs~~sub-paragraphs (5) or (6) — =

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those ~~subparagraphs~~sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph ~~5-6~~5.6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph ~~935~~935(a) any modifications to Network Rail's apparatus under this paragraph ~~are~~shall be deemed to be protective works referred to in that ~~sub-~~paragraph.

(4011) In relation to any dispute arising under this paragraph, the reference in article 51(~~arbitration~~ Arbitration) to the Secretary of State ~~must~~shall be read as a reference to the ~~President of the Institution of Engineering and Technology~~ of Electrical Engineers.

37. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

38. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable

requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

39. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

40. (a)1) The undertaker must pay to Network Rail all reasonable ~~and proper~~ costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 50 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail ~~but subject to the provisions of this paragraph) which~~

(i) a) by reason of the construction or maintenance of a specified work or the failure ~~of such a work;~~ thereof or

(ii) b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and ~~(b)~~ the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission. ~~(2) The; and the~~ fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under ~~the~~ his supervision ~~of the engineer does~~ shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph ~~(1)~~.

(3)2) Network Rail must ~~(a)~~ give the undertaker reasonable written notice of any such ~~claims or demands as soon as reasonably possible after Network Rail become aware of any such claims or demands;~~ (b) not admit liability or make any offer to settle or settle or compromise any claim or demand and no settlement or compromise of such a claim or demand without the prior consent of the undertaker ~~(which, if it withholds such~~

~~consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand);~~

~~(c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and~~

~~(d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.~~ demand shall be made without the prior consent of the undertaker.

~~(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the~~ 3) The sums payable by the undertaker under ~~that~~ sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs ~~in circumstances where—~~

~~(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and~~

~~(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.~~

~~(54)~~ Subject to the terms of any agreement between Network Rail and a train operator regarding the ~~amount~~, timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph ~~(43)~~ which relates to the relevant costs of that train operator.

~~(65)~~ The obligation under sub-paragraph ~~(43)~~ to pay Network Rail the relevant costs ~~is~~ shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-~~paragraph~~ (54).

~~(76)~~ In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in ~~sub-paragraph~~ subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

41. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this ~~Part with such information~~ Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).
42. In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.
43. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
- (a) any railway property shown on the ~~Works Plans~~ works and ~~Land Plans~~ land plans and described in the Book of Reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
44. ~~43.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.
45. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

46. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.