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ViaEmail:

[NorthShropshireReinforcement@planninginspectorate.gov.uk](mailto:NorthShropshireReinforcement@planninginspectorate.gov.uk) 24 April 2019

Dear Sirs,

## **North Shropshire Electricity Reinforcement DCO – Written Representation Deadline No 2**

As we confirmed in response to your previous Deadline No 1 for written representations we are engaged in the DCO process including the Issue Specific Hearing and provided the Examining Authority (ExA) with comment on a number of issues.

As we have recorded in previous written representations and subsequent oral submissions our concerns relate to the matters below:-

1. The temporary nature of the works access on the A5 trunk road.
2. The principle of “deemed approval”.

### **Statement of Common Ground**

We previously noted the Examining Authority’s request for a Statement of Common Ground (SoCG) between us and the applicant and have been engaged with them to reach agreement on this document. Unfortunately due to the applicant’s late submission of to us, immediate ahead of the Easter Bank Holiday, of further text and comments on the draft SoCG, we have been unable to reach agreement on the document at this time. We are committed to continue to engage with the applicant to reach an agreed document.

### **A5 trunk road access**

As we previously noted the use of the proposed temporary A5 trunk road access has been agreed in principle and proposed signage and highway changes strategy which could form the basis for a suitable mitigation proposal has been tabled by the applicant for technical review.

In terms of the draft DCO, the form of this application and a number of articles of it as currently drafted present fundamental concerns over the powers that would be awarded to the applicant that we cannot agree to. These issues comprise:

**Article 37** as drafted applies a blanket deemed consent provision across the entire DCO (excluding the requirements) including however the Articles and also the Protective Provisions. As we have previously advised we cannot agree to the principle of deemed consent due to its in compatibility with our role as a strategic highway company operating under the terms of the Infrastructure Act 2015 including the licence issued to us by the Secretary of State for Transport. We would however be content with being subject to a provision ‘not to unreasonably withhold or delay approval’ but no more.

With regards further agreement on the requirements of the temporary access, we anticipate this to be affected by the revised Article 26. The current wording of Article 26 would not be acceptable. This relates to the power to construct temporary accesses without recourse to a requirement to seek approval from the highway authority. This is a potential safety concern and the Article should be amended to require design consent from the relevant Highways Authority (Highways England for the SRN). Further the Article should ensure that all temporary accesses do not create any new rights of access beyond those already in place or created by the DCO.

**Article 9** gives the applicant the power to permanently alter the layout of any street or junction within the Order limits. Whilst this Article is subject to the consent of the street authority, because it relates to a permanent changes to our network there are significant safety concerns that could arise should this be undertaken without the application of the necessary checks and balances inherent to the necessary approval process we apply. This could result in a substandard design on our network which we would have responsibility and liability for – and highlights the risks of the principal of deemed consent.

**Article 13** – this article gives the applicant the power to create new accesses and is subject to the approval of the planning authority only. Procedurally we note that the planning authority would only have to consult with the highway authority (and not agree with the highway authority) and as this is an article subject to deemed consent a new access on the SRN could be created without due involvement or agreement of the relevant authority at all. This could arise if the planning authority failed to consult or otherwise missed the deemed approval deadline. This requirement therefore needs to be subject to the highway authority’s approval rather than the planning authority.

**Articles 26 and 27** – these relates to temporary land use and gives the power to construct temporary accesses. There is no requirement to seek approval from the highway authority and gives rise to another potential safety concern. We require that our consent be given to such proposals where they affect the SRN. The Article also must reflect out concerns noted above in regard of temporary accesses being removed after use. The provisions of Article 27 (maintenance accesses) should also require approval by ourselves and agreement to removal after use.

## **Protective Provisions**

The draft Protective Provisions provide us ‘step in rights’ to carry out or complete works should we need to, however no bond provision is provided to guarantee recovery of any monies expended by ourselves. Such a requirement is necessary and should be

included as should a requirement for project and contractor's insurances to be secured prior to works commencing.

We note further that within the Protective Provisions there is inconsistency with a 28 day deemed consent period applying rather than the 42 day period referenced elsewhere within the application. While our position is to object to the inclusion of such provisions we note that the applicant has suggested a 56 day period is a possibility. While we recognise a lengthening of this period is an improvement likely to increase the opportunity to resolve matters arising this does not overcome our objections to the principle of deemed approval / consent.

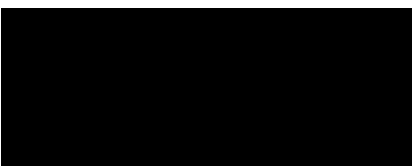
We are concerned that Paragraph 60(3) of the Protective Provisions is unreasonable as it highly likely to result in long disputes and delays in payment over what is or is not a 'reasonably incurred' expenditure and undermines the protection afforded by the indemnity.

By way of comment we note that the majority of our comments relate to matters of highway safety. Highways England's key priority is safe operation of our network and we have a statutory obligation to protect the safety of the SRN written into our licence issued by the DfT.

We are encouraging the applicant to make significant progress on the design of the A5 cable crossing, signage installations and a supporting traffic management plan during the course of the Examination to enable us to review our current position. As such, we are committed to further engagement with the applicant and commit to providing updates to ExA on progress made.

Please do not hesitate to contact me if you require any more information or clarification.

Yours sincerely

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