

YG-DCO-131

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

**Document 8.29.1 Applicant's Written Summary of Oral
Representations made at Compulsory Acquisition Hearing 2**

**Final Version A
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Version History

Document	Version	Status	Description / Changes
28/07/2023	A	Final	First Issue

1. About this document

1.1 Introduction

- 1.1.1 This document summarises the case put by the Applicant, National Grid Electricity Transmission plc (National Grid), at Compulsory Acquisition Hearing 2 on 18 July 2023 for the Yorkshire Green Energy Enablement (GREEN) Project (referred to as the Project or Yorkshire GREEN throughout).
- 1.1.2 The virtual hearing opened at 10:00am on 18 July 2023 and closed at 15:42am on 18 July 2023. The agenda for the hearing [EV-008] was published on the Planning Inspectorate's website on 5 July 2023.
- 1.1.3 In what follows, National Grid's submissions on the points raised broadly following the items set out in the Examining Authority's agenda.

1.2 Attendees on behalf of the Applicant

- 1.2.1 Richard Turney, Counsel instructed by Womble Bond Dickinson (UK) LLP appeared on behalf of National Grid Electricity Transmission plc, the Applicant.
- 1.2.2 The following expert witnesses also made submissions throughout the hearing:
- Steve Fowler, National Grid Electricity Transmission plc (Engineering);
 - Thomas Aylott, National Grid Electricity Transmission plc (Lands);
 - Iain Long, Fisher German LLP (Land Negotiation);
 - Neil Marlborough, WSP (Socio-Economics);
 - Jonathan Bower, Womble Bond Dickinson (UK) LLP (Legal); and
 - Elizabeth Tones, Womble Bond Dickinson (UK) LLP (Legal).

2. Item 3: Compulsory Acquisition (CA) and Temporary Possession (TP)

Table 2.1 – Item 3 The Applicant’s case for Compulsory Acquisition (CA) and Temporary Possession (TP), including any changes

Agenda Sub Item	Summary of oral case
<p>3a The ExA will ask the Applicant to present an update on any changes requested at Deadline 5, further to its Change Notification letter dated 19 June 2023 [AS-020], the ExA’s response dated 22 June 2023 [PD-012], and the Applicant’s letter of clarification dated 26 June 2023 [AS-021]</p>	<p>Change 1</p> <p>National Grid explained Change 1 is for a reduction in the Limits of Deviation (LoD) around the north (1m reduction), east (5m reduction) and western (5m reduction) sides of the Shipton North CSEC, which in turn would result in a reduction of the land over which compulsory acquisition powers would be sought. Plot B1-33 has been changed to a temporary construction area with B1-30A reduced to reflect the reduction in LoD to the north. National Grid confirmed they understand the landowner, occupier and agent are content with this change and are supportive and positive about the proposed change.</p> <p>National Grid explained they are of the understanding that Mr Stephenson represents both the landowner and the occupier.</p>
	<p>Change 3</p> <p>National Grid confirmed Change 3 is a change to permanent access that leads to the Shipton CSECs. The change amends the access AP98 and moves it approximately 50m to the north. This was following discussions with Mr Stephenson and his clients about the access. The old access point can then be closed with hedgerow planting. National Grid understands the change allows better access for farming and is better located for the occupiers. The change has also been positively received by the landowner and consent for the change provided.</p>

Agenda Sub Item	Summary of oral case
	<p>The ExA confirmed they are to seek clarity from Mr Stephenson on these points and his points raised in his D5 submissions. Particularly regarding hedgerows and passing places on Newlands Lane.</p> <p>Change 2</p> <p>The ExA confirmed they are calling this Skelton Springs as it is the name of the location.</p> <p>National Grid explained this change would mean that they would not utilise the previous access point coming off the A19 for the majority of construction traffic. The access track will be taken from northern side over a temporary bridge over Hurns Gutter down to SP005. This means utility diversion U4 is no longer required which has been removed. An access requirement remains along the existing access track as there is a requirement to get to both sides of the temporary bridge in order to construct and dismantle it. This existing access would also be the permanent maintenance access to the pylons, but would only be used by a small number of vehicles. The bridge will be removed following construction.</p> <p>National Grid confirmed they met all the Interested Parties on site and ran through the changes. Everybody seemed to be appreciative and aligned with proposal put forward.</p> <p>The ExA asked with regards to Mr Bell who was querying the exact location of the proposed crossing of Hurns Gutter necessitated by this change. The ExA believed it is on Blacker land not land owned by Mr Bell and asked for confirmation that B3-33 was the relevant plot.</p> <p>National Grid confirmed the crossing will go from SP004 and come south across Hurns gutter, so there will be a portion of the bridge on Mr Bell's and Mr Blackers' land.</p> <p>In response to Ms Johnston's concern regarding trees planted under a grant scheme where the carbon has been registered, National Grid confirmed they are aware of this. At the moment, National Grid have not undertaken detailed design of the bridge location. It will be within plot B3-33, once the pulling position has been decided, National Grid will know where the access needs to go. National Grid confirmed they will seek to minimise tree loss by putting access where there is already tree loss for removal of the overhead line.</p> <p>National Grid agreed to provide a sketch design showing the areas of trees lost as a result of the change. National Grid confirmed they were aware planting has been subject to some grants and might be accounted</p>

Agenda Sub Item	Summary of oral case
	<p>for in terms of carbon credits. In those circumstances, compensation would be payable. That is a matter which will be settled by the normal compensation process.</p> <p>The ExA asked Catherine Johnston if there will be sufficient information from a sketch for Mr Bell to have confidence and be content with the issues at play or is this something that may not be resolved during the examination. Ms Johnston indicated so but raised further concerns.</p> <p>National Grid confirmed a meeting on site took place with Catherine Johnston and her client and noted a couple of points which need to be finalised around commercial deals where National Grid will be in temporary possession of certain areas, but negotiations are nearly there. With regard to legal instructions, National Grid have issued documentation and asked for comments back, they will do everything in their power to conclude matters by the end of the examination. In response to the ExA asking for further assurance, National Grid confirmed dialogue is ongoing and still very positive.</p> <p>The ExA noted Ms Johnston's most recent submission. The ExA had asked for more information about outstanding issues and whether they were nearing resolution. Existing trees and location of the bridge is another area of concern. The ExA asked if there are any other areas where there is concern. Catherine Johnston raised an issue regarding crop loss payments.</p> <p>National Grid hope to conclude the agreement and explained there are various documents in circulation, so information from both sides is required. National Grid do not agree with Ms Johnston's recollection of events. Surveying was carried out on the land. If there are other areas of concern, that needs to be subject to evidence and is not a straightforward question. More than full compensation has now been made. The main point is about the permanent arrangements for the necessary agreement to be put in place. National Grid are continuing to engage to finalise this.</p> <p>Fisher German for National Grid confirmed two meetings were planned. One meeting was cancelled due to the ill health of Mr Blacker. National Grid met with the other landowner, Mr Ritchie, with regards to landscape planting along Hurns Gutter. Those discussions are ongoing. National Grid confirmed they are not looking to plant on Mr Blacker's land. The meeting with Mr Ritchie was positive and he was amenable to the proposals.</p> <p>National Grid are looking at a different solution with Mr Stephenson to provide visual mitigation for the cottages and are now looking to plant on the boundaries of those cottages. National Grid explained this is land which belongs to Bulmer and Eves.</p>

Agenda Sub Item	Summary of oral case
	<p>For completeness, Mr Ritchie's land is shown as plot B3-38. National Grid agreed details of the planting proposal could be submitted at Deadline 6.</p> <p>Change 4 – not submitted</p> <p>National Grid confirmed this is a change which was canvassed previously during the examination when looking at how they might seek to accommodate Mr Watson's concerns about Tadcaster West CSEC. National Grid thought the re-orientation approach was one which may alleviate some of his concerns, however it is not the optimal engineering solution. National Grid made it clear they would only proceed with Change 4 if Mr Watson expressed consent for this change. Mr Watson has not done so, as a result National Grid will not make the change and did not propose it as part of the change application. It would require more of Mr Watson's land for freehold acquisition and therefore it is inappropriate to propose it without agreement from the landowner.</p> <p>National Grid explained the real issue now is whether Mr Watson's alternative as detailed in his Deadline 5 submission is a suitable or appropriate alternative. National Grid's clear view is that it is not.</p>
4b. Any other matters relating to the Applicant's case for CA and TP.	N/A

3. Item 4: Site-specific representations from persons who may be affected by the compulsory acquisition provisions in the draft Development Consent Order (Affected Persons).

Table 3.1 – Item 4. Site specific representations from persons who may be affected by the compulsory acquisition provisions in the draft DCO

Agenda Sub Item	Summary of oral case
4a. The ExA will update the hearing on any withdrawals of objections received.	The ExA confirmed they have received withdrawal of objection 11, objection 12, objection 8 and objection 14. The ExA confirmed withdrawals can be submitted at any time during the examination.
4b. The ExA will hear oral representations from APs who have notified a wish to make oral representations at this CAH2 and any section 102 or Category 32 persons wishing to make oral representations AND 4c. The ExA will invite the Applicant to respond to each representation	<p>Mr Watson</p> <p>Location of CSEC</p> <p>Mr Watson made submissions on the impacts on farming the proposal has and the ExA asked several questions.</p> <p>National Grid confirmed in terms of the land being taken, the drawing on page 4 of Philip Watson's Deadline 5 submission [REP5-100] is illustrative. The final design of the CSEC will be located within limits of deviation. The precise point at which National Grid put the boundary fence can be subject to discussion with the landowner because there is some flexibility in that regard for the final design. If there is a strip of land not being capable of being farmed, this can be included in the acquisition and Mr Watson will be compensated accordingly. Mr Watson would also be compensated for any impacts from compaction. National Grid recognise there is an impact and will minimise this through the final siting of CSEC as far as possible within the parameters identified for engineering reasons. In trying to find a mutually agreeable solution, National Grid consider they have gone as far as they can.</p>

Agenda Sub Item	Summary of oral case
<p>individually under this Agenda item, in addition to the general and specific updates in Agenda item 5.</p>	<p>The ExA asked if Mr Watson was able to access the triangle of land from the CSEC access track.</p> <p>National Grid confirmed the point was to have a spur off from the access track approaching the CSEC. This would enable access to the triangle of land in the corner. Mr Watson could run along the north-eastern boundary of land and drop down into that area, to the south of CSEC. National Grid confirmed they would be able to put a gate at the bottom of the access track to the CSEC. Mr Watson could use this as an access track to the bottom part of the field.</p> <p>National Grid confirmed they do not see this as being much different than the status quo. They recognise there is an impact and these types of impacts will be subject to compensation. National Grid have not seen the evidence that multiple crops are grown in that field. To National Grid's knowledge it is farmed as one block.</p> <p>The ExA asked about the general assessment of socio-economic effects on New Farm and Newlands Farm in the last set of written questions, but did not ask a question about Mr Watson's operations within that written question and therefore asked for more detail on scoping socio-economic effects on Mr Watson's land and whether it requires assessment.</p> <p>National Grid confirmed within the socio-economic assessment the focus was on the degree of economic change that may occur, impact on the farming business and the ability of that business to accommodate changes. The original proposal to scope out farm effects was based on the fact that farming units were relatively large sizes and National Grid will be taking relatively small parcels of land. The information received on New Farm and Newlands Farm backs up that position. National Grid understand both landowners have over 300 acres of land and the land take is around 1-2%. For Mr Watson it is acknowledged there is slightly more impact, but Mr Watson has at least 70 acres in the location being discussed and substantially more in the nearby area, so as an impact on his farming business, National Grid maintain their original conclusions.</p> <p>National Grid confirmed that Change 4 is not being pursued as consent was not obtained from the landowner for the change, and this has been made clear to Mr Watson.</p> <p>Commenting on Mr Watson's proposal, National Grid explained that the proposal would not work, it would be too close to the tower so would require the use of an anchor block. The tower would need encompassing within the CSEC which would increase the size of the CSEC. Anchor blocks are not the preferred method of use which is a gantry solution, and are only used in situations where a gantry solution is not possible.</p>

Agenda Sub Item	Summary of oral case
	<p>Accessing the CSEC with anchor blocks cause additional maintenance implications, with additional measures needing to be in place to avoid clashing with elevated mobile platforms. It would increase the size and amount of CSEC and bring in other maintenance issues which would not exist with National Grid's current layout.</p> <p>The ExA referred to Mr Watson's submission wording regarding 'more suitable solutions for CSEC'. National Grid confirmed their approach to site selection is something that has been explained as detailed in the broader routing and siting study set out in the Corridor and Preliminary Routeing and Siting Study 2021.</p> <p>National Grid stated that the impact of pursuing the change proposed by Mr Watson would bring in third party permanent land take, and would be much more significant than changes within existing land holdings and require a greater land take that is not justified when a standard gantry CSEC solution is available. It would cause a significant problem at this stage in the examination in progressing such a change. More fundamentally, it is not so much a procedural point, but would interfere with another landholding. It is distributing the impact differently rather than reducing the impact on agricultural holdings.</p> <p>In response to Mr Watson asking whether there should be a minimum distance of pylon from the CSEC, National Grid confirmed typically the height of the pylon is the ultimate distance. It is around 50m or so away from the pylon to best optimise electrical clearances.</p> <p>10 metre access strip</p> <p>National Grid confirmed the strip will accommodate a permanent access track. There was a question in terms of whether a 7m wide access track was required and National Grid agreed it could accommodate a 4m access track but needed flexibility for siting and space for drainage.</p> <p>National Grid went on to confirm the proposal is not to leave any permanent track along the hedgerow for maintenance. There is wider strip of class 1 land from A659 to CSEC which accommodates the CSEC permanent access and then smaller strip that continues along plot D1-27, which is for the hedgerow planting and maintenance. This allows space to maintain the hedgerow but will not be a permanent track.</p> <p>National Grid need the powers to maintain the hedgerow as it is mitigation, but in practical terms, the impact of having the rights is going to be minimal for Mr Watson because it is only for maintenance activities rather than for permanent infrastructure. National Grid confirmed the maintenance will be in perpetuity and will include keeping the hedgerow in line and ensuring it is not undermined in any way.</p>

Agenda Sub Item	Summary of oral case
	<p data-bbox="517 213 1122 248">Limits of deviation and land acquisition</p> <p data-bbox="517 288 2074 397">National Grid confirmed it would only acquire the land required for the CSEC and not the entirety of land within the limits of deviation (LOD). There is the compound and its fence line and the access road, but the permanent acquisition would only be of land required for CSEC, permanent access and mitigation in this area.</p> <p data-bbox="517 496 1173 531">Extinguishment of rights at Tadcaster East</p> <p data-bbox="517 555 2022 663">The ExA asked National Grid to justify proposals in terms of buildability and to describe the changes in the detailed note submitted at Deadline 5. The ExA also thought that Mr Watson was content in the original consultation report, so want to understand why there are so many objections now. [APP-195] p229.</p> <p data-bbox="517 703 2047 882">National Grid confirmed minimal changes have been made. The proposed access diversion option shown in the previous version of the Technical Note didn't match the private right of access that came off the access track. The revised Technical Note shows updated swept paths which connect to the existing private right of access. The conclusions of the Technical Note and suitability of the alternative access option have not changed.</p> <p data-bbox="517 922 2016 995">The ExA then asked for comments on Mr Watson's suggestion to limit the size of vehicles, access arrangements the undertaker will require for maintenance and progress with land matters with Mr Ingham.</p> <p data-bbox="517 1035 2060 1214">National Grid confirmed they have considered the use of agricultural vehicles as detailed in the Technical Note after meeting with Mr Watson and still do not think it is suitable to accommodate agricultural vehicles as there is a maximum of 3.7 metres between the edge of embankment and fence line, along with other significant constraints. There is not enough space, with sloping ground to be able to construct a suitable access point or track.</p> <p data-bbox="517 1254 2067 1327">In response to the ExA's second point regarding access for third parties, National Grid explained the proposal is that the gas pipeline diversion would be the first element of works. The diversion would take place in the</p>

space where the embankment will eventually be located. National Grid expect there would be low maintenance requirement for gas pipeline. Temporary works could be implemented for a safe route.

In response to the third point regarding the land plan which shows the area National Grid are looking to take as freehold (plots D1-15 and D1-19) and how National Grid would access it, National Grid explained that area is proposed for planting and wildflowers, so there is no need for vehicular access, it can be maintained on foot. There would be no third party access unless required by the gas undertaker.

National Grid responded regarding the query on the consultation report; the landowner referred to who was content was Mr Ingham rather than Mr Watson. The right of way runs over Mr Ingham's land, he is the landowner not the beneficiary of the right of way.

In response to a point raised by Mr Watson, National Grid confirmed it did state on pg47 of [REP1-015] it was agreed they would not need to retain the land south of D1-15, despite its restricted accessibility. However, negotiations have moved on with Mr Ingham and this land is included for compulsory acquisition and no access was proposed to this land which is why it was referred to as having restricted accessibility.

National Grid explained [REP1-015] made it clear it included all of the land to the west of the CSEC due to restricted access to the retained land, but should the landowner wish to retain the land despite restricted access, he could.

In response to Mr Watson asking for clarification whether National Grid are purchasing a piece of land with Mr Ingham, National Grid confirmed it is in the order but precise details are the subject of private negotiations.

National Grid confirmed it responded to the relevant CAH1 action point regarding the option to include a retaining wall, but there are a number of reasons why a retaining wall is not suitable due to ground stability and installation methods. In terms of the other points regarding constraints, there are significant number of constraints, there is a gas pipeline and telecoms mast, this means this access is not feasible and so National Grid are not proposing to divert the access.

National Grid agreed to submit the distance from the CSEC to the boundary at Deadline 6.

When questioned why anchor blocks were appropriate at other CSECs, National Grid confirmed again that their specification is that a gantry solution is the standard and to only use anchor blocks where space constraints and where typical gantry cannot be accommodated. Anchor blocks cause maintenance issues. They come to the floor and strings and insulators can cause issues for access for maintenance.

Agenda Sub Item	Summary of oral case
	<p>National Grid confirmed this standard approach could be found in the technical specification which can be submitted to the ExA.</p> <p>Mr Watson asked about types of vehicles and National Grid explained they are not proposing to permit any access through the land and are not proposing a permanent access route. In the instance where a gas company need to do repairs, suitable temporary arrangements would need to be put in place. This would be a one off. National Grid do not believe there is enough space and have serious safety concerns because of the slope.</p> <p>National Grid confirmed they do not consider these works are appropriate for technical reasons and do not think they are necessary to accommodate farming practices in any event. National Grid are not proposing to create a right of way to accommodate Mr Watson who has a satisfactory means of access to serve his farming operations. If there is an impact on farming operations, Mr Watson will be compensated for that. National Grid are not proposing creation of legal right of way because there isn't a need for it.</p>
	<p>Access from the A659</p> <p>Mr Watson made various points in his D5 submission and the ExA asked National Grid for their view on some of these points.</p> <p>National Grid confirmed the issues regarding fly tipping will be a problem for National Grid too as they will need unrestricted access at all times. That is a point National Grid want to engage with Mr Watson on so both can maintain unrestricted access. National Grid confirmed they are looking to have these discussions and are awaiting feedback from Mr Watson.</p> <p>The ExA asked for an update on this point with suggestions at whichever deadline is possible, preferable 7 if not 6.</p> <p>In response to the ExA asking if the track could be reduced to 4m rather than 7m and if that would have an implication for the bellmouth, National Grid confirmed the bellmouth would be suitably sized to the permanent access track.</p> <p>Mr Watson confirmed this may alleviate some of his concerns, but asked if National Grid could put an access point in elsewhere.</p>

Agenda Sub Item	Summary of oral case
	<p>National Grid explained that they are not proposing a change, it makes more sense to use a single point of access and will work together to ensure the solutions work in practice.</p>
	<p>Mr and Mrs Blacker</p> <p>In response to the ExA asking if the pegging out has shown the limits of deviation (LOD), National Grid confirmed the pegging out has shown the position of the pylons as shown on the Work Plans rather than the extent of the LoD. The pylon can move within the LoD, but there are a lot of constraints in this area. There is potential that movement could occur to accommodate to allow sprayers etc, but it is so constrained the detailed design is needed from the contractor before anything can be committed to.</p> <p>National Grid confirmed this would be progressed post examination.</p> <p>National Grid explained they would not propose to move the position of pylons during the examination and preference would be to continue discussions in terms of what is flexible and what can be achieved. Something would have to be dealt with at detailed design stage.</p> <p>In response to the ExA asking if there is any way to secure commitment to ongoing liaison, National Grid confirmed the DCO itself does not contain this commitment, but they will only take the land actually required within the LoD and will run through micro-siting issues during the design process. If it is necessary to reflect the commitment to ongoing engagement with the landowner, that should lie in the COCP (Document 5.3.3B(B)) [REP2-020]), rather than on face of the order. Ultimately if there is a restriction as consequence of access, that would be dealt with via compensation.</p> <p>National Grid confirmed the removal of SP007 will not be feasible. SP008 is a suspension tower, so cannot accommodate an angle. It would need a replacement pylon and temporary diversion to construct that. The temporary diversion would have to connect to SP009. When designing a route, the distance of two adjacent spans have to be within a certain distance. Looking at removing SP007 would potentially mean the maximum distance would be exceeded.</p> <p>The ExA confirmed they are aware of constraints and the difficulties of SP007 and would like to see some wording in the COCP (Document 5.3.3B(B)) [REP2-020]) that is a commitment to working closely with the landowner in relation to SP005 and SP006.</p>

	<p>National Grid confirmed they would look at possible wording to propose within the COCP (Document 5.3.3B(B)) [REP2-020] and also to book in a site meeting which hopefully will move things forward.</p>
	<p>Mr Elliot</p> <p>In response to Ms Johnston’s submissions, National Grid explained they are content with re-routing the access track, but this is dependent on landlord consent. National Grid understand the Landlord is content in principle but are still awaiting confirmation that is the case. If it is agreed, that is a solution that is satisfactory to National Grid, but ultimately this is something that is outside of National Grid’s control.</p> <p>National Grid then responded to the extent of undergrounding point. As previously explained, National Grid have only taken powers for the necessary diversion and no more than necessary to accommodate the project; this is proportionate. Northern PowerGrid (NPG) can do more undergrounding if they wish. National Grid see the logic in what is being proposed by the landowner, but this is a point between NPG and the landowner, albeit National Grid are happy to facilitate the discussion. The order powers are limited to what National Grid need.</p>
	<p>Mr Rab</p> <p>National Grid explained the reasoning for the change to the proposed access road (moving 50m north) was the revised location for the access track would accommodate farming practices in the area. All parties are in agreement it is a better solution and suits future farm expansion.</p> <p>In terms of passing places, National Grid have put forward a proposed drawing at Deadline 5, illustrating what passing places could look like. Two passing places, one either side of proposed access have been suggested and show how an articulated lorry could pass another on that road. It should be noted there are already 3 bellmouths proposed along that road, which can act as passing places as well. The additional passing places if required would be over and above the 3 bellmouths and the measures in the COCP (Document 5.3.3B(B)) [REP2-020], ALO and delivery management system.</p> <p>In relation to putting access between two compounds, National Grid explained why this is not an option. Currently there is no access track between the compounds, so this would require a new track which would cross two different land holdings. Mr Stephenson referred to a dead tree but along that route is mature vegetation and there would need to be removal of this vegetation. There is no justification for National Grid to do this as National Grid can manage traffic on the existing highway adequately and finally the CSECs are for use by separate contractors and that level of interaction raises safety concerns.</p>

	<p>When asked a question about where the road leads, National Grid confirmed it dead ends and then goes onto a private track. This is something that may need confirmation, but it seems it lead only to Newlands Farm and there are no properties beyond it, but there is a right of way and so other users may use that road.</p>
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4. Item 5: Site-specific matters for the Applicant

Table 4.1 – Item 5. Site Specific matters for the Applicant

Agenda Sub Item	Summary of oral case
<p>5a. The ExA will ask questions of the Applicant and seek updates about negotiations and matters arising from written and oral submissions including, but not limited to the objections listed above, which have not been raised by APs and heard under Agenda item 4.</p>	<p>Mr Ingham</p> <p>National Grid explained that their expectation is the objection will be withdrawn by Deadline 6.</p> <p>Swales</p> <p>National Grid are still negotiating around commercial terms and ongoing discussions, no timescale for resolution, but can update at the next deadline.</p>
<p>5b. For the Applicant to give an update on probate and/ or negotiations with Executors for land at Monk Fryston Substation over which rights are sought.</p>	<p>National Grid confirmed there is no update and explained it is likely these issues will not be resolved throughout the timeframe of this examination and so proceedings with compulsory acquisition.</p>
<p>5c. For further questioning, if</p>	<p>National Grid confirmed they would remove the compulsory powers sought for Work No. U8.</p>

Agenda Sub Item	Summary of oral case
<p>necessary, on the justification for inclusion of land for Work No. U8.</p>	
<p>5d. The ExA will ask for an update on negotiations with APs and a timetable for their conclusion.</p>	<p>National Grid explained the numbers as of today (18 July 2023) with 78 heads of terms still in negotiation, 33 have been signed and still one option which is agreed and signed for being the Monk Fryston tenancy surrender.</p> <p>The ExA asked for this table to be updated at Deadline 6 separate to the hearing note</p>
<p>5e. The ExA will also ask for a general update from the Applicant on the Objections Schedule to be submitted at Deadline 5, whether indication of likelihood of resolution can be given.</p>	<p>National Grid confirmed there are still some issues in respect of statutory undertakers but in terms of individual objectors there is nothing else which is believed to need consideration.</p>

5. Item 6: Statutory Undertakers

Table 5.1 – Item 6. Statutory Undertakers

Agenda Sub Item	Summary of oral case
<p>6a. Applicant’s case for PA2008 sections 127 and 138 – the acquisition of Statutory Undertakers’ land and the extinguishment of rights and removal of apparatus of Statutory Undertakers</p> <p>AND</p> <p>6b. Representations from Statutory Undertakers, including PA2008 sections 127 and 138 – the acquisition of Statutory Undertakers’ land and the extinguishment of rights and removal of apparatus of Statutory Undertakers, and progress on Protective Provisions</p>	<p>As a general update, National Grid confirmed in terms of agreed protective provisions those with the Canal and River Trust and the two National Power Grid entities are agreed.</p> <p>National Highways</p> <p>National Grid referred the ExA to (Document 8.27.2 Application under Section 127 and 138 Planning Act 2008 – National Highways Limited) [REP5-087] which is the D5 submission explaining the position in respect of s127 and s138 in respect of National Highways. This sets out the case. S127 is concerned with situations where acquisition of interest or rights of statutory undertakers and engaged because of the powers that are sought in respect of land which is in the control of National Highways. The overall case that National Grid put forward including the need case, is set out in detail elsewhere and is summarised in Section 1.2 of the representation; it will be well understood by ExA and National Highways. In terms of the proposed works, that is set out at section 1.3 of (Document 8.27.2 Application under Section 127 and 138 Planning Act 2008 – National Highways Limited) [REP5-087], there are three locations where there are works over National Highways land. The first area is around Tadcaster and the two new CSECs. The works so far as they affect National Highways are works proposed to the existing 275kV Overhead Line including replacing conductors and pylon fittings. For those re-conducting works, scaffolding would need to be put over the A64.</p> <p>National Grid explained further works to the existing 275kV line near Monk Fryston are concerned with the oversail of National Highways’ road, and that is in the location of the A1 A63 roundabout. Scaffolding is needed for the works there. Similarly, Section F, scaffolding over A1/A63 for re-conducting works of XC-XCP line is needed. Those are the proposed works. The impact on National Highways land is concerned with works (scaffolding) over the highway whilst overhead lines are worked on and the actual impacts of those and the management of those can be explained to further.</p> <p>Regarding the s127 application National Grid explained the provision is that the DCO can only include provision authorising the compulsory acquisition of statutory undertakers’ land where the Secretary of State is</p>

Agenda Sub Item	Summary of oral case
	<p>satisfied the land may be purchased and not replaced without serious detriment to the carrying on of the undertaking, or it can be replaced with other land available for acquisition by the undertaking without serious detriment. In this case, National Grid say the works can be carried out without serious detriment. This term is not defined in statute, but given the nature of the works, it is clear in National Grid's submission there will not be serious detriment. It has been set out at section 1.5 of (Document 8.27.2 Application under Section 127 and 138 Planning Act 2008 – National Highways Limited) [REP5-087] the nature of impact and the land which is affected and the identification of the plots concerned. As summarised in paragraph 1.5.6 of the (Document 8.27.2 Application under Section 127 and 138 Planning Act 2008 – National Highways Limited), National Grid submits that there is no serious detriment to National Highways and the interference would be minimal. National Grid is seeking to agree protective provisions which would address those concerns otherwise National Grid have to rely on compulsory powers contained in the order.</p> <p>There is a similar position in respect of the s138. This is set out in 1.6 of (Document 8.27.2 Application under Section 127 and 138 Planning Act 2008 – National Highways Limited) . In terms of the need for the project, this is clearly established that there is no serious detriment to National Highways. The relevant statutory test is met.</p>
	<p>Response to National Highway submissions</p> <p>National Highways made several submissions on serious detriment.</p> <p>National Grid explained they are trying to settle protective provisions. They note the point about extinguishing National Highways interest, and will take this into account when drafting the protective provisions.</p> <p>However National Grid strongly disagree about not needing compulsory acquisition powers to cross the highway. National Grid need to enter onto the land and work safely to deliver the NSIP in a timely fashion, the powers in the New Roads and Street Works Act 1991 are not sufficient. National Highways already have overhead lines oversailing the highway in many places and the way in which National Grid will have to enter into the highway land and ensure that line can be safely worked on is something National Highways will be familiar with. It is essential for the delivery of significant public benefits of the scheme. That is why National Grid are seeking powers, there is a clear case in acquiring the rights and interests identified.</p> <p>National Grid acknowledge it should not exercise the rights in a way that would prejudice National Highways long term interests and will make sure the Protective Provisions reflect this. In terms of the works, this will be scaffolding over a temporary period to allow overhead lines to be worked on safely, there doesn't seem to be</p>

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	<p>real suggestion that that activity is prejudicial to highway network. National Grid should be able to implement safe measures. National Grid can accommodate National Highways' land interest concern but National Grid maintain they should have powers in question.</p> <p>National Highways confirmed some of the issues with the protective provisions would fall away if there was some resolution on Schedule 1 descriptions and the exclusion of the SRN from the 'further works' definition. The ExA invited the Applicant to consider this before ISH4.</p> <p>National Grid confirmed they will continue to think on this but in the latest draft DCO paragraphs 61 through to 64 of Schedule 15 cover the approvals by National Highways of the works it would carry out within the highway. National Grid do not think there is a point of principle between themselves and National Highways.</p> <p>National Grid explained if protective provisions cannot be agreed, the ExA will have to give recommendation of protective provisions put forward by National Grid or to amend them in a particular way. In terms of approach, the normal thing would be to look to focus on protective provisions, to restrict the ability of the undertaker under the Order to carry out the works within the highway rather than to look to restrict the provisions within Schedule 1. National Grid say that the issue is properly addressed by the protective provisions which give National Highways the ability to approve those works so far as they encroach into the National Highways undertaking. The point that National Highways should have control over those works is one that is recognised and is reflected in terms of protective provisions.</p> <p>The ExA confirmed they would not be able to give the Secretary of State what they wanted at this stage and could not give the Secretary of State two different protective provisions. By Deadline 6, the ExA require precise wording of where the areas of dispute are from both sides. The ExA need to understand areas of dispute. The ExA urging detailed wording by Deadline 6 from both parties. The ExA needs two different wordings.</p> <p>National Grid and National Highways confirmed they are happy to provide detail as to point of difference in wording.</p> <p>The ExA asked for a clarification, it understood there was only one area of crossing of the road but there are three listed in [REP5-114]</p> <p>1) A64 crossing. 2) Access from A64 slip road. 3) Westfield Lane</p>

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	<p>National Grid confirmed that there is no requirement to modify the existing site access, from the A64 slip road anymore and the road has been removed from schedule 6 of the DCO.</p> <p>In response to the ExA asking for an explanation why deemed consent should apply and why timescales should be shortened, National Grid confirmed in order to address some comments National Grid has introduced a provision whereby consent for any works within a 4m envelope would be required from National Highways. That hopefully addresses some concerns National Highways has. In terms of works above that 4m, in order to ensure they are delivered in a timely manner and because it is a well-used process undertaken by National Grid, National Grid have included a deemed approval process. In relation to other works, it is a deemed refusal as per the drafting. National Grid acknowledged National Highways have only recently seen the drafting from National Grid and the other way around. It might be there is movement on that point and others.</p> <p>National Grid confirmed they are trying to reach agreement and hopefully will do.</p>
	<p>National Gas Transmission PIC (NGT)</p> <p>National Grid confirmed that its D5 submission (Document 8.27.3 Application under section 127 and 138 Planning Act 2008 – National Gas Transmission plc) [REP5-088] contains its application under s127 and s138. It is in a similar structure to National Highways application. The need case remains the same, it is the same project, same purpose. The place to go in terms of understanding the works is paragraph 1.3 of (Document 8.27.3 Application under section 127 and 138 Planning Act 2008 – National Gas Transmission plc [REP5-088]). There are three locations where National Grid have identified work over NGT's land in particular. These are works in Tadcaster near XD003, at the new CSEC and Monk Fyston.</p> <p>In terms of the nature of those works, in essence most of the interaction with the apparatus of NGT is concerned with the creation of temporary access tracks and running over the top of their assets. The works in question are non-intrusive and therefore low risk, so proportionate protective provisions are appropriate. The nature of the works and the need for them is set out in (Document 8.27.3 Application under section 127 and 138 Planning Act 2008 – National Gas Transmission plc [REP5-088]), for the same reasons as National Highways. The works can be authorised under the DCO with no serious detriment to the undertaking.</p>

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	<p>There are protective provisions in the order as it stands and those provide some protection to NGT as gas undertaker. In terms of the negotiations of the detail of bespoke protective provisions, there has been an issue as is identified about the wording of indemnity provisions. National Grid's position is that limited indemnity being sought is unreasonable on the facts of the case because the works are non-intrusive and low risk and therefore an open-ended indemnity is inappropriate.</p> <p>National Grid explained that one of the issues that has been a struggle is that National Grid do not understand why the indemnity sum is thought to be inadequate, National Grid has asked for information as to why the risk to assets is thought to justify an uncapped indemnity.</p> <p>In response to the ExA asking for an update on the side agreement with NGT, National Grid confirmed it is the same issues holding up progress on the side agreement.</p> <p>Northern Gas Networks (NGN)</p> <p>National Grid confirmed the position is that there are the general protective provisions for NGN in part 1 of schedule 15 but also there are bespoke protective provisions which are being negotiated and which will be included once they are in an agreed form. The SoCG (Document 8.5.20(B) Statement of Common Ground between National Grid Electricity Transmission plc and Northern Gas Networks Limited) [REP5-067] submitted at deadline 5 summarises the key points of disagreement National Grid and NGN are trying to deal with. The first one is similar to NGT in terms of the level of indemnity given what National Grid say are the risks and the potential impacts of the project on NGN's infrastructure. The second point is about timeframes for giving notice of works and in essence that is a point about NGN's normal timescales vs what National Grid say is necessary and appropriate in this project given the urgency and the fact National Grid want to start works as soon as possible after Development Consent is obtained.</p> <p>Network Rail Infrastructure Limited</p> <p>In terms of the types of works, National Grid explained there is one new crossing of the railway, one crossing to be dismantled and removed which is the XCP line and three crossings of the existing railway, one of which is disused. All of those crossings are to be managed by scaffolding.</p> <p>National Grid confirmed they have been making steady progress on the protective provisions but have reached similar points of disagreement as in the past. At deadline 6, National Grid will be submitting the relative positions. There are similar issues regarding the framework agreement that parallel the protective</p>

Agenda Sub Item	Summary of oral case
	<p>provisions issue and National Grid confirmed it will be difficult to progress the framework agreement without agreement on protective provisions issues.</p> <p>In response to the ExA asking about Network Rail seeking a right to terminate rights within 6 months, National Grid confirmed that it has been a point of difference; Network Rail say their ability to terminate is a point they do not want to negotiate on, and from National Grid's position it is not an acceptable proposition to require National Grid to remove apparatus, so this point of difference goes to the heart of the disagreement. It is something National Grid are trying to narrow the difference on.</p> <p>National Grid explained there is also an issue regarding indemnities. In essence, National Grid are trying to work through points of principle with Network Rail, looking at what has been agreed elsewhere and nonetheless maintaining that in the absence of agreement, National Grid have a combination of the order powers plus protective provisions in the order to ensure the works can be carried out without any material impact on the railway undertaking. National Grid hope to reach a more extensive agreement but if not, the request will be to have order powers subject to protective provisions.</p> <p>The ExA confirmed all parties should work on National Grid's drafting as the baseline. Any experience from previous cases would be welcomed.</p> <p>National Grid confirmed they endorse the ExA's proposal that suggestions be made to change National Grid's drafting to try and find a middle ground. In other instances, other examining authorities have found it helpful to have it on the applicant's drafting.</p>

Item 7: Human Rights

Table 5.2 – Item 7. Human Rights

Agenda Sub Item	Summary of oral case
<p>7a. Regard given to Articles 8 and 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol, including the degree of importance attributed to the existing uses of the land proposed to be acquired. The ExA may wish to question further the degree of importance that has been given to existing farming uses of the land and rights proposed to be compulsorily acquired in light of the weight given to, and the amended details of, the role of the Agricultural Liaison Officer (ALO).</p>	<p>National Grid explained it could be more than one person as an ALO. It is a description of a role which may at times require more than one person to be appointed. The fundamental element of the job description would remain the same. National Grid agreed to reflect on the wording to ensure it is clear it is a description of the role and not prescriptive to one person.</p>
<p>7b. The weighing of any potential infringement of ECHR rights against the</p>	<p>In response to the ExA asking about the need for an easement raised by Network Rail, National Grid confirmed it comes down to the same issues that are holding up the wider agreement with Network Rail. The question is whether National Grid need those compulsory powers over the railway or whether matters can be dealt with via agreement. Given that there is an absence of agreement generally with Network Rail on the</p>

Agenda Sub Item	Summary of oral case
<p>potential public benefits if the dDCO is made, which may include any further comments from APs on easements, following the submission with further explanation by the Applicant [REP4-027], Appendix C.</p>	<p>terms of what National Grid are doing, the provision of indemnities and termination provisions, National Grid maintain they need those powers for all the reasons previously discussed in terms of having an easement.</p> <p>National Grid explained whether they could step down to a lesser contractual right would depend on all the terms it was subjected to and that is certainly the case with Network Rail, that unless all terms can be agreed, National Grid will have to rely on the order powers to do what is needed with the crossing of the Network Rail lines.</p>

6. Item 8: Consideration of duties under the Equality Act 2010

Table 6.1 – Item 8. Consideration of duties under the Equality Act 2010

Agenda Sub Item	Summary of oral case
<p>8a. The Applicant to provide a verbal update of any further inquiries and engagement with the Travellers Community following submission of its Summary of Actions and Engagement in Relation to the Traveller Community, [REP4-018] and any Deadline 5 update, including any update on landownership as mentioned at CAH1.</p>	<p>National Grid confirmed email correspondence has occurred between Mr Carruthers and National Grid since the last update was provided and will update the communication log for the next deadline.</p> <p>The ExA made a point about the public sector equality duty and the new requirement in the DCO and asked if wording with regards to communication with the Traveller community could be used that reflects that communication would be undertaken in a way that is accessible. National Grid agreed to consider this point and discuss further during the Issue Specific Hearing 4.</p> <p>National Grid agreed to consider whether Mr Carruthers should be consulted on the site specific mitigation scheme and will propose wording regarding consultation on the site-specific mitigation scheme if deemed appropriate.</p>
<p>8b. The Applicant to give any update on landowners at the Travellers' Site.</p>	<p>N/A</p>

7. Item 9: Funding

Table 7.1 – Item 9. Funding

Agenda Sub Item	Summary of oral case
Any further points that the ExA may wish to explore, and any points raised by attendees.	National Grid confirmed there was no update since CAH1 and the general regulatory framework remains unchanged in terms of the way the project is funded. The difference is the route to funding. This project falls within ASTI an accelerated process, although it has not been through another gateway decision on funding, the fact it is on an accelerated route should give the ExA more confidence of reasonable chance of funding. National Grid confirmed it will update the funding statement at Deadline 7.

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