

YORKSHIRE GREEN
DEADLINE 6 – 11 JULY 2023
NATIONAL GAS TRANSMISSION PLC (“NGT”)
NGT RESPONSE TO COMPULSORY ACQUISITION HEARING 2, ACTION 16

1. We write in response to Examination Document 8.27.3, the Applicant’s application under section 127 and 138 of the Planning Act 2008 to compulsorily acquire rights over NGT’s land (the “**Application**”), and the oral representations made by Mr Richard Turney on behalf of the Applicant at Compulsory Acquisition Hearing 2 on 18 July 2023 (“**CAH2**”).

NGT’s Apparatus and Undertaking

2. NGT has the following apparatus and interests within and in very close proximity to the proposed Order limits:
 - (a) Towton AGI Compound;
 - (b) Feeder Main 7;
 - (c) Feeder Main 13; and
 - (d) Feeder Main 29(the “**NGT Apparatus**”).
3. The NGT Apparatus comprises high pressure major accident hazard pipelines (“**MAHP**”). By definition, MAHP pose a serious health and safety risk if not protected and maintained properly and appropriately. The safe and effective protection and maintenance of MAHPs is a fundamental objective of NGT and is central to both NGT’s business operations and statutory obligations.
4. The Pipeline Safety Regulations 1996 (the “**Regulations**”) further require that pipelines are designed, constructed and operated so that the risks are as low as is reasonably practicable (ALARP). Regulation 15 states that “No person shall cause such damage to a pipeline as may give rise to a danger to persons.” NGT operates and maintains its network in line with the Regulations and according to well established standards to ensure the ongoing safety of the network.
5. NGT is responsible for the national, high-pressure gas transmission network; NGT is not a gas distribution network operator (“**GDN**”). This is an important distinction to make when assessing the potential consequences of damage/interference/disruption to the network. Whilst impacts to a GDN’s apparatus have the potential to cause localised consequences for thousands of customers, impacts to NGT’s Apparatus have the potential to cause national consequences to a significantly greater number of gas consumers.
6. If the proposed development were to cause damage to NGT’s Apparatus then there may well be the need to isolate and depressurise assets within the transmission system in order to mitigate further impacts to the network and repair the damage. If these measures are required, then it could result in the loss of gas supply to a significant number of consumers. This would incur financial consequences in restoring those gas connections and present health and safety implications for vulnerable residents left without a gas supply to their property.

7. Any damage caused to the three feeder mains could constrain NGT's ability to transport gas between the northern and southern parts of the network. Those constraints will not only result in detrimental impacts to the gas consumers across the network but would also result in significant constraint costs.
8. In addition to constraints on the operation of the network, any damage to the feeder mains would also compromise NGT's ability to maintain its network. Damage to one feeder main may result in an inability to carry out routine maintenance scheduled for other assets in the area. NGT would lose flexibility in how to operate its network and there may well be associated costs.
9. Primarily, NGT has obligations under its licence to ensure a continued supply of gas across its network and damage caused to NGT's Apparatus by the proposed development could result in NGT breaching those obligations. NGT cannot accept anything which presents a threat to its compliance under its licence and its other statutory and regulatory obligations.

NGT's Land

10. Section 1.3 of the Application gives an overview of the works which are proposed over plot numbers D1-28, D1-29, D1-32, D1-39, D1-46, D1-56, E3-08 and E3-13 ("**NGT's Land**"). NGT understands from discussions with the Applicant that the following activities are proposed which have the potential to impact the NGT Assets:
 - (a) reconductor existing 275kV and 400kV overhead lines which traverse overhead directly above NGT feeder main pipelines;
 - (b) manoeuvre existing conductors onto a temporary diversion directly above an NGT feeder main pipeline;
 - (c) install a construction working area which has the potential to interfere with an existing NGT pipeline and associated access rights and restrictive covenants for its protection; and
 - (d) use and improve accesses across NGT pipelines, utilising track matting subject to ground conditions.

Section 127 Application

11. We agree with the Applicant's interpretation of Section 127 of the Act as set out in Section 1.4 of the Application so do not repeat the provisions here.
12. NGT strongly disputes the Application on the grounds that the compulsory acquisition of rights over NGT's Land:
 - (a) could cause serious detriment to the carrying out of NGT's undertaking; and/or
 - (b) any detriment caused to the carrying out of NGT's undertaking, in consequence of the acquisition of the rights, could not be made good by the use of other land belonging to NGT or available for acquisition by NGT.
13. Section 1.5.5 of the Application sets out the purpose for which the Applicant considers NGT's Land is required and rights to be acquired. NGT considers that the following works, specified in section 1.5.5 of the Application, present a serious threat to the safe operation and maintenance of the NGT Assets without the protection to NGT's Assets that would be secured by the provisions sought by NGT and presently not agreed with the Applicant ("**NGT's Protective Provisions**"):
 - (a) the removal of buildings, structures, pylons, apparatus, equipment and vegetation from the land;

- (b) the construction, maintenance, repair, alteration, renewal, replacement or removal of the authorised development;
 - (c) the felling, trimming, removing or lopping of trees, hedges and bushes; and
 - (d) the construction, installation, maintenance, modification, improvement, adjustment, repair, replacement, extension and removal of any temporary or permanent drains, watercourses and culverts.
14. All of the above works have the potential to cause substantial impacts to the ground conditions and stability and severely impact the NGT Apparatus. NGT considers it wholly inappropriate for these activities to be carried out over NGT's Land without the Applicant first agreeing to NGT's Protective Provisions.
15. In addition, section 1.5.5 states that the Applicant requires the acquisition of NGT's rights to ensure that: nothing is done upon the land which may interfere with or cause damage to the authorised development; no building or structure is erected on the land; the level of the surface, ground cover or composition of the land is not changed; and the land is not drilled, dug or broken up. NGT must ensure complete control over its Apparatus and associated land rights in order to adequately protect and maintain its apparatus and all of the above restrictions would fundamentally compromise NGT's ability to do so. Contrary to section 1.5.5 of the Application, NGT's Protective Provisions must be secured in order to ensure that the Applicant does not do any of the above specified activities or works on NGT's Land without NGT's express approval.
16. The Applicant's suggestion at section 1.5.6 of the Application that the acquisition of NGT's rights "would cause minimal interference to NGT's undertaking" is simply not correct. If the Applicant acquires NGT's rights then NGT will be prevented from, amongst other things, drilling, digging and breaking up the land in order to reach the NGT Assets. This would present an ongoing risk whereby NGT Assets cannot be accessed. This is unacceptable and would prevent NGT from carrying out its undertaking and ensuring the safe and effective operation of its network. It is also unclear to NGT how the serious detriment that would result in the loss of ability to manage its Assets can be made good.
17. NGT does not consider that the protective provisions included by the Applicant at Schedule 15, Part 1 of the draft DCO provide adequate protection to NGT's apparatus and it for that reason that NGT has developed bespoke protective provisions – NGT's Protective Provisions – which represent an industry standard and are insisted upon by NGT in respect of every third-party DCO that involves potential interaction with NGT's apparatus.
18. NGT welcomes the Applicant's suggestion that negotiations will continue in parallel with the compulsory acquisition process with a view to concluding as soon as possible, but NGT maintains that the NGT Protective Provisions must be agreed. If the Applicant is unwilling to agree to the NGT Protective Provisions being included within the Order, then NGT will provide a copy of the same to the Examining Authority and insist that the Secretary of State include them should they make the Order.
19. For the above reasons, NGT cannot accept the Applicant's suggestion at section 1.5.11 of the Application that NGT's rights should be compulsorily acquired regardless of whether the NGT Protective Provisions are secured. Only the imposition of NGT's Protective Provisions can ensure that there is no serious detriment to the carrying on of NGT's undertaking – this is a position that has been accepted in every DCO where bespoke provisions were required by NGT and its predecessor.

Section 138 Application

20. NGT strongly disputes the Applicant's case at section 1.6.3 of the Application that without extinguishing NGT's rights over NGT's Land and without removing or repositioning NGT's Assets, the proposed works could not be completed by the Applicant. NGT is entirely amenable to granting the Applicant the necessary access rights over NGT's Land to enable the safe construction of the proposed development provided that NGT's Protective Provisions are agreed with the Applicant and in place to ensure that NGT's Assets are adequately protected.
21. NGT entirely refutes the Applicant's suggestion that "the nature of the proposed works and the inclusion of protective provisions in the DCO means that the Secretary of State can be satisfied that NGT's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking." Whilst the proposed works over NGT's Land do not involve intrusive ground works, they nonetheless present an identifiable risk to NGT's Assets including works to re-conductor and temporarily divert high voltage overhead lines directly above MAHP (which could conceivably be substantially impacted as a result of poor workmanship, mismanagement and accident), and NGT is wholly unsatisfied that the proposed works can be carried out without detrimentally affecting NGT in carrying out its undertaking, without first securing NGT's Protective Provisions. NGT is responsible for safely operating and maintaining the nation's gas transmission system and any detrimental impact to its network could have a severe impact on both NGT's ability to carry out its undertaking as well as the health and safety of the general public.

Conclusion

22. For the above reasons, NGT strongly rejects the Application. NGT refutes the Applicant's suggestion that the proposed development presents a low risk to NGT's Apparatus and asserts that the potential consequences of *any* damage to NGT's Apparatus are so severe that the impacts to both NGT and hundreds of thousands of gas consumers could be catastrophic.
23. NGT's position is that the only way to mitigate and manage any serious detriment to its undertaking is if the NGT protective provisions are included in the DCO. NGT requests that the Examining Authority recommend that the final DCO, if made, includes the protective provisions in the form submitted by NGT alongside this document.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

28 JULY 2023