

YG-DCO-078(ED)

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.5.11(ED) Statement of Common Ground between
National Grid and Network Rail Infrastructure Limited (Tracked)

~~Draft Final~~ Version 34
~~July-September~~ 2023

Planning Inspectorate Reference: EN020024

Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 Regulation 5(2)(q)

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Yorkshire GREEN Project

Document control

Version History

Document	Version	Status	Description / Changes
Statement of Common Ground	1	Draft	
Statement of Common Ground	2	Draft	Updates to negotiation status of documents in section 2.3
Statement of Common Ground	3	Draft	Updates to negotiation status of documents in section 2.3
<u>Statement of Common Ground</u>	<u>4</u>	<u>Final</u>	<u>Final version for submission to the ExA</u>

1. Introduction

- 1.1.1 A Statement of Common Ground (SoCG) is a written statement produced as part of the application process for a Development Consent Order (DCO) and is prepared jointly between the applicant and another party. It sets out matters of agreement between both parties, as well as matters where there is not an agreement. It also details matters that are under discussion.
- 1.1.2 The aim of a SoCG is to help the Examining Authority manage the Examination Phase of a DCO application. Understanding the status of the matters at hand will allow the Examining Authority to focus their questioning and provide greater predictability for all participants in examination. A SoCG may be submitted prior to the start of, or during Examination, and then updated as necessary, or as requested during the Examination Phase.
- 1.1.3 This is a SoCG between National Grid Electricity Transmission plc (National Grid) and Network Rail Infrastructure Limited (Network Rail). The SoCG relates to the DCO application for the Yorkshire Green Energy Enablement (GREEN) Project (referred to as the Project or Yorkshire GREEN). It has been prepared in accordance with the guidance¹ published by the Department for Levelling Up, Housing and Communities (DLUHC).
- 1.1.4 This SoCG has been prepared to identify matters agreed, matters not agreed and matters currently outstanding between National Grid and Network Rail in terms of technical and engineering matters. Political matters have not been set out in this document.
- 1.1.5 This version (~~V2-V4 July-September~~ 2023) of the SoCG represents the final position between National Grid and Network Rail at Deadline ~~5-7~~ on the ~~11-July6 September~~ 2023.

1.2 Description of the Project

Need for the Yorkshire GREEN Project

- 1.2.1 National Grid propose to upgrade and reinforce the electricity transmission system in Yorkshire. This reinforcement is needed to improve the transfer of clean energy across the country.
- 1.2.2 Electricity flows are set to double within the next ten years as a result of offshore wind developments, other sources of clean energy and expanding interconnection capacity (high-voltage cables that connect the electricity systems of neighbouring countries) in both Scotland and north-east England. Yorkshire GREEN would contribute towards strengthening the national electricity transmission network so that it can accommodate this growth in electricity flows. Reinforcement would ensure that the network is not

¹ Planning Act 2008: Guidance for the examination of applications for development consent. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance_final_for_publication.pdf

overwhelmed, and that potential future pressures on the network are relieved in the north and north-east of England, whilst balancing supply and demand.

- 1.2.3 Without additional reinforcement, the existing transmission system would become overloaded. To stop these overloads from happening, National Grid Electricity System Operator would need to constrain power generation. Such action could result in significant costs to consumers.
- 1.2.4 As a result, it is necessary and economical to invest in network reinforcement in the long term, and critically to ensure that Yorkshire GREEN is designed, tested and installed in sufficient time to meet the 2027 earliest in service date. Reinforcement of the network would enable an increase in the transfer of clean energy, increasing network capacity and avoiding constraint costs.

Yorkshire GREEN Project Description

- 1.2.5 Yorkshire GREEN comprises both new infrastructure and works to existing transmission infrastructure and facilities. The Project is divided into six sections (see **Figure 1**), located within three local authority boundaries² :

- **Section A (Osbalwick Substation) (City of York Council):** Minor works would take place at the existing Osbalwick Substation comprising the installation of a new circuit breaker and isolator along with associated cabling, removal and replacement of one gantry and works to one existing pylon. All substation works would be within existing operational land.
- **Section B (North west of York Area) (City of York Council, and North Yorkshire Council):** Works would comprise:
 - reconductoring of 2.4km of the 400kV Norton to Osbalwick (2TW/YR) overhead line and replacement of one pylon on this overhead line;
 - the new 400kV YN overhead line (2.8km), north of the proposed Overton Substation;
 - the new Shipton North and South 400kV cable sealing end compounds (CSECs) and 230m of cabling to facilitate the connection of the new YN 400kV overhead line with the existing Norton to Osbalwick YR overhead line;
 - a new substation (Overton 400kV/275kV Substation) approximately 1km south of Shipton by Beningbrough;
 - two new sections of 275kV overhead line which would connect into Overton Substation from the south (the 2.1km XC overhead line to the south-west and the 1.5km SP overhead line to the south-east);
 - works to 5km of the existing XCP Poppleton to Monk Fryston overhead line between Moor Monkton in the west and Skelton in the east comprising a mixture of decommissioning, replacement and realignment. To the south and south-east of Moor Monkton the existing overhead line would be realigned up to 230m south from the current overhead line and the closest pylon to Moor Monkton (340m south-east) would be permanently removed. A 2.35km section of this existing

² North Yorkshire Council, City of York Council, and Leeds City Council.

overhead line permanently removed between the East Coast Mainline (ECML) Railway and Woodhouse Farm to the north of Overton.

- **Section C (existing 275kV Poppleton to Monk Fryston (XC) overhead line north of Tadcaster (Section D)) (North Yorkshire Council):** Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.
- **Section D (Tadcaster) (, Leeds City Council and North Yorkshire Council):** Two new CSECs (Tadcaster East and West 275kV CSECs) and approximately 350m of cable would be installed approximately 3km south-west of Tadcaster and north-east of the A64/A659 junction where two existing overhead lines meet. One pylon on the existing 275kV Tadcaster Tee to Knaresborough (XD) overhead line would be replaced.
- **Section E (existing 275kV Poppleton to Monk Fryston (XC) overhead line south of Tadcaster (Section D)) (North Yorkshire Council):** Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations. Work to the existing overhead line similar to those outlined for Section C would be undertaken; and
- **Section F (Monk Fryston Area) (North Yorkshire Council):** A new substation would be constructed to the east of the existing Monk Fryston Substation which is located approximately 2km south-west of the village of Monk Fryston and located off Rawfield Lane, south of the A63. A 1.45km section of the 275kV Poppleton to Monk Fryston (XC) overhead line to the west of the existing Monk Fryston Substation and south of Pollums House Farm would be realigned to connect to the proposed Monk Fryston Substation. East of the existing Monk Fryston Substation the existing 4YS 400kV Monk Fryston to Eggborough overhead line, which currently connects to the existing substation, would be reconfigured to connect to the proposed Monk Fryston Substation.

1.2.6 Temporary infrastructure would be required to facilitate the Project, including temporary overhead line diversions and temporary construction compounds.

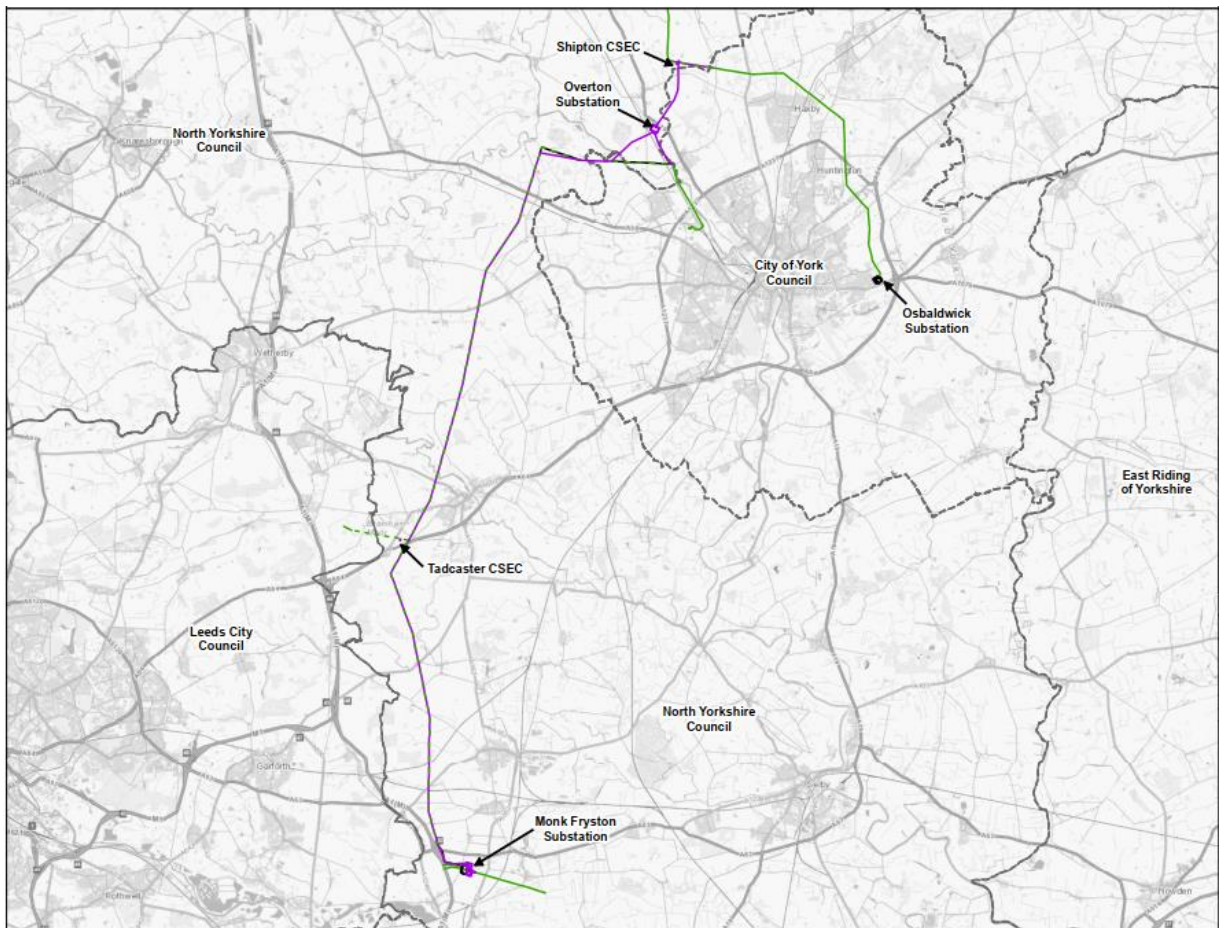


Figure 1– Location of the Yorkshire GREEN Project

1.3 This Statement of Common Ground

1.3.1 For the purpose of this SoCG, National Grid and Network Rail will jointly be referred to as the “Parties”.

1.3.2 Throughout the SoCG:

- Where a section begins ‘matters agreed’, this sets out matters that have been agreed between the Parties or where no issues have been raised by Network Rail, and therefore where there is no dispute;
- Where a section begins ‘matters not agreed’, this sets out matters that have been discussed and are not agreed between the Parties and where a dispute remains; and
- Where a section begins ‘matters outstanding’, this sets out matters that are subject to further negotiation between the Parties.

1.3.3 This SoCG is structured as follows:

- **Section 1:** Provides an introduction to this SoCG and a description of its purpose together with a broad description of the Project;
- **Section 2:** States the role of Network Rail in the DCO application process and details consultation undertaken between the Parties;
- **Section 3:** Sets out matters agreed between the Parties;

- **Section 4:** Sets out matters not agreed between the Parties;
- **Section 5:** Sets out matters where agreement is currently outstanding between the Parties; and
- **Section 6:** Sets out the approvals and the signing off sheet between the Parties.

2. Record of Engagement

2.1 Role of Network Rail in the DCO process

- 2.1.1 Network Rail is the owner and operator of Great Britain’s railway infrastructure. Network Rail is a statutory undertaker in respect of its railway undertaking, with statutory and regulatory obligations in respect of it.
- 2.1.2 The Application includes provisions which would, if granted, authorise National Grid to carry out works in and in close proximity to operational railway land belonging to Network Rail and to use such land temporarily and to acquire permanent interests in such land.
- 2.1.3 The Proposed Development will include the installation of new 400kV overhead line, reconductoring of existing 275kV overhead line and the dismantling of a section of existing 275kV overhead line over rail infrastructure. This will also require the installation and removal of protective netting and scaffolding over rail infrastructure belonging to Network Rail at the following locations in connection with the following works:

Plot Numbers	Work	Works Description
B2-36, B2-37, B2-40, B3-28, B3-31, B3-39, B3-73	Work No.6	Works to reconfigure the XC overhead electric line, through reconductoring and installation of new sections of overhead electric lines, and dismantling of the XCP overhead electric line and sections of the XC overhead electric line shown on sheets 2 to 5 of the works plan, (Document 2.6.2. (B) Section B, Works No 6) [REP1-005] .
B2-55, B2-68	Work No.4	Works to construct and install a new substation at Overton, to facilitate connections to the YN, SP and XC overhead electric lines shown, on section B, sheet 2 of the works plan, (Document 2.6.2. (B) Section B, Works No 6) [REP1-005] . This is comprising the construction and installation of Overton Substation including six gantries for termination of the new overhead electric lines, four supergrid transformers, noise enclosures, switchgear, plant and equipment, operational and ancillary buildings and permanent landscaping works, the construction of gates and fencing, hardstanding and drainage for Overton Substation.

B3-29, B3-30, B3-32, B3-34, B3-35, B3-37	Work No.5	Works to construct and install the SP overhead electric line and dismantle the XCP overhead electric line shown on section B, sheets 2 and 3 of the works plan.
C1-02, C1-17	Work No.7	Works to upgrade, modify and reconductor the existing XC overhead electric line shown on Section C, sheet 1 (Document 2.6.3. (B) Section C, Works No. 7) [REP1-006]) to Section D, sheet 1 (Document 2.6.4. (B) Section D, Works No. 7) [REP1-007]) of the works plan comprising the reconductoring of the XC overhead electric line from XC430 to XC480, including modifications to existing pylons and foundations, replacement of conductors, fibre optic earthwires, fittings, and insulators.
E5-04, E5-15, E6-22, E6-36	Work No.9	Works to upgrade, modify and reconductor the XC overhead electric line shown on section D, sheet 1 to section E, sheet 7 of the works plan, (Document 2.6.5. (B) Section E, Works No. 9) [REP1-008] , comprising the reconductoring of the XC overhead electric line from XC482 to XC521, including modifications to existing pylons and foundations, replacement of conductors, fibre optic earthwire, fittings and insulators.

2.1.4 Formal track possessions would be required to facilitate the construction of the proposed 400kV overhead line, removal of the existing 275kV overhead line and reconductoring of the existing 275kV overhead line, and installation of crossing protection.

2.2 Summary of pre-application discussions

2.2.1 **Table 2.1** summarises the consultation and engagement that has taken place between the Parties prior to submission of the DCO application. This includes discussions relating to engineering works, protective provisions and additional technical engagement.

Table 2.1 – Pre-application discussions

Date	Discussion points
22 June 2021	<ul style="list-style-type: none"> Email from National Grid to Network Rail enclosing an initial enquiry questionnaire.
15 December 2021 (via Teams Meeting)	<ul style="list-style-type: none"> The meeting was held to discuss the provisions of safety management to enable National Grid's works

Date	Discussion points
	<p>to be carried out in proximity of the operational railway.</p> <ul style="list-style-type: none"> • The following were also discussed at this meeting: • Network Rail Guidance Notes to be considered; • Confirmation of Asset Protection services; • General construction information; • Proposed temporary/permanent works design submissions; • Proposed RAMS (Risk Assessment Method Statement) submissions; • Site specific possession and isolation information; and • Network Rail's associated costs. • Network Rail stated to National Grid that permanent installations crossing Network Rail property will require an easement/wayleave which must be in place prior to works commencing on site and temporary/permanent occupation of Network rail land will require a licence.
20 December 2021 (Letter from Network Rail to National Grid)	<ul style="list-style-type: none"> • Summarising meeting of 15 December 2021 and the points discussed. • Requesting further information in respect of insurance and costs from National Grid.
11 February 2022	<ul style="list-style-type: none"> • Voicemail received by National Grid from Network Rail re the contact at Network Rail who would be progressing the documentation on behalf of Network Rail.
07 February 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail re DCO documentation.
23 February 2022	<ul style="list-style-type: none"> • Phone call from National Grid to Network Rail re appointment of individual for Network Rail.
4 March 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail proposing a call to discuss easement requirements.
11 March 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail re information required in order to progress negotiations with Network Rail.
17 March 2022	<ul style="list-style-type: none"> • Phone call from National Grid to Network Rail to discuss meeting dates and times.
18 March 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail confirming meeting date and time. Meeting invitation sent for 24 March 2022 at 3.30-4.30pm.
21 March 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail proposing a call to discuss easement requirements.

Date	Discussion points
24 March 2022 (Teams Meeting)	<ul style="list-style-type: none"> • Discussion between Network Rail and National Grid re protective provisions and a SoCG. • Discussion re completion of schedule of minimum information (SMI) documentation and wayleaves/easements.
01 April 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail providing information to another contact at Network Rail.
29 April 2022 (Email from National Grid to Network Rail)	<ul style="list-style-type: none"> • Submitted SMI forms and application details for each of the five crossings of Network Rail's assets to Network Rail.
18 May 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail progressing negotiations.
28 June 2022 (Teams Meeting)	<ul style="list-style-type: none"> • Meeting held to discuss project and easement requirements.
18 July 2022	<ul style="list-style-type: none"> • Email from Network Rail's lawyers to National Grid's lawyers with a copy of standard protective provisions.
12 August 2022	<ul style="list-style-type: none"> • Email from National Grid's lawyers to Network Rail's lawyers enquiring about byelaws.
18 August 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail requesting meeting to discuss preferred form of agreements.
23 August 2022	<ul style="list-style-type: none"> • Telephone call to arrange meeting with Network Rail on 24 August 2022 to discuss the progress of the SMI application forms and the easements for the five proposed crossings.
24 August 2022 (Teams Meeting)	<ul style="list-style-type: none"> • Meeting held to discuss SMI forms and easements. Preference for new easements on all crossings explained by National Grid.
24 August 2022	<ul style="list-style-type: none"> • Template Heads of Terms provided by Network Rail to National Grid for review ahead of arranging a further meeting.
25 August 2022	<ul style="list-style-type: none"> • Network Rail issued SMI form certificates of business clearance and technical clearance for five crossings.
3 October 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail requesting meeting to discuss financial premiums for easements.
11 October 2022	<ul style="list-style-type: none"> • Email from National Grid to Network Rail requesting meeting to discuss financial premiums for easements.
13 October 2022 (Teams Meeting)	<ul style="list-style-type: none"> • Meeting to discuss financial premiums to be incurred should new crossing easements be

Date	Discussion points
	agreed. Comparables were discussed but no premium agreed.
10 November 2022	<ul style="list-style-type: none"> Email from National Grid to Network Rail requesting meeting to discuss form of crossing easements.
11 November 2022	<ul style="list-style-type: none"> Email from National Grid's lawyers to Network Rail's lawyers confirming the protective provisions to be placed on the face of the DCO.
14 November 2022	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers confirming their preference for a different form of protective provisions.

2.3 Summary of post-submission discussions

2.3.1 **Table 2.2** will summarise the consultation and engagement that takes place between the Parties post submission of the DCO application.

Table 2.2 – Post-submission discussions

Date	Discussion points
29 November 2022	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers confirming no byelaws applicable.
2 December 2022 (Teams Meeting)	<ul style="list-style-type: none"> Meeting to discuss strategy for agreeing form of crossing easements, whether to use the Master Agreement, or new easements. Agreed that in the first instance this should be agreed in the Statement of Common Ground, and that should be used to steer negotiations.
26 January 2023	<ul style="list-style-type: none"> Email from National Grid's lawyers to Network Rail's lawyers with proposed updates to the protective provisions.
27 January 2023	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers requesting relevant shapefiles.
2 February 2023	<ul style="list-style-type: none"> Email from National Grid's lawyers to Network Rail's lawyers supplying the requested shapefiles.
22 February 2023	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers with comments on the proposed updated protective provisions.
20 March 2023	<ul style="list-style-type: none"> Email from National Grid's lawyers to Network Rail's lawyers with proposed updates to the protective provisions.
29 March 2023	<ul style="list-style-type: none"> Emails between National Grid and Network Rail offering a call to discuss land matters further. Network Rail informed

	National Grid of a new point of contact for SoCG going forward.
31 March 2023	<ul style="list-style-type: none"> Email to Network Rail from National Grid to request any progress or issues with the SoCG.
04 April 2023	<ul style="list-style-type: none"> Email from Network Rail to National Grid to provide contact details of personnel dealing with SoCG. Email from National Grid to Network Rail to request progress on SoCG.
13 April 2023	<ul style="list-style-type: none"> Emails between National Grid and Network Rail offering a call to discuss land matters further.
25 April 2023	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers with comments on the proposed updated protective provisions.
2 May 2023	<ul style="list-style-type: none"> Email from Network Rail's lawyers to National Grid's lawyers providing a first draft Framework Agreement.
31 May 2023	<ul style="list-style-type: none"> Meeting held with Network Rail to discuss terms of easement. Agreed that Network Rail would send Heads of Terms to National Grid to include all of their standard clauses. Further meetings scheduled to take place every 2 weeks.
14 June 2023	<ul style="list-style-type: none"> Email chase to Network Rail requesting the Heads of Terms as agreed. Scheduled meeting agreed to be postponed by a week.
<u>23 June 2023</u>	<ul style="list-style-type: none"> <u>Email from National Grid's Lawyers to Network Rail's Lawyers with a mark up of the protective provisions.</u>
28 June 2023	<ul style="list-style-type: none"> Email received from Network Rail to National Grid with Heads of Terms in PDF format.
30 June 2023	<ul style="list-style-type: none"> Meeting held between Network Rail and National Grid to discuss Network Rail specific Heads of Terms and clauses within the voluntary terms.
05 July 2023	<ul style="list-style-type: none"> Email received from Network Rail to National Grid with Heads of Terms in word format for review.
<u>07 July 2023</u>	<ul style="list-style-type: none"> <u>Email from National Grid's Lawyers to Network Rail's Lawyers with a draft SoCG.</u>
<u>11 July 2023</u>	<ul style="list-style-type: none"> <u>Email from Network Rail's lawyers to National Grid's lawyers with an updated SoCG.</u>
<u>17 July 2023</u>	<ul style="list-style-type: none"> <u>Draft HoT issued to NRIL Group Property Surveyor</u>
<u>26 July 2023</u>	<ul style="list-style-type: none"> <u>Email from National Grid's Lawyers to Network Rail's Lawyers following up on actions from CAH2 and sharing proposed draft joint submission for Deadline 6.</u>

	<ul style="list-style-type: none"> • <u>Email from Network Rail's lawyers to National Grid's lawyers with an updated version of the protective provisions and confirming receipt of the proposed draft joint submission.</u>
<u>28 July 2023</u>	<ul style="list-style-type: none"> • <u>Email from Network Rail's lawyers to National Grid's lawyers with an updated version of the draft joint submission for Deadline 6.</u> • <u>Email from National Grid's lawyers to Network Rail's lawyers proposing meeting times.</u>
<u>1-3 August 2023</u>	<ul style="list-style-type: none"> • <u>Emails between National Grid's lawyers and Network Rail's lawyers attempting to arrange a meeting.</u>
<u>3 August 2023</u>	<ul style="list-style-type: none"> • <u>Email to Network Rail Property Surveyor with copies of all existing land plans showing scope of proposed works and interaction between project and NRIL.</u>
<u>4 August 2023</u>	<ul style="list-style-type: none"> • <u>Email to Network Rail Group Property Surveyor with copies of all existing crossing agreements and cross reference to the crossings NR have referenced.</u>
<u>8 August 2023</u>	<ul style="list-style-type: none"> • <u>NRIL Group Property Surveyor provided updated comments on draft HoT issued on 17 July.</u>
<u>9 August 2023</u>	<ul style="list-style-type: none"> • <u>Teams call with NRIL Group Property Surveyor to review HoT and establish actions going forward in an effort to agree as much detail as possible.</u>
<u>15 August 2023</u>	<ul style="list-style-type: none"> • <u>Email from NRIL Group Property Surveyor raising further questions around land rights requirements and details.</u>
<u>18 August 2023</u>	<ul style="list-style-type: none"> • <u>Email to NRIL Group Property Surveyor with further marked up copy of draft HoT. Email from NRIL Group Property Surveyor with some further questions in relation to the existing agreements</u>
<u>23 August 2023</u>	<ul style="list-style-type: none"> • <u>All parties call to review key issues of disagreement within the Draft Protective Provisions and agree next steps</u>
<u>24 August 2023</u>	<ul style="list-style-type: none"> • <u>Emails between National Grid's Lawyers and Network Rail's Lawyers regarding drafting updates to the protective provisions.</u>
<u>29 August 2023</u>	<ul style="list-style-type: none"> • <u>Email from NRIL Group Property Surveyor provided updated comments on draft HoTs and cancelled all parties called planned 29 August 2023.</u>
<u>30 August 2023</u>	<ul style="list-style-type: none"> • <u>All parties call rearranged for 1 September 2023 to review HoT and establish actions going forward in an effort to agree as much detail as possible.</u>
<u>1 September 2023</u>	<ul style="list-style-type: none"> • <u>All parties call to discuss possible ways forward</u>

4 September
2023

- Emails between National Grid's Lawyers and Network Rail's
Lawyers regarding all matters.
-

3. Matters Agreed

- 3.1.1 This section sets out the matters that have been agreed between National Grid and Network Rail and **Table 3.1** details these matters.
- 3.1.2 Whilst each of the below matters are agreed in principle, the Parties are in ongoing discussions regarding the detailed wording required in each case.
- ~~3.1.3 The Parties will update the Examining Authority as soon as detailed terms have been agreed between them to address each of the outstanding matters.~~

Table 3.1 – Matters agreed in principle

SoCG ID	Matter	Agreed position	Date of Agreement
3.1.1	Protective Provisions	The draft DCO should include specific provisions for the protection of Network Rail. <u>Save the matters listed in Table 4.1 below, the drafting of the protective provisions on the face of the draft DCO (Document 3.1(F)) is agreed.</u>	31 24/08 6 /2022
3.1.2	Basic Asset Protection Agreement	The parties should enter into a form of Basic Asset Protection Agreement to govern the construction, maintenance and where appropriate the removal of those parts of the proposed development which are located on operational railway land;	08/04/2022
3.1.3	Notification	National Grid agree to provide Network Rail with possession details and timescales for when works are proposed. This will be done as soon as possible after the main works contract has been awarded and detailed design commenced.	20/12/2021

4. Matters Not Agreed

4.1.1 Section 4 sets out matters not agreed between National Grid and Network Rail. **Table 4.1** details these matters.

Table 4.1 – Matters not agreed:

SoCG ID	Matter	<u>Agreed position</u> <u>Network Rail position</u>	<u>Date of Agreement</u> <u>National Grid position</u>
N/A			
4.1.1	<p><u>Network Rail consent for DCO powers regarding Articles: 3, 4, 25, 26, 29, 34, 36-40, 46 & 55.</u></p> <p><u>DCO powers regarding:</u></p> <ul style="list-style-type: none"> <u>S172 (rights to enter and survey), s203 (powers to overwrite easements) of the Housing and Planning Act 2016</u> <u>Temporary possession under the Neighbourhood Planning Act 2017</u> <u>Rights to prevent operation,</u> 	<p><u>Network Rail's prior consent to exercising powers under these articles on railway property must be sought in order to maintain the safe operation of the railway.</u></p> <p><u>The timescales for obtaining such consent are set out within Network Rail's protective provisions and should already be familiar to National Grid from its interface with other Network Rail assets on projects elsewhere. Network Rail is of course willing to engage with NG and will be under a duty to act reasonably. However, NR is under an overarching duty not to compromise the safe operation of the rail network and its consent must be sought by NG in this respect. National Grid should factor this into its development programme and ensure early engagement. Works which may potentially affect the safe operation of the railway cannot be undertaken without NR's prior consent. NR will endeavour to work cooperatively with NG in the context of granting consents, but ultimately its</u></p>	<p><u>This provision has the potential to hinder progress of the Project and fetters rights under the DCO. In the context of ongoing discussions relating to the land rights heads of terms and in line with the approach taken on other National Grid DCO Projects. National Grid's position in this respect is further detailed within the Position Statement – Protective Provisions Not Yet Agreed with Network Rail (Document 8.34.3) submitted at Deadline 7.</u></p>

	<u>access, and maintenance to railway & properties.</u>	<u>protective provisions must ensure its consent is required to preserve the safety and integrity of the railway.</u>	
<u>4.1.2</u>	<u>The stopping of any works if EMI is present. Currently there is duplication of process within these provisions.</u>	<u>Under consideration by Network Rail.</u>	<u>Subject to clarifications.</u>
<u>4.1.3</u>	<u>Wording around EMI testing and access to apparatus to enable testing.</u>	<u>Under consideration by Network Rail.</u>	<u>Subject to clarifications.</u>
<u>4.2 Easements</u>			
<u>4.2.1</u>	<u>Easements</u>	<u>The Parties have progressed matters and have agreed in principle a mechanism which facilitates agreeing a form of easement by a specified longstop date which is subject to drafting.</u>	<u>National Grid has been clear about terms that would allow Network Rail to terminate an easement or serve notice to relocate the assets are not acceptable. The time and cost involved in relocating a transmission line are unreasonable and impractical to the operation of the electricity transmission network. Planning permission and land rights may be required in order to facilitate a relocation or termination which can take many years to obtain. Outages in the network are also required for the works to be undertaken safely which are planned years in advance. Land rights need to be permanent in order give certainty to the consumer over operating costs.</u>

National Grid are in discussion with Network Rail regarding the principle of a mechanism which facilitates agreeing a form of easement by a specified longstop date.

4.3 Framework Agreement

<u>4.3.1</u>	<u>Framework Agreement</u>	<u>Without agreement of the easements or wording of the protective provisions, it is not possible to sign up to a Framework Agreement.</u>	<u>Without agreement of the easements or wording of the protective provisions, it is not possible to sign up to a Framework Agreement.</u>
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4.4 Draft DCO

<u>4.4.1</u>	<u>Compulsory Acquisition</u>	<u>Network Rail's position on retaining this requirement within the Protective Provisions is set out at 4.1.1 above. The Parties are yet to agree on National Grid being able to exercise powers for the compulsory acquisition of interests in land belonging to or in respect of which Network Rail enjoys an interest without National Grid first obtaining Network Rail's prior consent (including entering into the necessary easements and asset protection agreements).</u>	<u>National Grid considers these powers to be essential until such time as a voluntary grant of the interests in question has been secured and remains of this view in light of the decision of the Secretary of State in respect of this matter in the context of the National Grid (Hinkley Point C Connection Project) Order 2016 (SI. 2016/49).</u>
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5. Matters outstanding

5.1.1 Section 5 sets out matters where agreement is currently outstanding between National Grid and Network Rail. In particular **Table 5.1** details these matters.

Table 5.1 – Matters outstanding

SoCG ID	Matter	Network Rail position & National Grid Position
<u>N/A Documents</u>		
5.1.1	Easements	National Grid seeks new easements in respect of the permanent interests on Network Rail's land for the proposed development. <u>Heads of Terms negotiations have progressed but</u> Heads The Parties are yet to agree the precise terms of the easements to be granted by Network Rail to National Grid. <u>Principal areas of disagreement include the relocation, termination and indemnity provisions requested by Network Rail which are not acceptable to National Grid. Commercial terms or the consideration payable for the grant of these easements are in principle agreed between the parties.</u>
5.1.2	Framework Agreement	The Parties are yet to agree the precise form of the framework agreement which shall dictate the Parties' respective obligations in respect of the authorised works. A draft was provided by Network Rail's solicitor to the Applicant's solicitor on 2 May 2023 and the Applicant is in the process of reviewing the draft.
Draft DCO		
5.1.3	Protective Provisions	The Parties are yet to agree the precise form of the protective provisions to be included within the draft DCO.
5.1.4	Compulsory Acquisition	The Parties are yet to agree on the <u>National Grid being able to necessity fore</u>exercise powers to be granted to National Grid for the compulsory acquisition of interests in land belonging to or in respect of which Network Rail enjoys an interest <u>without National Grid first obtaining Network Rail's prior consent (including entering into the necessary easements and asset protection agreements).</u> <u>Network Rail's position on retaining this requirement within the Protective Provisions is set out at 4.1.1 above.</u>

~~National Grid considers these powers to be essential until such time as a voluntary grant of the interests in question has been secured and remains of this view in light of the decision of the Secretary of State in respect of this matter in the context of the National Grid (Hinkley Point C Connection Project) Order 2016 (SI. 2016/49).~~

~~The Parties have progressed discussions on termination rights and these are agreed in principle subject to drafting within a Framework Agreement. Network Rail has previously sought to have a right to terminate any rights given to National Grid on 6 months' notice. National Grid is content to agree interruptions to the national electricity transmission network where necessary because of emergency, or because of reasons of safety for the public or the operation of the railway. However National Grid believes it is in the public interest to have a reliable electricity network, and seeks rights suitable for that purpose.~~

~~National Grid considers these powers to be essential until such time as a voluntary grant of the interests in question has been secured and remains of this view in light of the decision of the Secretary of State in respect of this matter in the context of the National Grid (Hinkley Point C Connection Project) Order 2016 (SI. 2016/49).~~

Table 5.2—Matters Outstanding – Draft Protective Provisions

SoCG Matter ID	Outstanding detail	National Grid position	Network Rail position
5.2.1 Network Rail consent	<p>DCO powers regarding Articles: 3, 4, 19, 21, 25, 26, 29, 34, 36-40, 46 & 55.</p> <p>DCO powers regarding:</p> <ul style="list-style-type: none"> • S172 (rights to enter and survey), s203 (powers to overwrite easements) of the Housing and 	<p>National Grid is unable to accept the wording in the PP's due to the Project needing to be delivered by 2027. Any delay could have potential implications to this delivery date.</p> <p>This provision has the potential to hinder progress of the Project and fetters rights under the DCO. In the context of ongoing discussions relating to the land rights heads of terms and in line with the approach taken on other National Grid DCO Projects.</p>	<p>Network Rail's prior consent to exercising powers under these articles on railway property must be sought in order to maintain the safe operation of the railway. The timescales for obtaining such consent are set out within Network Rail's protective provisions and should already be familiar to National Grid from its interface with other Network Rail assets on projects elsewhere. Network Rail is of course willing to engage with NG and will be under a duty to act reasonably. However, NR is under an overarching duty not to compromise the safe operation of the rail network and its</p>

Planning Act
2016

- Temporary possession under the Neighbourhood Planning Act 2017
- Rights to prevent operation, access, and maintenance to railway & properties.

consent must be sought by NG in this respect. National Grid should factor this into its development programme and ensure early engagement. Works which may potentially affect the safe operation of the railway cannot be undertaken without NR's prior consent. NR will endeavour to work cooperatively with NG in the context of granting consents, but ultimately its protective provisions must ensure its consent is required to preserve the safety and integrity of the railway.

5.2.2 Approvals timescales

Time scales to obtain approval of plans submitted to Network Rail

Network Rail's standard wording provides for a 28-day approval period (consistent with National Grid's approach) However, this then allows for a further time period where written notice has to be filed before a further 14 days is allowed. This is potentially a 42 day period.

Due to the tight time constraints on this Project, National Grid have proposed slightly shortening the initial period under which consideration is made before the further written notice allows 14 further days.

Network Rail's Asset Protection engineers require a minimum initial period of 28 days to consider a request for consent due to the amount of work processed by this team. If approval is not issued within that initial 28-day period, the Applicant must serve a final notice requiring Network Rail to respond within a second window of time and if no response is provided during that second window, Network Rail's consent is deemed to be given. Network Rail has already agreed to reduce the second window from its standard position of 28 days to 14 days and the Applicant is now seeking to reduce the initial period to 21 days which cannot be accepted as a minimum of 28 days is required to provide enough time for the matter to be considered by Network Rail.

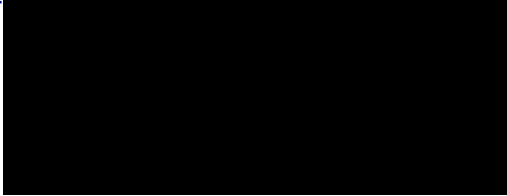
5.2.3	Capitalised sum	The cost of any works required to be carried out by Network Rail	National Grid require limits of financial exposure to be outlined in more detail by Network Rail, the current drafting does not allow for this.	National Grid is only required to reimburse Network Rail for its 'reasonable costs' incurred in carrying out alterations/additions to the railway necessitated by the authorised development. Network Rail is content to provide National Grid with invoices or other evidence of incurred liability.
5.2.4	EMI testing	The stopping of any works if EMI is present. Currently there is duplication of process within these provisions.	National Grid has committed to working with Network Rail to establish appropriate arrangements to verify effectiveness, needing to agree this process again is duplicative and has the potential to add delay to the process.	Under consideration by Network Rail.
5.2.5	Restrictions in relation to EMI	Wording around EMI testing and access to apparatus to enable testing.	National Grid have stated that the wording duplicates subparagraph (3) and is unclear in its scope.	Under consideration by Network Rail.
5.2.6	Indemnity for EMI	Whether EMI should be included in the indemnity provisions.	National Grid do not consider that the indemnity should extend to the EMI provisions. This is consistent with the approach that was taken in the Richborough Order, as confirmed by the Secretary of State in that instance.	Under consideration by Network Rail.

5.2.7	Indemnity cap	Providing a defined cap on the indemnity from National Grid for Network Rail's incurred liabilities as a result of the authorised development.	Even with a capped indemnity, Network Rail would still have the ability to take action under the agreement through the usual course. Through provision of an indemnity, National Grid is providing enhanced protection to Network Rail but it wishes to proportionately limit this in line with the scale of potential impacts on Network Rail's assets.	Network Rail cannot agree to a cap as it is not possible to quantify the level of liability it may incur as a result of the authorised development and to agree a cap without this information could result in Network Rail incurring financial losses as a result of the Applicant's development.
5.2.8	Indemnity	The definition and limit in regard to costs, charges, damages and expenses in relation to works carried out under the draft DCO.	<p>The additional wording requested by Network Rail would involve all costs that would stem from Network Rail having to facilitate National Grid's access to the site, including costs associated with complying with such procedures.</p> <p>Network Rail have not indicated how extensive these procedures might be and so National Grid have no indication of the costs involved.</p>	This information is being provided to National Grid so it understands the procedures involved.
5.2.9	Limits of Liability	What is considered within the scope of limits of liability.	<p>National Grid should not be liable for economic costs other than those which Network Rail has a direct contractual obligation to pay.</p> <p>If the agreements in question are in the public domain, then Network Rail should have no issue disclosing them to National Grid at the outset.</p> <p>This approach is consistent with the approach that was taken in the Richborough Order, as confirmed by the Secretary of State.</p>	<p>Network Rail is content for indirect costs to be linked to those for which it is liable under train operator agreements, however the need for Network Rail to have previously disclosed these agreements to National Grid in order to be able to recover its losses through the indemnity provision is onerous, unreasonable and unnecessary.</p> <p>Network Rail is content to provide the relevant agreement at the time of making the request for recovery of losses, but not before as it would not know which agreements were relevant until the losses</p>

had been suffered. Otherwise, in order for Network Rail to avoid the risk of not being able to recover its indirect losses, it would need to provide National Grid with copies of all train operator agreements which might ever be relevant, which is clearly unreasonable.

6. Approvals

Section does not need to be completed at this stage

Signed	
On Behalf of	National Grid
Name	Sarah Herbert
Position	Senior Project Manager
Date	<u>05 September 2023</u> 10th July 2023

Signed	
On Behalf of	<u>Network Rail Infrastructure Limited</u>
Name	<u>Emily Williams</u>
Position	<u>Partner, Addleshaw Goddard LLP</u>
Date	<u>6 September 2023</u>

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