

YG-DCO-155

# Yorkshire Green Energy Enablement (GREEN) Project

**Volume 8**

**Document 8.34.6 Applicant's Position Statement - Protective Provisions Not Yet Agreed with Northern Gas Networks**

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## Version History

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06/09/2023	A	Final	First Issue
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# 1. Position Statement - Protective Provisions Not Yet Agreed with Northern Gas Networks

## 1.1 Summary of Position

- 1.1.1 At Deadline 5, National Grid submitted an application under sections 127 and 138 of the Planning Act 2008 (the Act) (**Document 8.27.4**) [REP5-089] which demonstrates that there is a compelling case in the public interest for inclusion within the DCO of powers of compulsory acquisition over Northern Gas Networks (NGN) land. For the reasons set out therein, the Secretary of State can be satisfied that the tests in section 127 and section 138 of the Act have been met in these circumstances for the Project.
- 1.1.2 At Deadline 6, National Grid submitted a Joint Position Statement that provided the precise drafting differences between its proposed protective provisions and the preferred wording of NGN, Proposed Protective Provisions to benefit NGN (**Document 8.30.4**) [REP6-066]. The document gave an overview of both National Grid's and NGN's position and should be read in conjunction with this Position Statement.
- 1.1.3 Since the Deadline 6 submission, both parties have sought to progress negotiations in order to narrow the issues between them. Now all matters are agreed save for one point of difference remains regarding the indemnity. The **Statement of Common Ground between national Grid and Northern Gas Networks (Document 8.5.20(C))** submitted at Deadline 7 confirms this.
- 1.1.4 As a promoter of a nationally significant infrastructure project (NSIP), National Grid takes seriously its obligation to ensure that statutory undertakers' apparatus and equipment is protected through the inclusion of adequate protective provisions, as considered necessary and relevant to each statutory undertaker's undertaking. However, as a statutory undertaker in their own right and with a regulated obligation to act in the best interests of the electricity consumer, National Grid must ensure that the protective provisions entered into within Part 8 of Schedule 15 of the **draft DCO (Document 3.1(F))** are reasonable, proportionate and would not lead to unnecessary or unjustified cost burdens which would ultimately be borne by the consumer.
- 1.1.5 This Position Statement has been prepared to provide the Examining Authority with National Grid's position with regards to the above matter and to request that the Examining Authority recommends to the Secretary of State that the form of Protective Provisions to be included within the DCO, if made, should follow that proposed by National Grid within Part 8 of Schedule 15 of the **draft DCO (Document 3.1(F))**.
- 1.1.6 National Grid's position in respect of the matter of disagreement concerning the indemnity is explained below.

## 1.2 Indemnity

- 1.2.1 National Grid require a proportionate and reasonable indemnity provision in line with the nature of the Proposed Works and the level of risk being undertaken on or near (within

15 metres) NGN infrastructure. This is a reasonable and proportionate approach that has been taken with all statutory undertakers whilst negotiating protective provisions.

- 1.2.2 The absence of an uncapped indemnity does not contribute to a test of 'serious detriment' because, fundamentally, should there be any damage to NGN's apparatus above the capped amount, they would still have recourse through the usual contractual channels to seek costs from National Grid for damage attributable to it under the provisions (such losses would simply need to be proven as opposed to being outright indemnified). The indemnity merely provides a more beneficial starting point for NGN with respect to recovering their costs. Additionally, the remainder of the bespoke protective provisions for the benefit of NGN (for which all elements are agreed) provide protections which would prevent any such damage being incurred.
- 1.2.3 Whilst there are more extensive works being carried out in proximity to NGN's apparatus than statutory undertakers such as NGT, the apparatus in question is not a high-pressure gas main and so is of a lower risk and consequential costs of any potential damage would also be lower.
- 1.2.4 Furthermore, the remainder of the protective provisions would still ensure that works are undertaken with NGN's prior approval and protective measures are put in place.
- 1.2.5 National Grid believe that a liability cap of £10million should be adequate for the scale and potential impacts upon NGN's assets and should be considered acceptable and proportionate. The level of liability cap offered by National Grid should give NGN comfort that costs will be covered in the unlikely event that their apparatus is damaged by any of National Grid's Proposed Works on or near NGN infrastructure.

## 1.3 Conclusion

- 1.3.1 For the above reasons, the Examining Authority and Secretary of State are invited to retain the wording within Schedule 15, Part 8 to the **draft DCO (Document 3.1(F))** as currently drafted. National Grid's position is reasonable and in line with its statutory obligation. In the absence of evidence to substantiate NGN's position, it is not possible for National Grid to meet NGN's requests and still comply with its statutory duty.

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