YORKSHIRE GREEN
DEADLINE 7 (6 SEPTEMBER 2023)
NATIONAL GAS TRANSMISSION PLC ("NGT")
NGT RESPONSE TO EXA'S DCO COMMENTARY AND QUESTIONS: 16 AUGUST 2023

1. We write in response to the Examining Authority's ("**ExA**") "DCO Commentary: 16 August 2023", in which it directed a number of questions at both the Applicant and NGT at Section 10.3. NGT's responses to those questions are set out below. This documents builds upon and should be read in conjunction with NGT's previous submissions and in particular for Deadline 6.

Question 10.3.1(c): Clarify the proximity of the apparatus and interests referred to in the response to the Applicant's s127 and s138 case to the Order limits of the authorised development and the nature of the detriment which you consider could take place [REP6-073].

2. The proximity of NGT's apparatus and interests to the Order limits of the authorised development is depicted on the four plans (each with drawing number FP: 105088-126) enclosed at Enclosure 1. These plans confirm that at three separate locations, there is a total of seven instances where the Order limits directly cross NGT's high pressure major accident hazard pipelines ("**MAHP**")

3. NGT respectfully submits that the nature of the detriment which could take place if the Applicant is successful with its application under section 127 and 138 of the Planning Act 2008 is detailed in NGT's response to that application and submitted at Deadline 6 [REP6-073]. In addition, NGT wishes to draw the ExA's attention to the critical national importance of its apparatus which is set out in the enclosed NGT Technical Note which has been prepared by NGT engineers for the benefit of the Examining Authority - enclosed at Enclosure 2.

Question 10.3.2(a): Under definition of "acceptable insurance" it would assist the ExA and the SoS if parties could reach agreement on a figure to be included to limit the third-party liability insurance in dDCO para 80, ([REP6-065], para 2, page 4).

4. NGT maintains that £50 million represents an acceptable level of third-party liability insurance required to be held by any DCO promotor. £50 million is the standard figure adopted across the gas industry and is sought by NGT in respect of all DCO schemes – for example, please see the dDCO for the Mallard Pass Solar Project which is currently going through examination.

5. In addition, £50 million also represents the standard figure adopted by the Applicant in respect of DCO schemes promoted by third parties – for example, please see The Sizewell C (Nuclear Generating Station) Order 2022.

6. Furthermore, NGT wishes to draw the ExA's attention to DCOs which include protective provisions on behalf of both the Applicant and NGT jointly as "National Grid", where the "acceptable insurance" sum required was £100 million, as an aggregate of the two entities standard requirements for £50 million – for example, please see The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.

7. £50 million third-party liability insurance is widely available on the insurance market and NGT submits that is it not unreasonable for the Applicant, given its strong covenant, to obtain a precedented level of insurance cover.

Question 10.3.2(c): Under definition of "Network Code Claims" explain further the nature of the ambiguity that National Gas Transmission considers could arise with the inclusion of the word "direct" in dDCO para 80(a) [REP6-065], page 6.

8. The inclusion of "direct" into the definition of "Network Code Claims" presents the risk that:

(a) NGT experiences costs or expenses that arise as legitimate consequence of the authorised works (i.e., but for the authorised works being constructed, maintained or operated, the costs or expenses would not have been incurred by NGT); but

(b) those costs or expenses are not obviously direct but were necessary; and therefore

(c) NGT is unable to recover those costs from the Applicant under the indemnity provisions of the protective provisions.

9. It is a well-established principle that a party seeking development consent for a nationally significant infrastructure project ("NSIP") must bear all risk and responsibility for costs or expenses which are caused to a statutory undertaker by the development which they are seeking consent for. As noted in the ExA's other questions it is a position adopted by the Applicant where it might be impacted on by an NSIP. If the Applicant does not dispute this principle then NGT submits that it ought to accept the removal of "direct" from the definition of Network Code Claims to ensure the principle is upheld.

Question 10.3.3(c): Respond to the Applicant's point that the authorised development would only comprise one crossing of a National Gas Transmission pipeline and would not break surface of the land; and that the undertaker would engage in pre-application engagement before approvals are sought [REP6-065], page 22.

10. As shown on the plans at Enclosure 1, the Applicant is wrong in suggesting that the authorised development would only comprise one crossing of a National Gas Transmission pipeline; rather, the authorised development comprises seven potential crossings.

11. NGT accepts that the authorised development does not propose to break the surface of the land over which NGT has rights and under which NGT operates MAHPs. However, as expressed in NGT's Deadline 6 submissions ([REP6-073], [REP6-074] and [REP6-075]), as well as in NGT's Technical Note (Enclosure 2), NGT has considerable concerns over the risks posed to its apparatus should any accidents occur in the construction and operation of the authorised development without there being suitable measures in place – which NGT proposes to secure via its preferred protective provisions submitted at Deadline 6 [REP6-072] – to ensure any risks are mitigated as far as is necessary. NGT has already stressed the catastrophic consequences which could occur should any accidental damage be caused to its MAHP by the authorised development and does not wish to repeat those here unnecessarily, but would summarise the interaction between the authorised development and the MAHPs as "low risk, high severity". Indeed, the risk is only "low" should the authorised development be constructed and operated without accident, but in view of the scale of the authorised development it is reasonable for NGT to express concerns over the possibility of a high severity accident occurring and seeking to mitigate against that risk as best it can. NGT's position is driven by a concern for the health and safety of those working over and around its MAHP.

12. Even where the surface is not intentionally broken it is still necessary for NGT to seek the protection of its apparatus from the impact of movements over it which, depending on the type and weight of vehicle, could result in damage with concomitant risks to health and safety of NGET's employees and contractors at the time any damage is caused.

13. NGT wholly anticipates that the Applicant will engage in pre-application engagement before approvals are sought, as is reasonable, sensible, and expedient. However, it is also recognised that work may be undertaken by contractors and agents of NGT rather than directly. Nonetheless, NGT does not consider that pre-application engagement alone can adequately mitigate against the high severity risks to the MAHP and therefore is seeking to secure NGT's preferred protective provisions [REP6-072].

Question 10.3.4(b): Comment on the Applicant's case that indemnity provisions need to reflect the interfaces with National Gas Transmission apparatus, not just comparing other Orders [REP6-065], page 32.

14. NGT respectfully submits that the nature of NGT's undertaking as set out in the technical note at Enclosure 2, and its role as a regulated custodian of MAHPs means that each part of its network must have the same level of protection. Seeking to adopt a consistent approach to NGT's apparatus is also of benefit to DCO applicants in general.

15. NGT's position is that an uncapped indemnity does reflect the interface between the authorised development and NGT's apparatus. As stated above, NGT accepts that the authorised development does not propose to break the surface of the land over which NGT has rights and under which NGT operates MAHPs. However, as articulated by the Inspector in the Report to the Secretary of State prior to The Eggborough Gas Fired Generating Station Order 2018 being made, there is an inconsistency in the Applicant on the one hand suggesting that the authorised development presents an incredibly low risk to NGT's apparatus and on the other seeking to limit the indemnity which it is willing to provide should any claims arise. Regard must also be had to the Applicant providing Network Rail Infrastructure Limited with an uncapped Indemnity while acknowledging that its impact on Network Rail apparatus may be greater (according to the Applicant). NGT submits that if the Applicant believes its submissions in respect of the level of interaction and risk, then it ought to draw comfort from the fact that it expects the indemnity given to never be called upon. It should also be noted that it is entirely within the Applicant's gift to minimise the potential for an Indemnity to be activated.

16. Further to this, NGT wishes to repeat the concerns expressed in NGT's Deadline 6 submissions ([REP6-073], [REP6-074] and [REP6-075]), as well as in NGT's Technical Note (Enclosure 2) that there is a "high severity" to operating MAHP. Regardless of how likely it is that the authorised development damages NGT's apparatus, if any such damage is caused then the consequences – financially and practically – are potentially catastrophic. Accordingly, NGT cannot accept any cap on the indemnity being provided. The Applicant has suggested that the indemnity should be capped at £30 million, a sum which is likely to be dwarfed by the actual costs and expenses incurred in the event that NGT's MAHP are damaged by the authorised development. NGT has asked but has never been provided with a reasoned assessment of that £30m sum including any assumptions on which it is based.

17. The Applicant references the Thurrock Flexible Generation Plant Development Consent Order 2022. The ExA should note that that project comprises a gas fired electricity generating station, which connects directly into NGT infrastructure (please see Work No. 5). Whilst both the Applicant and NGT secured protective provisions on the face of that Order, other documentation governs the interaction between the authorised development and NGT apparatus which it is connecting into.

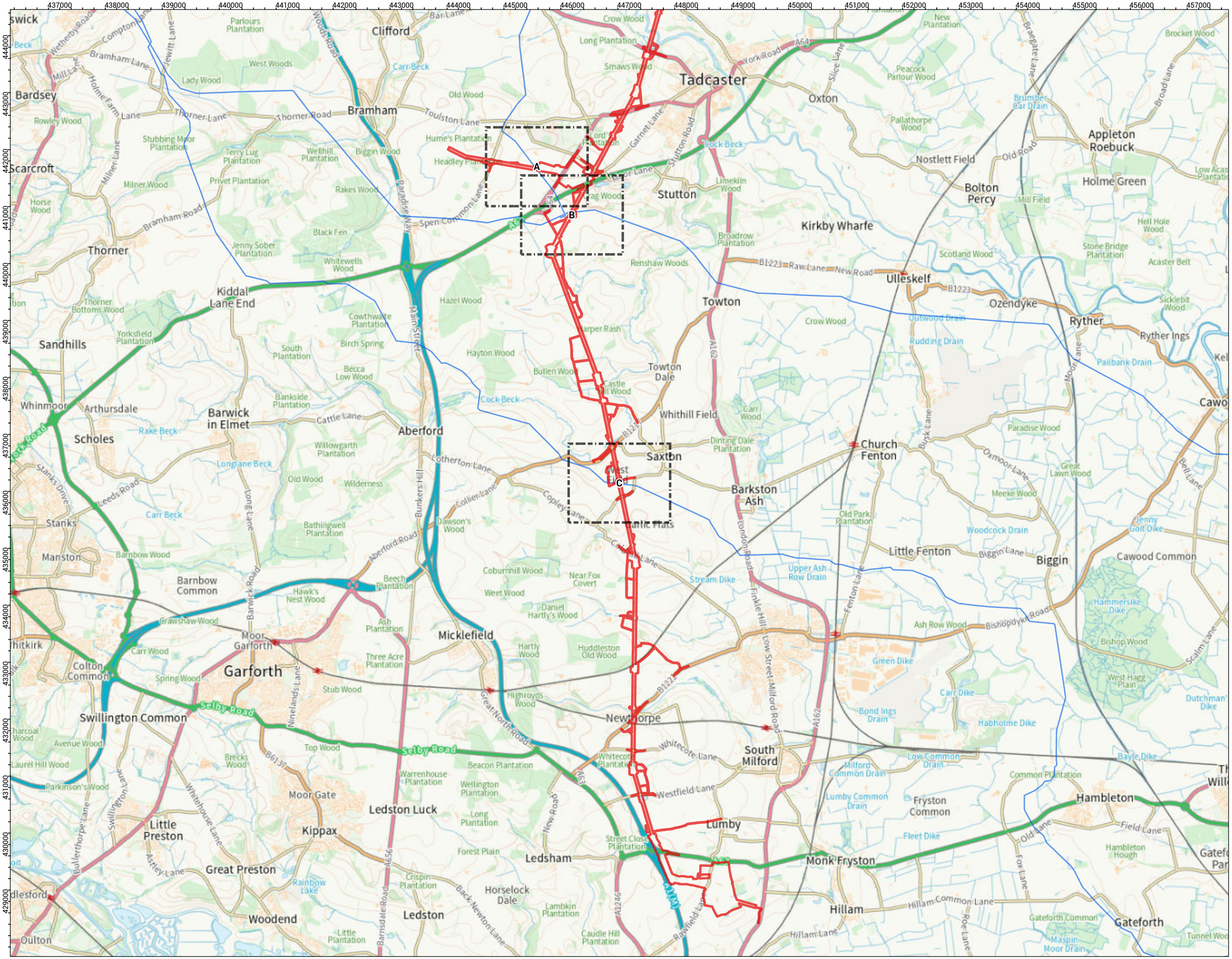
Question 10.3.5(b): Set out why arbitration would be handled differently for National Gas Transmission solely, with all other dispute resolution following that set out in the dDCO.

18. NGT is willing to proceed with paragraph 15 as drafted by the Applicant in its preferred protective provisions [REP6-065] and repeated below:

> 15. Any difference or dispute arising between the undertaker and NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGT, be determined by arbitration in accordance with article 53 (Arbitration).

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

6 SEPTEMBER 2023



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OVERVIEW WINDOW

LEGEND:

- Page Extents
- Yorkshire Green DCO Order Limits
- NGT Gas Pipe

REVISION: A

CLIENT: national gas

SCHEME:
Yorkshire Green DCO

TITLE:
Interaction Plan

FP. 105088-126

SCALE: 1:60,000 @ A3
DATE: 18/08/2023

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Map data

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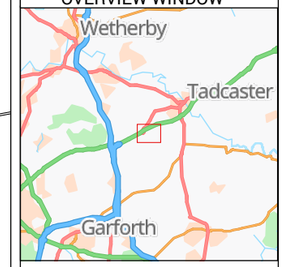
OVERVIEW WINDOW



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Yorkshire Green DCO Order Limits

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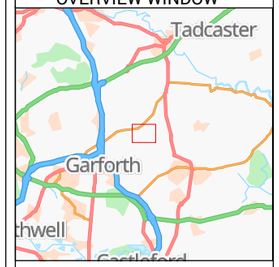

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CLIENT: national gas

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The purpose of this note is to further expand on the undertaking of National Gas for the Examining Authority in the "Yorkshire GREEN" DCO Examination. In particular it is intended as a high level explanatory note placing the apparatus which National Grid Electricity Transmission seeks powers in relation to in context. That apparatus is just one component of a wider piece of critical national infrastructure.

Who are National Gas?

National Gas Transmission (NGT) is the backbone of Britain's energy system today. NGT own and operate the gas National Transmission System (NTS) – more than 7,600km of pipeline, 68 compressors at 23 compressor stations and more than 500 above-ground installations delivering energy to where it is needed in every part of the country.

There is a defined process of transporting gas from source to the customer which starts with producing the gas, these are made up of the following areas: Gas fields in the North Sea, Pipes from Europe, Imports via ship as Liquified Natural Gas and Biomethane. The gas flows into our high-pressure NTS, acting as the 'motorways of the system', transporting gas up to 94 bar pressure(a fully inflated car tyre is about 2 bar).

Direct customers of National Gas service include the four Gas Distribution Networks (GDNs), these being Cadent, Gas, Northern Gas Networks, SGN and Wales & West Utilities. Of which there are c23m homes taking gas. In addition to this, National Gas have customers directly connected to their systems, which include 2 Industrial consumers, 35 Power stations, of which use the gas supply to generate over 38% of UK's electricity in 2022, 9 Storage sites, 2 Terminals and 3 Interconnectors, importing and exporting gas to the continent.

How safe is the Gas Network?

As might be expected, there are many rules and regulations governing the transportation of gas around the UK. These include the Gas Safety (Management) Regulations 1996, which state that gas transporters have to prepare a safety case which must be approved by the HSE (Health and Safety Executive). Over and above these regulations is the Gas Act, which covers all gas operations in the UK. Under the Gas Act, many activities involving gas are prohibited unless the person or company involved has a licence to engage in those activities. These activities include:

- Transporting gas through pipelines to premises – a person with this licence is a gas transporter
- Supplying gas which has been transported through pipes – a person with a licence to do this is a gas supplier
- Working with a gas transporter to have gas conveyed through a pipeline system – a person with a licence to work in this way is a gas shipper
- Being granted a licence to carry out these activities comes with strict conditions, and these conditions are used by Ofgem to regulate the energy industry

NGT is a thoroughly regulated undertaking, necessarily so because of the critical national infrastructure which it is the custodian of and health and safety implications of interference with that infrastructure. In addition to the license condition mentioned above, there are specific working Regulatory Safety standards which dictate how National Gas as a Critical National Infrastructure provider operate; Pipeline Safety Regulations 1996 (PSR), for example which requires that National Gas have adequate procedures and effective protection arrangements in place to protect their assets.

What is the significance of the Gas transmission system?

The NGT system is in effect the central nervous system of the UK gas network and its safe continued operation is essential to the operation of the gas distribution network. It transports gas at very high pressure around the country, from gas shippers and transporters to the gas distribution networks themselves. The main difference between the two is the fact that the gas transported by NGT's network is moved under extremely high pressure, which makes it unsuitable for general use but essential to the successful receipt of gas and power by general users. The pipes used by the gas distribution networks are only able to carry gas at a much lower pressure, and so the gas carried by the national gas transmission system needs to be depressurised via a pressure reduction station.

Due to operating at high pressure, the time required to repair damage and the impacts on supplies can have regional and national consequences and can impact upon the GDNS.

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What could happen if Yorkshire GREEN damaged the National Gas Transmission system

The NTS does not have the ability to "move gas" around flexibly as there are many considerations and consequences in doing so, with feeder mains providing the backbone to the gas network within the UK. Therefore, any interruption as a result of NGET's works would likely cause significant disruption of gas supplies to many hundreds of thousands of customers through no fault of their own or of NGT.

In terms of restoration of supply, the GDN system, due to ability to relocate supplies have a much quicker timescale to restore supplies if lost, the transmission system, due to the type of pipe and restoration process / obligations to ensure any repair is fit for purpose before restoring supplies can begin, are likely to take weeks/ months to return gas supplies to normal.

NGT is concerned with accident and loss of life prevention and its preferred Protective Provisions have been drafted to give effect to that aim.

For the reasons set out above, the NGT system is a piece of critical national infrastructure and as such National Gas cannot for health, safety and by reason of obligations to the consumer and regulators accept provisions that would give another party deemed approval to carry out works which might impact on the NGT system.