



Your reference

Our reference WILLEB/HENSM/43283-4075

6 September 2023

BY EMAIL TO:

YorkshireGreen@planninginspectorate.gov.uk

National Infrastructure Planning
Temple Quay House
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Bristol
BS1 6PN

Dear Sirs

DCO Scheme: Yorkshire Green Energy Enablement (GREEN) Project

Our client: Network Rail Infrastructure Limited

Subject: Response to Examining Authority's Questions of 16 August 2023

Deadline: Deadline 7

This Firm is instructed by Network Rail Infrastructure Limited (**NR**) in relation to the application by National Grid Electricity Transmission (NGET) Plc for the Yorkshire Green Energy Enablement (GREEN) Project. On 16 August 2023 the Examining Authority issued its commentary and questions on the draft Development Consent Order (DC1) to which NR responds against each relevant question in the form of the enclosed table.

We hope this is self-explanatory but should you have any queries, please don't hesitate to contact us.

Yours faithfully



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DC1	Question to:	Question:	Network Rail's Response:
10. Schedule 15: Protective Provisions			
10.0 Overarching matters			
Q10.0.1	The Applicant, Network Rail Infrastructure Limited, National Highways, National Gas Transmission PLC, Northern Gas Networks Limited	<p>Resolution of Protective Provisions yet to be agreed</p> <p><u>Deadline 8 (Wednesday 13 September 2023) is the final opportunity for submissions.</u> After this deadline, the ExA will close the Examination.</p> <p>Any Protective Provisions that have not been agreed between the parties and fully documented as such by the close of Examination will fall to be adjudicated by the ExA through its Recommendation.</p>	Network Rail hopes to be in a position to confirm that the Protective Provisions for the benefit of railway interest are agreed before the close of the Examination.
10.1 Part 4 – For the Protection of Railway Interests			
<p>The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary, with the exception of questions Q11.1.2, Q11.1.3 and Q11.1.4.</p> <p>The ExA notes that discussions have taken place to give more precision over areas of disagreement, moving on from the position as stated in the most recent SoCG [REP5-049], Tables 5.1 and 5.3. References are made to the Applicant's Proposed Protective Provisions to benefit Network Rail Infrastructure Limited (Network Rail) [REP6-063], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.</p>			
Q10.1.1	Network Rail	<p>S127 and s138 response</p> <p>The ExA asked Network Rail to “provide any comments you may wish to make, with reasoning, on the s127 and s138 cases (as appropriate) that will have been submitted by the Applicant” [PD-011], ExQ2 4.2.3b). You indicated that you would respond at Deadline 6 [REP5-116], response to ExQ2 4.2.3b), but there was no update received at Deadline 6.</p>	<p>Apologies, we submitted our response on this matter at Deadline 6 but there may have been a technical error as we do not appear to have an email receipt for this submission. Nevertheless:</p> <p>(a) NR has issued the Technical and Business Clearance Certificates for those works forming part of the authorised</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>a) If Network Rail's objection still stands at Deadline 7, provide commentary on the Applicant's Application under section 127 and 138 Planning Act 2008 – Network Rail Infrastructure Limited [REP5-086].</p> <p>b) Confirm your agreement or otherwise to the plots included in the Application under section 127 and 138 Planning Act 2008 – Network Rail Infrastructure Limited [REP5-086]. In particular, plots E6-22 and E6-36 are not included in Network Rail's RR [RR-001], nor in the Written Representation [REP2-081], but Network Rail is shown as the reputed owner in the Book of Reference [REP6-031] and the plots are included in the s127 and s138 Application.</p>	<p>development which affect the railway which confirm that the proposed works are acceptable in principle (subject to compliance with the conditions attached to those Clearance Certificates).</p> <p>NR's preference will always be to agree the necessary form of rights required to facilitate the authorised development by private treaty to avoid any compulsory acquisition of rights, however NR has no objection to the Applicant's s.127 and s.138 cases provided that Protective Provisions in a form acceptable to NR are included in the Development Consent Order. As above, we are hopeful that the Protective Provisions for the benefit of railway interests will be agreed by the close of the Examination.</p> <p>(b) As above, provided that Protective Provisions in a form acceptable to NR are included in the Development Consent Order, NR is agreeable to the inclusion of these plots (including plots E6-22 and E6-36).</p>
Q10.1.2	The Applicant Network Rail	<p>Framework Agreement</p> <p>a) Network Rail: Does the Framework Agreement include the Basic Asset Protection Agreement (BAPA) [REP5-116], or is the BAPA an</p>	<p>(a) An Asset Protection Agreement (APA) has already been entered into between Network Rail and the Applicant but a</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>agreement that can be entered into prior to carrying out any work, but post-consent [REP6-025], para 28(3)? Explain what the two agreements are.</p> <p>b) Network Rail: You indicated that if the Framework Agreement is not agreed that you would submit the points in contention between parties a week prior to the close of the Examination [REP5-116], response to Q4.2.10. If needed, ensure that this is submitted, with reasoning, no later than Deadline , Wednesday 13 September. This is the last deadline for submissions.</p> <p>c) The Applicant: If the Framework Agreement is not agreed, also set out the points of contention with reasoning from the Applicant's point of view.</p> <p>d) Both: If any progress in agreeing the Framework Agreement has enabled further agreement on paragraphs in the Protective Provisions, set this out here.</p>	<p>further APA (or basic asset protection agreement (BAPA)) may be required to be entered into prior to the carrying out of works if deemed necessary by Network Rail's engineers when reviewing the plans of the proposed works. APAs and BAPAs set out the requirements and procedures required to be undertaken by the Applicant prior to the carrying out of works on railway land.</p> <p>(b) Confirmed. Network Rail is hopeful that matters will be agreed by Wednesday 13 September 2023.</p> <p>(d) The points in contention on the Protective Provisions have been significantly narrowed following calls with the Applicant.</p>
Q10.1.3	The Applicant Network Rail	<p>Property documents</p> <p>a) Both: Provide an update on the required property documents, which are referred to in Network Rail's Deadline 5 submission where it was indicated that they would be agreed within six weeks from 11 July 2023, ie 22 August 2023 [REP5-116], response to Ex2 Q 4.2.10, well before Deadline 7.</p> <p>b) Applicant: Are the property documents referred to by Network Rail [REP5-116], those which are referred to by the Applicant as the voluntary agreements with all persons with interests in land [REP6-063], pages 8 to 10? If not, what are they?</p>	<p>(a) The parties have significantly narrowed the points in contentious on the property documents and have agreed, in principle, a mechanism which will allow further time for the property agreements to be agreed and completed, whilst still being able to agree the Protective Provisions in the meantime</p> <p>(b) The required property documents will comprise an option in favour of the Applicant to request private easements to</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>c) Both: Are the easement documents referred to in the latest SoCG [REP5-049], part of the property documents? Is it the easement documents which contain the disagreed "lift and shift" provisions?</p> <p>d) Both: If the property documents are agreed, list what changes/ areas of disagreement would be removed from those set out at present [REP6-063]. Would any areas of disagreement be sustained?</p>	<p>be granted by Network Rail for the rights required by the Applicant to carry out the authorised development on railway land.</p> <p>(c) As above, yes the property documents will include easements. Matters have now moved on and the parties are close to an agreed position on the easement terms.</p> <p>(d) Please refer to the latest SoCG submitted by the Applicant on Deadline 7.</p>
Q10.1.4	The Applicant Network Rail	<p>Property documents and Framework Agreement</p> <p>Both: Would agreement need to be reached on both the property documents and the Framework Agreements before agreement could be reached on the Protective Provisions?</p>	<p>Agreement on the Framework Agreement needs to be reached for the parties to be agreed on all matters contained in the PPs, but the property agreements do not need to be agreed or completed at this stage to agree the Protective Provisions.</p>
Q10.1.5	The Applicant Network Rail	<p>Applicant's Proposed Protective Provisions to benefit Network Rail</p> <p>a) Network Rail: Confirm that in the event that agreement is not reached between yourself and the Applicant, you are in agreement that the form of wording contained in Applicant's Proposed Protective Provisions to benefit Network Rail [REP6-063], with the Network Rail amendments, would be acceptable as opposed to using the Network Rail Protective Provisions which you submitted at Deadline 2, because we note that you said they were out of date [REP2-082].</p> <p>b) Both: A response to the point above regarding the basis for Protective Provisions is crucial to the Ex A, in order that it can make a recommendation to the SoS in the event that agreement is not reached between parties. Our understanding is that we could not rely on the</p>	<p>(a) The parties have agreed that a revised form of Protective Provisions will be included in the Order and such form of Protective Provisions will be submitted by the Applicant at this Deadline 7. There are only two matters yet to be agreed between the parties on this form of Protective Provisions:</p> <p>1) EMI Provisions at paragraph 11: The Applicant has some queries on the procedures concerning the testing of EMI. Network Rail has responded to these</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>Network Rail Deadline 2 submission and could not therefore recommend as described as Network Rail's overview position [REP6-063] para 1.3.3 to 1.3.4. If this is not the case, set out why not and provide detail of any further detailed differences.</p>	<p>queries and this information is currently with the Applicant for consideration.</p> <p>2) Network Rail requires the inclusion of provisions 4(1)-(6) (concerning the restriction on the Applicant's use of compulsory powers on railway property under the Order without first obtaining Network Rail's consent. Network Rail's position on this matter is set out in the latest SoCG submitted by the Applicant at this Deadline 7.</p>
Q10.1.6	The Applicant Network Rail	<p>Para 27 (dDCO [REP6-025])/ para 2 [REP6-063]: definition of "asset protection agreement"</p> <p>a) Applicant: Provide any comments/ alternative drafting or confirm the wording for the definition of asset protection agreement, in the event that later use of the term is required under para 39 (additional (e) shown as 14(e) and referred to as 15(e) [REP6-063]).</p> <p>b) Both: Agree wording, even in light of the Applicant's view that this definition would be redundant.</p>	<p>N/A – This matter is now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.</p>
Q10.1.7	The Applicant Network Rail	<p>Para 28 (dDCO [REP6-025])/ para 3 [REP6-063]</p> <p>a) Applicant: Explain why you disagree with the removal of the words "in good faith" in dDCO para 28(2)(a) [REP6-025], (REP6-063], para 3(2)(a), page 8.</p> <p>b) Network Rail: What is the justification for removal of the words "in good faith" dDCO para 28(2)(a) ([REP6-063], para 3(2)(a), page 8)?</p>	<p>Save as set out below, these matters are now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.</p> <p>(d) For obvious safety reasons and to ensure it does not breach the terms of its network licence, Network Rail cannot</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>c) Network Rail: Confirm whether the proposed additions which are shown for insertion as para 28(4), 28(5) and 28(6) in the dDCO ([REP6-063], para 3(4), 3(5) and 3(6), pages 11 to 12) are the same as those which Network Rail includes in its standard Protective Provisions.</p> <p>d) Network Rail: Set out specific evidence to show that the powers sought under each of the articles and powers under various acts listed under the Network Rail proposed dDCO para 28(4)(1) to 28(4)(5) ([REP6-063], para 3(4), page 8 to 11) would compromise or otherwise adversely affect the safe and efficient operation of the railway. How in practice would that be compromised, in the context of and on the facts of this scheme?</p> <p>e) Applicant: Set out details of how the Network Rail Protective Provisions proposed under dDCO para 28(4) ([REP6-063], para 3(4), page 11) would impact on the undertaker's ability to deliver the project in terms of the rights sought in the vicinity of the railways.</p> <p>f) Network Rail: Explain the need for the broad-brush exclusion powers sought under proposed Ddco para 28(4)(6) and 28(4)(7) ([REP6-063], para 3(4)(6) and 3(4)(7), page 11 to 12) which could undermine the purpose of the rights being sought.</p> <p>g) Applicant: Provide comments on the Network Rail proposed additional paragraphs dDCO 28(4)(6) and 28(4)(7) ([REP6-063], para 3(4)(6) and 3(4)(7), page 11 to 12).</p> <p>h) Network Rail: Those DCOs cited as including Network Rail's standard Protective Provisions [REP6- 063], para 1.3.4 may have been made on the basis of their own facts and merits but what are the distinguishing facts in this case that justify this treatment?</p>	<p>permit the exercise of compulsory acquisition of rights over railway land without controlling the means by which such rights are exercised. If the Applicant acquires rights under the Order to access railway land, such rights would be obtained without the standard restrictions/reservations that Network Rail would typically require when granting third parties rights to access railway land. Such a risk is not acceptable as it has the potential to compromise the safety of the railway.</p> <p>(e) National Grid should factor this into its development programme and ensure early engagement with Network Rail. NR will endeavour to work cooperatively with the Applicant in the context of granting consents, but ultimately its protective provisions must ensure its prior consent to the exercise of compulsory acquisition powers is required to preserve the safety and integrity of the railway.</p>

DC1	Question to:	Question:	Network Rail's Response:
Q10.1.8	The Applicant Network Rail	<p>Para 29 (dDCO [REP6-025])/ para 4 [REP6-063]</p> <p>a) Both: It would assist the ExA if agreement could be reached between parties on the time by which the engineer must intimate disapproval etc dDCO para 29(2) ([REP6-063], para 4(2), page 14).</p> <p>b) Network Rail: Provide your final consideration (as indicated) whether the wording in dDCO para 29(4)(3) as set out in [REP6-063], para 4(4)(3), page 15 to 16 is acceptable. The ExA understands the consideration of wording to be over that shown as deleted in brackets referring to adjoining parts of specified works.</p> <p>c) Applicant: Comment on the proposed deletion of words from dDCO para 29(4)(3) as set out in [REP6-063], para 4(4)(3), page 15 to 16.</p>	N/A - these matters are now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.
Q10.1.9	The Applicant Network Rail	<p>Para 30 (dDCO [REP6-025])/ para 5 [REP6-063]</p> <p>a) Applicant: Comment on Network Rail's point that describing expenses as 'reasonable' justifies the removal of the description of losses as 'foreseeable' in dDCO para 30(2) ([REP6-063], para 5(2), page 18).</p> <p>b) Both: If agreement can be reached by setting out more detail of limits of financial exposure, as stated by the Applicant, provide that [REP6-063], page 18.</p>	N/A - these matters are now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.
Q10.1.10	The Applicant Network Rai	<p>Para 33 (dDCO [REP6-025])/ para 8 [REP6-063]</p> <p>a) Applicant: Notwithstanding the fact that there is disagreement over the deletions and additions in dDCO para 33(1) ([REP6-063], para 8(1), page 20 to 21) over costs of alterations, if the SoS was minded to include the wording proposed by Network Rail, what is your opinion on the precise wording included and the payment terms of 14 days?</p>	N/A - these matters are now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.

DC1	Question to:	Question:	Network Rail's Response:
		<p>b) Applicant: Elsewhere in the dDCO 'undertaker' appears as a single entity. For the Applicant's preferred wording should 'their' read as 'its' in dDCO para 33(1)?</p> <p>c) Both: Confirm that you are content with the flow of meaning if the Network Rail deletions and additions were to be included at dDCO para 33(1) as shown [REP6-063], para 8(1) page 21. If not provide alternative drafting.</p> <p>d) Both: Is one option to revert to the Network Rail standard Protective Provision wording [REP2-081], para 9?</p>	
Q10.1.11	The Applicant Network Rail	<p>Para 35 (dDCO [REP6-025])/ para 10 [REP6-063]: Electromagnetic Interference (EMI) testing</p> <p>a) Applicant: Do you agree that testing is required prior to commencement and if so explain where else this is secured. Respond to Network Rail's position as stated with regards to dDCO para 35(6) ([REP6-063], para 10(6), page 25 to 26).</p> <p>b) Applicant: In connection with your view that dDCO para 35(7) is duplication, respond to the point made by Network Rail that dDCO para 35(3) covers design and construction and not operation of the authorised development [REP6-063], para 10(7) page 26 to 27.</p> <p>c) Network Rail: Explain the need for the exclusion powers sought under proposed dDCO para 35(7)(d) ([REP6-063], para 10(7)(d), page 27), responding to the Applicant's position that it duplicates the purpose of the rights being sought under dDCO para 35(3).</p> <p>d) Applicant: Explain why it is proposed that EMI matters fall outside the indemnity, providing reasoning based on the distinguishing facts in this case, rather than reliance on the Richborough Order as a precedent, in response to Network Rail's proposed addition at dDCO para 35(9),</p>	<p>The Applicant has raised queries on Network Rail's requirements for EMI testing and information has been provided to the Applicant to answer these queries. We are hopeful that these matters will be agreed prior to the close of the Examination.</p> <p>(e) N/A – this matter has now been agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.</p>

DC1	Question to:	Question:	Network Rail's Response:
		<p>and linking this to the wording in dDCO para 43(1) ([REP6-063], para 10(9), page 28).</p> <p>e) Network Rail: Explain more fully the concerns over the wording in dDCO para 43(1) ([REP6-063], para 15(1)) which in your opinion has necessitated the addition of proposed dDCO para 35(9) ([REP6-063], para 10(9), page 27).</p>	
Q10.1.12	The Applicant Network Rail	<p>Para 43 (dDCO [REP6-025])/ para 14 [REP6-063]</p> <p>a) Applicant: Is the contention that the additions Network Rail proposes at dDCO para 43(1)(c), 43(1)(d), and 43(1)(e) ([REP6-063], para 14 (1)(c),(d),(e), page 33 to 34) are costs which Network Rail would not have a direct contractual obligation to pay? Set out further explanation of your disagreement to the inclusion of these three sub-sub paras.</p> <p>b) Network Rail: Provide any further justification that you consider necessary for the inclusion of proposed dDCO para 43(1)(c), 43(1)(d), and 43(1)(e) ([REP6-063], para 14 (1)(c),(d),(e), page 33 to 34).</p> <p>c) Applicant: Respond to Network Rail's case regarding the unreasonableness of disclosure at the outset, of all train operator agreements which might be relevant [REP6-063], page 33 to 34.</p> <p>d) Both: Note that the numbering of sub-paras differs between the dDCO and [REP6-063] for para 43(2) onwards.</p> <p>e) Network Rail: The removal of the word "that" prior to "sub-paragraph" does not appear to assist the meaning, dDCO para 43(4), ([REP6-063], para 14(3)(sic), page 35).</p> <p>f) Applicant: Set out the reasoning for your disagreement with Network Rail's deletions to dDCO para 43(4) and 43(5) [REP6-063], para 14(3) and 14(4), page 35 to 36.</p>	N/A - these matters are now agreed and the agreed position is set out in the revised form of Protective Provisions submitted by the Applicant at this Deadline 7.

DC1	Question to:	Question:	Network Rail's Response:
		g) Network Rail: Explain the reasons and justify the proposed deletions to dDCO para 43(4) and 43(5) ([REP6-063], para 14(3)(sic) and 14(4)(sic), page 35 to 36).	