

**YORKSHIRE GREEN**  
**DEADLINE 8 (13 SEPTEMBER 2023)**  
**NATIONAL GAS TRANSMISSION PLC (“NGT”)**  
**NGT RESPONSE TO THE APPLICANT’S SUBMISSIONS AT DEADLINE 7**

1. We write in response to the Applicant’s submissions at Deadline 7.

**Dispute Resolution**

2. As the ExA will be aware from NGT’s submissions at Deadline 7, NGT has compromised on the Arbitration provisions in the draft DCO. However, the Applicant has been unwilling to make any reciprocal concessions in relation to the issues which are fundamental to the safe operation of NGT apparatus and its role as a statutory undertaker.

**Deemed consent and amendment to time scales**

3. The amendments that the Applicant is seeking to make to NGT’s precedent protective provisions indicate a lack of understanding around the health and safety implications and regulatory obligations of operating and maintaining major accident hazard pipelines (“MAHPs”). It is a fundamental matter of principle that NGT cannot agree deeming provisions where health and safety are at issue. This is as much about protecting the health and safety of the Applicant’s employees, agents and contractors (as well as the general public) as it is about protecting NGT’s apparatus and the continued operation of the gas transmission network. The Applicant has stated at paragraph 1.4.1 of their Position Statement [Document 8.34.4] that the proposed works are not intrusive, but as NGT has stressed throughout the examination the principal concern which should be addressed is the potential consequences of any damage that might be caused to MAHPs – albeit accidentally – despite the level of risk perceived to be low. The potential consequences are so severe that deemed approval can simply never be acceptable.
4. With this in mind, NGT is surprised by the Applicant’s suggestion at paragraph 1.4.1 that 28-days’ notice is a reasonable period of time with which to review material submitted to NGT and that an even shorter timeframe of 21 days is an adequate period of time within which to request any modifications which might be necessary. NGT’s position is that a provision which requires the Applicant to provide NGT with more notice – rather than less – does not jeopardise the prompt delivery of the Project but actually ensures prompt delivery.

**Indemnity**

5. NGT notes the Applicant’s repeated references in section 1.5 of their Position Statement to the Applicant being a “regulated undertaker” with a “statutory duty to be economic and efficient”. NGT is disappointed that the Applicant fails to acknowledge that NGT is no different in this regard. NGT accepts the Applicant’s statement at paragraph 1.5.7 that NGT has been unable to quantify the potential risk of damage to its apparatus. NGT has asked the Applicant to explain the assumptions or calculations underpinning their £30 million proposed indemnity cap figure, but to-date no explanation has been given; the Applicant has merely pointed to its desire to protect itself commercially from being exposed to an uncapped indemnity. NGT remains of the view that if the proposed development present such a low risk to NGT’s apparatus – as stressed by the Applicant throughout the Examination – then to provide an uncapped indemnity which should never be called upon is the most reasonable position.

6. The Applicant notes that none of the DCOS referred to in previous submissions were promoted by the Applicant and should not be taken as precedent for the Project. As the Applicant is new to interactions with NGT it is difficult for NGT to understand how it has arrived at £30,million as the “end of normal working practice liability expectations” for a working at a MAHP. The Applicant is willing to give uncapped indemnities and has shown no compelling reason why one should not be given to NGT.

**Conclusion**

7. The suggestion by the Applicant that it is not possible for them to meet NGT's requests and still comply with their statutory duties is to confuse NGT's requests with commercial matters. NGT's position is reasonable and in line with its statutory obligations and the Protective Provisions requested have been accepted by other Statutory Undertakers. NGT's request in relation to Indemnity, Deeming and Timescales are for the benefit of the health and safety of those working around its infrastructure and the consumer. The Applicant has asserted but never fully explained why its statutory duties are breached by granting the protections which NGT are seeking.
8. For the above reasons, and those set out in our previous submission, the Examining Authority and Secretary of State are invited to adopt NGT's preferred Protective Provisions and in particular:
  - (a) no capping of Indemnity;
  - (b) no deemed approval for works/working over NGT apparatus; and
  - (c) no shortening of timescales for review of plans

**Cameron McKenna Nabarro Olswang LLP**  
**13 September 2023**