
Response to MPA Lift and Shift Provision

The Yorkshire and Humber (CCS Cross Country Pipeline) Development Consent Order

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1 Purpose of this document

- 1.0.1 Mr Ratcliff of the Mineral Products Association submitted a proposed “lift and shift” provision for the DCO at the DCO ISH for consideration by National Grid and the Examiner requested a response from National Grid at Deadline 3 on it. This document details National Grid’s response.

2 Background

- 2.0.1 Mr Ratcliff, representing the Mineral Products Association and W Clifford Watts, submitted a document containing detailed legal drafting provisions in order to introduce a “lift and shift” alternative into the DCO. The document had not previously been provided to National Grid, and so it was not possible to give a considered response at the DCO ISH. A replacement document of substantially similar effect was produced later on and in advance of the Minerals ISH. Neither the document on its face, nor Mr Ratcliff, have described how or where it would be inserted into the existing DCO draft provisions.
- 2.0.2 In summary, the provisions are what one might expect to find in a contractual document dealing with land and rights in land. In broad summary, the effect of the document is to allow for a party to serve notice on National Grid should that party intend to work minerals in proximity to the authorised development. The theoretical alternative for National Grid in that event would be to either “lift and shift” its pipeline, or pay compensation to the minerals operator.
- 2.0.3 Mr Ratcliff stated that the provisions were to make up for perceived shortfalls in the Mining Code, incorporated into the DCO by Article 39 (*Incorporation of the mineral code*).
- 2.0.4 Specifically, it was said that the operation of the Mining Code was deficient and contained a lacuna, in that it relies on the service of a notice and counter-notice and that counter-notices may not be served at all, or delayed for several years. It was also said to be important to prevent the undertaker from objecting to an application for planning permission for mineral working.
- 2.0.5 Neither submission has any merit.

3 National Grid's Response

3.1 "LIFT AND SHIFT" PROVISIONS

- 3.1.1 National Grid's response to the "lift and shift" provisions put forward by Mr Ratcliff is as follows:
- 3.1.2 The authorised development to be delivered as part of this DCO is an urgent priority for the UK's energy infrastructure. It is being brought forward in accordance with National Policy Statement EN-1.
- 3.1.3 The DCO authorises the pipeline to be laid and operated only within the defined lateral limits of deviation, which are appropriately limited in extent and primarily to overcome micro-siting issues. It does not authorise it to be relocated elsewhere. The environmental statement does not contemplate or assess potential "lift and shift" operations, and so even if National Grid did wish to accommodate some form of change as proposed by Mr Ratcliff, it would be beyond the scope of the environmental impact assessment, and the application as consulted on.
- 3.1.4 Thus the amendment of the DCO to include a "lift and shift" provision of the sort proposed is simply not an option open to the Secretary of State. The amendment suggested on behalf of Mr Ratcliff's clients appears to have been advanced with no consideration of these important matters.
- 3.1.5 Further and in any event, such an approach would not make any practical sense in the context of an urgently required pipeline intended to transport carbon emissions from significant regional emitters so as to maintain security of energy supply whilst also reducing carbon emissions (see NPS EN-1 paragraph 3.6.4). In practical terms, in order to "lift and shift" the pipeline once it is in place, it would be necessary to cease operations along the entirety of the pipeline; then isolate the relevant section of the pipeline and expel the carbon emissions within; before moving the pipeline, testing and re-pressurising it. This assumes the re-aligned route would be on land within National Grid's control and practically also with all necessary consents from landowners who are affected either directly as owner/occupier of the land on which the pipe is to be laid, or indirectly as owner/occupier of neighbouring land. All the while, the emitters who have connected into the pipeline system, having invested in carbon capture

technology, would not be able to transport it along the pipeline for the duration of these works. The acknowledged urgent need for the authorised development would not be met for that period (and this would be the case whenever and wherever such a "lift and shift" operation were required).

- 3.1.6 A rigorous routeing optioneering process has been undertaken and consulted upon prior to the application being submitted. The routeing has had appropriate regard to the effect of the authorised development on mineral deposits. Further detail in respect of National Grid's approach to minimising and mitigating impacts on potential mineral deposits along the pipeline route is provided in the Minerals Report (Document 11.2), and in the written summary of the submissions made at the Minerals ISH on 4 February 2015.
- 3.1.7 To the extent that a party has a relevant interest in land, and can substantiate a claim for compensation, the existing compensation code (including the Mining Code) provides the established and appropriate route for compensation to be sought and awarded. No party to the examination has demonstrated that the existing compensation code (including the Mining Code) is inadequate to provide fair and proportionate compensation to those affected.
- 3.1.8 National Grid does not therefore consider it appropriate, reasonable or necessary to incorporate the provisions proposed by Mr Ratcliff, or any other provisions that would have similar effect.

3.2 MINING CODE

- 3.2.1 If Mr Ratcliff's clients wish the Secretary of State to conclude that there is a procedural lacuna in the Mining Code, it will be necessary for them to identify in their written representations precisely which part of the code is said to contain the alleged flaw. Furthermore, even if the suggested concern can be made out and the operation of the Code can be shown to be capable of frustration by the simple failure to serve a counter-notice, it would be capable of being rectified by the inclusion of suitable drafting in Article 39 of the DCO to adapt the Code accordingly.
- 3.2.2 Mr Ratcliff commented in particular that the MPA was not satisfied with that that part of the Mining Code comprised in Part 3 of Schedule 2 of the Acquisition of Land Act 1981, (again which is incorporated into the DCO by virtue of Article 39 (incorporation of the mineral code)), on the basis that a mineral operator would have to serve a notice on National Grid that it wished to work mines or mineral underlying the pipeline but National Grid

could choose not to respond, meaning that no compensation would be payable and the mineral operator would have to proceed with works at its own risk. National Grid does not consider this to be an accurate characterisation of Part 3, which provides as follows:

- 3.2.3 If the owner of any underlying mines or minerals desires to work them, they would have to provide National Grid with 30 days' advance notice (paragraph 3(1));
- 3.2.4 If National Grid considers that the working of the underlying mines or minerals is likely to damage the pipeline, and is willing to compensate the owner for all or any part of the mines, the owner cannot work them (paragraph 3(3)) but, to assist mineral owners against their notice being ignored, paragraph 4(1) creates a deemed approval mechanism in favour of the owner of the underlying mine, in that if National Grid does not confirm its willingness to "treat with the owner for the payment of compensation" within 30 days the owner can just work the underlying mines "by proper methods and in the usual manner of working such mines in the district in question".
- 3.2.5 Compensation is to be agreed or referred to the Upper Tribunal of the Lands Chamber.
- 3.2.6 So, Part 3, which is a long-established provision within the Mining Code, is clear always that either compensation is payable or a mine owner can proceed with their works with the defence of adopting proper and usual methods in doing so. The Code was drafted by Parliament exactly to ensure that a mine owner is not constrained or prejudiced by the operator of overlying apparatus not responding to a notice, which is the opposite of Mr Radcliffe's contention that the Code is capable of frustration by the simple failure to serve a counter-notice. There is, therefore, no lacuna and Mr Ratcliff's dissatisfaction is with the standard terms of the Land Compensation Act 1981 provisions for such circumstances. If Mr Ratcliff's clients wish the Secretary of State to conclude that there is a procedural lacuna in the Mining Code, it will be necessary for them to identify in their written representations precisely which part of the code is said to contain the alleged flaw. Furthermore, even if the suggested concern can be made out, and for the reasons set out above, National Grid considers this not to be the case, it would be capable of being rectified by the Secretary of State by the inclusion of suitable drafting in Article 39 of the DCO to adapt the Code accordingly

- 3.2.7 If the operator of a gas pipeline reasonably considers that a proposed development (whether mineral operations or otherwise) is likely to interfere with the safe and efficient operation of that pipeline, it would plainly be contrary to the public interest for it to be prohibited in any way from objecting to such a development. Ultimately it would be for the relevant planning authority (or on appeal the Secretary of State) to determine whether any such objection was well-founded, which provides an adequate safeguard against unreasonable objections.
- 3.2.8 At the DCO ISH National Grid explained by way of overview why in principle a 'lift and shift' provision is not appropriate and would not be included in the DCO.
- 3.2.9 National Grid notes the very broad wording within the proposed provisions for the basis of a compensation entitlement and also the indemnity for the costs incurred of the party wishing to work the Minerals.