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# Position in respect of statutory undertakers and others

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

Statutory Undertaker	National Grid Update
Northern Powergrid (Yorkshire) plc	Negotiation of alternative protective provisions in favour of Northern Power Grid are at an advanced stage. Revised draft documentation has recently been received with a small number of outstanding points, which National Grid is considering.
Network Rail	<p>Further to constructive discussions, Network Rail has requested that its preferred set of protective provisions be accepted by National Grid and has proposed that National Grid further enter into its preferred contractual documentation in respect of the voluntary acquisition of rights. The terms of the protective provisions are substantially agreed as per the set appended to the letter of Addleshaw Goddard (acting for Network Rail) to the Planning Inspectorate of 27 January 2015 save for the matters set out below; the preferred contractual documentation was provided by Network Rail for consideration by National Grid on 10 February 2015 – to avoid duplication and the potential for inconsistency, it is proposed that the protective provisions will, if agreed between the parties, be included within the preferred contractual documentation, which itself contains detailed asset protection provision. Current points of difference on the protective provisions can be summarised as per the bullet points below; National Grid is still considering the preferred contractual documentation as a whole:</p> <ul style="list-style-type: none"> <li>• Certain formatting and drafting consistency points previously identified by National Grid do not appear in the set appended to the letter of 27 January 2015. It is assumed that these are uncontroversial;</li> <li>• Definition of "railway property" – Network Rail requires the protective provisions not to be limited to railway property owned only at the date of the DCO but instead to extend to any railway property it might acquire in future after the DCO is made. National Grid considers that Network Rail will be aware of the route of the authorised development when taking decisions on future land acquisitions. In the context that</li> </ul>

paragraph 3.6.5 of EN-1 describes carbon capture and storage as “a priority for UK energy policy”, even amongst the urgency of other nationally significant energy projects, National Grid considers that it is appropriate for Network Rail to contact National Grid in relation to its proposals at the appropriate time;

- Paragraph 3(1) – Network Rail does not agree that the protective provisions may require approvals by Network Rail “not be unreasonably withheld or delayed” or, if appropriate, “subject to reasonable conditions”. Network Rail concedes that it is under a duty as a public body to behave reasonably but does not wish to “fetter its discretion” for health and safety reasons. National Grid considers that if Network Rail is under a duty as a public body to behave reasonably, and must do so when taking decisions involving health and safety, there should be no issue about recording a reasonableness provision in the protective provisions: clearly, if there is a legitimate health and safety concern, Network Rail would never be fettered in coming to the appropriate conclusion - as that conclusion would always be reasonable. This has been recognised in recent Network Rail protective provisions, where the move seems to be towards recognising this point:
  - Part 4 of Schedule 9 of The Able Marine Energy Park Development Consent Order 2014, which came into force on 29 October 2014 states as follows:
 

*“34.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval **must not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety)** and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.”*
  - Part 5 of Schedule 16 of The Thames Water Utilities Limited (Thames Tideway

Tunnel) Order 2014, which came into force on 24 September 2014 states as follows:

*“5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the **reasonable** approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.”*

- Article 5(2) - National Grid has proposed that the approval of the engineer under sub-paragraph (1) must not be unreasonably withheld "or delayed". As described above, Network Rail has historically conceded that there is no reason why approval should be unreasonably withheld. Network Rail notes in the letter of 27 January 2015 that technical approvals “can take some time to be provided” but, in the context of paragraph 3.6.5 of EN-1 describing carbon capture and storage as “a priority for UK energy policy”, even amongst the urgency of other nationally significant energy projects, National Grid does not agree that Network Rail should unreasonably delay approvals. Clearly, where consideration of a health and safety matter is properly required, that would not constitute unreasonable delay.
- Article 10(d) – This provision requires National Grid to pay Network Rail the costs of “special traffic working” if its engineer has required speed restrictions. National Grid has not requested that the speed restrictions be "reasonable", though there is no reason why they should be unreasonable, but would require that if costs are to be recovered from National Grid for special traffic working, then the speed restrictions which led to these costs must have been reasonable rather than unreasonable. National Grid does not agree that this would be a fetter on Network Rail’s discretion on safety, as set out in the letter of 27 January 2015, which is a different point.
- Those four points aside, which essentially are only two points of difference which National Grid considers it would be appropriate for Network Rail to accommodate, the

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	<p>reason that the protective provisions cannot be inserted into the DCO at Deadline 3, if indeed they are to be inserted into the DCO at all pending agreement on Network Rail's proposed contractual documentation, is that they include a restriction on National Grid exercising key powers under the draft DCO, particularly in respect of the compulsory acquisition of land.</p> <ul style="list-style-type: none"> <li>• Network Rail provided a first draft of its preferred contractual documentation for consideration by National Grid on 10 February 2015. National Grid cannot accept all the terms of the protective provisions (in the DCO or otherwise) until that contractual documentation has been considered and agreed. This is because it would mean that National Grid would not be able to exercise compulsory acquisition powers over Network Rail interests but nor would it have the relevant voluntary agreement in place. The other two overall points of difference identified above also remain to be agreed.</li> <li>• In the very unlikely event that there is no agreement of contractual documentation, protective provisions will have to be included in the draft DCO with the four National Grid amendments proposed above and without a restriction on use of compulsory acquisition powers. However, neither National Grid nor Network Rail can see any reason why they should not be able to conclude an agreement significantly before the end of the Examination, as also identified in Network Rail's letter of 27 January 2015. Upon agreement of that documentation, there may be no inclusion of protective provisions in the DCO as matters should be appropriately addressed in that documentation.</li> </ul>
Drax Power Limited/Capture Power Limited	<p>Negotiations with CPL are ongoing on both land and asset protection matters. Whilst CPL does not have an existing asset National Grid is negotiating provisions which would operate to mutually protect the parties' future assets. Equally, negotiations with Drax Power Limited in relation to their land and protecting its existing assets are also ongoing.</p> <p>National Grid is confident of a successful resolution to these negotiations during the</p>

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	examination because of the very close working relationship between National Grid, CPL and Drax CCS Limited, not least because of the mutuality of benefit of their respective schemes. Drax CCS Limited are a member of the CPL consortium.
BT Openreach	BT Openreach confirmed by email on 26 September 2013 that BT Openreach is satisfied with the standard protections provided to operators of electronic communications code networks by way of the Telecommunications Act 1984 in Part 2 of Schedule 11 (protective provisions) of the draft DCO and provided some technical documents for information to assist in detailed design of the authorised development.
Kingstone Communications	Kingstone Communications has not responded to requests for confirmation that, like BT Openreach, it is satisfied with the standard protections provided to operators of electronic communications code networks by way of the Telecommunications Act 1984 in Part 2 of Schedule 11 (protective provisions) of the draft DCO. However, National Grid considers that appropriate, standard protection is provided and notes that no representation has been made to the contrary.
Yorkshire Water Services Limited	Yorkshire Water's solicitors have confirmed that the terms of the asset protection documents are agreed and can proceed to being engrossed for execution.
Northern Gas Networks Limited	Negotiation of asset protection documents are at an advanced stage. Revised draft documentation has recently been received with a small number of outstanding points, which National Grid is considering.
Ineos Manufacturing (Hull) Limited	Ineos and National Grid have reached an advanced stage in negotiating the terms of an asset protection agreement based on INEOS's document entitled "Conditions and Restrictions for Work in Close Proximity to Ineos Pipelines May 2011".  National Grid has issued National Grid's preferred documentation for the acquisition of necessary land rights for the authorised development over INEOS's subsurface stratum

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	interest, but the principle of the easement is agreed.
National Grid Electricity Transmission PLC	Negotiation of asset protection documents is at an advanced stage.
National Grid Gas PLC	
Government Pipeline and Storage Systems	<p>Government Pipeline and Storage Systems (“<b>GPSS</b>”) made a relevant representation drawing National Grid’s attention to section 16 of the Land Powers (Defence) Act 1958, which means works could not start within ten feet of the GPSS pipe-line without the consent of the relevant Secretary of State (or the works can be removed).</p> <p>In subsequent discussion with GPSS, National Grid has been informed that section 16 consent is only ordinarily required following the planning stage, once contracts are in place and a particular level of design detail can be provided.</p> <p>National Grid has therefore written to GPSS asking for it to confirm as follows:</p> <ul style="list-style-type: none"> <li>• Whether GPSS is satisfied that section 16 of the Land Powers (Defence) Act 1958 would provide its assets with adequate protection.</li> <li>• Whether, having considered National Grid’s application, GPSS considers that there is any particular reason why in principle section 16 consent would not be granted at the appropriate stage after development consent is granted.</li> </ul>
The Canal and River Trust	Negotiations continue in order to see whether National Grid can provide appropriate confirmations for Canal and River Trust (“ <b>CRT</b> ”).
Driffield Navigation Trust	The Trust has instructed solicitors and land agents. National Grid continues to seek to understand the Trust’s position from them in order to progress legal documentation.