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1 April 2020

**Email**

**Our ref** KALG/STMM/ROGN/CAP/129163.01172

Dear Sir or Madam

**The Southampton to London Pipeline Development Consent Order (the "Order")  
Southern Electric Power Distribution plc  
Withdrawal of Objection**

We are writing on behalf of our client, Southern Electric Power Distribution plc ("SSE"). SSE is an interested party in the examination of the Order.

The Promoter and SSE have agreed the protective provisions for SSE's benefit in the form enclosed.

On the basis that the Promoter will be including these on the face of the Order in its deadline 7 submission in the form attached (save for any grammatical, formatting or cross-referencing changes which may be required including such changes as may be identified by the SI validation programme), SSE hereby withdraws its objection to the Order.

Yours faithfully

**CMS Cameron McKenna Nabarro Olswang LLP**

Enc. Protective Provisions

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**PART 1**  
**FOR THE PROTECTION OF SOUTHERN ELECTRIC POWER DISTRIBUTION**  
**PLC**

*Application*

1. For the protection of SSE the following provisions will, unless otherwise agreed in writing between the undertaker and SSE, have effect.

*Interpretation*

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SSE to enable SSE to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, substations, cables or other apparatus belonging to or maintained by SSE for the purposes of electricity distribution together with any alternative apparatus, replacement apparatus and/or such other apparatus constructed pursuant to the Order that becomes operational apparatus of SSE for the purposes of distribution and/or supply of electricity and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) (interpretation) of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include low risk works.

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are reasonably necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SSE (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for SSE's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"low risk works" means intrusive remediation works, intrusive environmental (including archaeological) surveys and investigations, intrusive site and soil survey, erection of fencing to site boundaries, the diversion or laying of services or intrusive environmental mitigation measures;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SSE including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SSE” means Southern Electric Power Distribution plc (company number 04094290 whose registered office is at No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH) or its successors in title or successor bodies and/or any successor as an electricity distribution licence holder pursuant to the Electricity Act 1989.

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 5 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph [ ] or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph [ ] or otherwise;

“undertaker” means the undertaker as defined in article 2 (interpretation) of this Order.

#### *On Street Apparatus*

**3.**—(1) Except for paragraphs [ ] (apparatus in stopped up streets), [ ] (removal of apparatus) in so far as sub-paragraph [ ] applies, [ ] (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, [ ] (retained apparatus: protection), [ ] (retained apparatus: protection – overhead lines), [ ] (expenses) and [ ] (indemnity), of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SSE, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SSE are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs [ ] (removal of apparatus) and [ ] (facilities and rights for alternative apparatus) will apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

#### *Apparatus of SSE in stopped up streets*

**4.** Regardless of the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), SSE will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as is reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway

#### *Protective works to buildings*

**5.**—(1) The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SSE and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SSE or any interruption in the distribution of electricity by SSE, as the case may be, is caused, the undertaker must bear and pay

on demand the cost reasonably incurred by SSE in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to SSE for any loss sustained by it by reason or in consequence of any such damage or interruption; and
- (b) indemnify SSE against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SSE, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SSE or its contractors or workmen.

(3) SSE will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof is to be made by SSE, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### *Acquisition of land*

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire any land interest or appropriate, acquire, or extinguish, interfere with or override any easement, other interest or right and/or apparatus of SSE otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SSE and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SSE and/or affects the provisions of any enactment or agreement regulating the relations between SSE and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SSE reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SSE and the undertaker acting reasonably and which must be no less favourable on the whole to SSE unless otherwise agreed by SSE.

(3) The undertaker and SSE agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SSE and/or other enactments relied upon by SSE as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) Any agreement or consent granted by SSE under paragraph [ ], [ ] or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of SSE in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SSE from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SSE right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph [ ] do not apply, the undertaker must:

- (a) retain any notice of SSE's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SSE's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include

(with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SSE's easement, right or other interest in relation to such acquired land; and

- (c) provide up to date official entry copies to SSE within 20 working days of receipt of such up to date official entry copies.

#### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph [ ] or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that SSE's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SSE to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SSE and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SSE advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SSE reasonably needs to move or remove any of its apparatus) the undertaker must afford to SSE to its reasonable satisfaction (taking into account paragraph [ ] below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSE must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will only extend to the requirement for SSE to use its compulsory purchase powers if SSE in its absolute discretion elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SSE and the undertaker or in default of agreement settled by arbitration in accordance with paragraph [ ] (arbitration) of this Part of this Schedule.

(5) SSE must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SSE of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SSE to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

#### *Facilities and rights for alternative apparatus*

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SSE facilities and rights in land for the access to, construction and

maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SSE and must be no less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SSE.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SSE under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are materially less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SSE's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph [ ] (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SSE as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

*Retained apparatus: protection of SSE*

9.—(1) Not less than 14 days before beginning any low risk works (which in each case does not take place more than 300mm below the surface of the ground, and in respect of the diversion or laying of services, excluding apparatus) the undertaker must submit to SSE a plan identifying the nature of the works and the planned interaction with apparatus and the undertaker will undertake those works in accordance with the requirements of HSE's guidance notes: "HS G47 - Avoiding Danger from underground services" and "GS6 Avoiding danger from overhead power lines".

(2) Save where sub-paragraph (1) applies, not less than 56 days before the commencement of any specified works the undertaker must submit to SSE a plan and, if reasonably required by SSE, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to SSE under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(4) The undertaker must not commence any works to which sub-paragraphs (2) and (3) apply until SSE has given written approval of the plan so submitted.

(5) Any approval of SSE required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) and/or (3) apply, SSE may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (2) and (3) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and SSE and in accordance with all conditions imposed under sub-paragraph (5)(a), and SSE will be entitled to watch and inspect the execution of those works.

(8) Where SSE reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SSE's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(9) Any requirements made by SSE under sub-paragraph (8) must be made within a period of 42 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(10) If SSE, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs [ ] to [ ] and [ ] to [ ] apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph [ ].

(11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 14 days (in respect of low risk works) or otherwise 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(12) The undertaker is not required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SSE notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (13) at all times.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SSE retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph [ ].

*Retained apparatus: protection of SSE as Electricity Undertaker – Overhead Lines*

**10.**—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph [ ] (removal of apparatus) the undertaker must submit to SSE a plan and seek from SSE details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the specified work;
- (b) the level at which the specified work is proposed to be constructed or renewed;
- (c) the manner of the construction or renewal of the specified work including details of excavation and positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) details of any ground monitoring scheme if required.

(3) In relation to any works which will or may be situated on, over, under or within 15 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must include a method statement which must in addition to the matters set out in sub-paragraph (2)—

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;

- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assess earth rise potential if reasonably required by SSE's engineers; and
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works requiring the submission of a plan under sub-paragraph (1) until SSE has given written approval of the plan so submitted.

(5) Any approval of SSE required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to a work requiring the submission of a plan under sub-paragraph (1), SSE may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.

(7) Works requiring the submission of a plan under sub-paragraph (1) must be executed only in accordance with the plan, as amended from time to time by agreement between the undertaker and SSE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) or (9) by SSE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SSE is to be entitled to watch and inspect the execution of those works.

(8) Where SSE reasonably requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to SSE's reasonable satisfaction prior to the commencement of works requiring the submission of a plan under sub-paragraph (1).

(9) If SSE in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs [ ] and [ ] and [ ] to [ ] apply as if the removal of the apparatus had been required by the undertaker under paragraph [ ].

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SSE notice as soon as is reasonably practicable a plan of those works and must—

- (a) comply with conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) As soon as reasonably practicable after any ground subsidence event, the undertaker must implement an appropriate ground mitigation scheme.

#### *Expenses*

**11.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SSE on demand, following receipt of an invoiced demand (including where necessary anticipated disbursements) all charges, costs and expenses reasonably anticipated or incurred by SSE in, or in



connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SSE in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including reasonable professional fees) incurred by SSE as a consequence of SSE;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph [ ] if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SSE;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to paragraph [ ] or paragraph [ ].

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SSE by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SSE in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided

in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSE any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### *Indemnity*

**12.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SSE, or there is any interruption in any service provided, or in the supply of any goods, by SSE, or SSE becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost properly incurred by SSE in making good such damage or restoring the supply; and
- (b) indemnify SSE for any other properly incurred expenses, loss, demands, proceedings, damages, claims, penalty (but not criminal penalties, unless such criminal penalties are directly attributable to the undertaker or any person authorised or employed by him) or costs properly incurred by or recovered from SSE, by reason or in consequence of any such damage or interruption or SSE becoming liable to any third party as aforesaid other than arising from any default of SSE.

(2) The fact that any act or thing may have been done by SSE on behalf of the undertaker or in accordance with a plan approved by SSE or in accordance with any requirement of SSE or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SSE fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of SSE, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SSE as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph [ ].

(4) SSE must give the undertaker reasonable notice of any such third party claim or demand

(5) No settlement, or compromise or admission which might be prejudicial must, unless payment is required in connection with a statutory compensation scheme, be made without first obtaining the undertaker's agreement and if the undertaker acting reasonably does not agree SSE and the undertaker will acting jointly, proceed to manage any settlement negotiations and or any litigation which may arise from the third party claim or demand.

### *Enactments and agreements*

**13.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SSE and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the

undertaker and SSE in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### *Co-operation*

**14.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SSE requires the removal of apparatus under paragraph [ ] or [ ] or SSE makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraph [ ] or SSE needs to access its apparatus in stopped up streets under paragraph [ ], the undertaker must use its best endeavours to co-ordinate the execution of the works:

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of SSE's undertaking,

and SSE must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SSE's consent, agreement, approval or expression of satisfaction is required in relation to plans, documents or other information submitted by SSE or the taking of action by SSE, it must not be unreasonably withheld or delayed.

#### *Access*

**15.** If in consequence of the agreement reached in accordance with paragraph [ ] or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SSE to maintain or use the apparatus no less effectively than was possible before such obstruction and both parties must use their best endeavours to co-operate for that purpose.

#### *Arbitration*

**16.** Save for differences or disputes arising under paragraphs [ ] and paragraph [ ] any difference or dispute arising between the undertaker and SSE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SSE, be determined by arbitration in accordance with article 48 (arbitration).

#### *Notices*

**17.** The plans submitted to SSE by the undertaker pursuant to paragraphs [ ] and [ ] must be sent to SSE at their registered or such other address as SSE may from time to time appoint instead for that purpose and notify to the undertaker.