

[REDACTED]

From: Jessica Rose [REDACTED]@wbd-uk.com>
Sent: 06 March 2024 17:48
To: Hynet CO2 Pipeline
Cc: Rachel Sykes; Tom Gray
Subject: RE: Ref: EN070007 - application for HyNet Carbon Dioxide Pipeline DCO - NGET response
Attachments: Compare of NGET DCO Protective Provisions against NGET preferred form Protective Provisions(206180103.1).pdf; NGET - PPs Compare Table(206178467.1)(002).pdf
Importance: High
Categories: Post-examination Submissions

[REDACTED]

Dear Sir/Madam,

Further to the update provided on behalf of National Grid Electricity Transmission plc (**NGET**) on 1 March 2024 and despite NGET's best efforts, the parties have been unable to resolve the outstanding issue in respect of the NGET Protective Provisions. NGET's objection to the NGET Protective Provisions contained at Schedule 10, Part 3 of the Applicant's draft DCO therefore remains in place. In support of NGET's position which is for its preferred form Protective Provisions to replace those currently within the draft DCO, we attach a comparison document to this email showing the differences between the two sets of Protective Provisions. To assist the Secretary of State in considering NGET's request for its preferred form Protective Provisions to be included in the DCO, we attach a table setting out the differences between the two sets of Protective Provisions as well as justification for our client's position.

We look forward to hearing from the Secretary of State once they have had an opportunity to consider the attached documents.

We will continue to engage with the Applicant (and have cc'd the Applicant's solicitor into this email for his information) and will inform the Secretary of State in the event that agreement is reached between the parties.

Yours faithfully,

Womble Bond Dickinson (UK) LLP

Jessica Rose

Associate

Womble Bond Dickinson (UK) LLP

[REDACTED]





From: Jessica Rose
Sent: Friday, March 1, 2024 5:46 PM
To: hynetco2pipeline@planninginspectorate.gov.uk
Cc: Rachel Sykes <[REDACTED]@wbd-uk.com>
Subject: RE: Ref: EN070007 - application for HyNet Carbon Dioxide Pipeline DCO - NGET response

Dear Sir/Madam,

Further to the update provided on behalf of National Grid Electricity Transmission plc (**NGET**) on 21 February 2024, the status of the relevant Protective Provisions contained at Schedule 10, Part 3 of the Applicant's draft DCO remains the same, namely they are not agreed and our client's objection therefore remains in place.

The parties are still trying to resolve an outstanding issue in relation to which they haven't yet reached agreement in principle. Formal legal assurances in relation to the Protective Provisions are still awaited and therefore many of the issues referred to in NGET's written representation remain. However, the parties are working expeditiously to resolve this situation and therefore NGET respectfully suggests that it provides a further update to the Secretary of State by 23:59 on Wednesday, 6 March 2024.

Yours faithfully,

Womble Bond Dickinson (UK) LLP

From: Jessica Rose
Sent: Wednesday, February 21, 2024 5:18 PM
To: hynetco2pipeline@planninginspectorate.gov.uk
Cc: Rachel Sykes <[REDACTED]@wbd-uk.com>
Subject: RE: Ref: EN070007 - application for HyNet Carbon Dioxide Pipeline DCO - NGET response

Dear Sir/Madam,

Further to the update provided on behalf of National Grid Electricity Transmission plc (**NGET**) on 14 February 2024, the status of the relevant Protective Provisions contained at Schedule 10, Part 3 of the Applicant's draft DCO remains the same, namely they are not agreed and our client's objection therefore remains in place.

The parties are still trying to resolve an outstanding issue in relation to which they haven't yet reached agreement in principle. Formal legal assurances in relation to the Protective Provisions are still awaited and therefore many of the issues referred to in our written representation remain. However, the parties are working expeditiously to resolve this situation and therefore NGET respectfully suggests that it provides a further update to the Secretary of State by 23:59 on 1 March 2024.

Yours faithfully,

Womble Bond Dickinson (UK) LLP

From: Jessica Rose
Sent: Wednesday, February 14, 2024 3:31 PM
To: hynetco2pipeline@planninginspectorate.gov.uk
Cc: Rachel Sykes <[REDACTED]@wbd-uk.com>
Subject: Ref: EN070007 - application for HyNet Carbon Dioxide Pipeline DCO - NGET response

Dear Sir/Madam,

In response to the letter dated 31 January 2024 from the Head of Energy Infrastructure Planning Delivery with reference "EN070007", we confirm on behalf of National Grid Electricity Transmission plc (**NGET**) that the relevant Protective Provisions contained at Schedule 10, Part 3 of the Applicant's draft DCO are not agreed and our client's objection therefore remains in place.

We can confirm that good progress has been made on negotiations to resolve our client's objection. However, there is one outstanding issue in relation to which we haven't yet reached agreement in principle, although the parties are working expeditiously to resolve it. We are still awaiting formal legal assurances in relation to all of these issues and therefore many of the issues referred to in our written representation remain.

NGET respectfully suggests that it provides a further update to the Secretary of State by 23:59 on 21 February 2024.

Yours faithfully,

Womble Bond Dickinson (UK) LLP

Please consider the environment! Do you need to print this email?

The information in this e-mail and any attachments is confidential and may be legally privileged and protected by law. hynetco2pipeline@planninginspectorate.gov.uk only is authorised to access this e-mail and any attachments. If you are not hynetco2pipeline@planninginspectorate.gov.uk, please notify [REDACTED] as soon as possible and delete any copies. Unauthorised use, dissemination, distribution, publication or copying of this communication or attachments is prohibited and may be unlawful. Information about how we use personal data is in our [REDACTED] our website.

Any files attached to this e-mail will have been checked by us with virus detection software before transmission. Womble Bond Dickinson (UK) LLP accepts no liability for any loss or damage which may be caused by software viruses and you should carry out your own virus checks before opening any attachment.

Content of this email which does not relate to the official business of Womble Bond Dickinson (UK) LLP, is neither given nor endorsed by it.

This email is sent by Womble Bond Dickinson (UK) LLP which is a limited liability partnership registered in England and Wales under number OC317661. Our registered office is 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Our VAT registration number is GB123393627.

Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.womblebond Dickinson.com/legal notices for further details.

Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority (SRA number 449247).

SCHEDULE 1

For the protection of National Grid Electricity Transmission plc as electricity undertaker

Application

~~15.15.~~ ~~(1)~~ ~~(1)~~ For the protection of National Grid₁ as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

~~(2)~~ ~~(2)~~ Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (benefit of Order) -

~~(a)~~ ~~(a)~~ any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

~~(b)~~ ~~(b)~~ written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

~~(3)~~ ~~(3)~~ Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid₁ (but without prejudice to paragraph 25(3)(b) of this Part of this Schedule).

Interpretation

~~16.16.~~ In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not

lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker’s liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid₁ to enable National Grid 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^(a~~1~~), belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply 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(1) of this Order and includes any ancillary works as defined in article 2(1) of this 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” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“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 or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are 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 National Grid (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, shall require the undertaker to submit for National Grid’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;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which

(a) ~~(a)~~ will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or

(b) ~~(b)~~ may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or

⁽¹⁾ 1989 c.29.

[Different first page setting changed from on in original to off in modified.]

(c) ~~(e)~~ includes any of the activities that are referred to in National Grid's document "Development near overhead lines" EN43-8 and the Health and Safety Executive's (HSE) Guidance Note GS6 "Avoiding Danger from Overhead Power Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGENSO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

~~17.17.~~ Except for paragraphs 18 (Apparatus of statutory undertakers in temporarily restricted streets), 23 (retained apparatus: protection of electricity undertaker) ~~and~~, 24 (expenses) and 25 (indemnity) of this Part 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 National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertakers in temporarily restricted streets

~~18.18.~~ Despite the temporary stopping up or diversion of any highway under article 14 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

Protective works to buildings

~~19.19.~~ The undertaker, in the case of the powers conferred by article 22 (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 National Grid.

Acquisition of land

~~20.20.~~ ~~(1)~~ (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 may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid unless agreed by National Grid.

(2) ~~(2)~~ As a condition of an 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 National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) ~~(3)~~ Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid 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

[Different first page setting changed from on in original to off in modified.]

[WORK\50248850\3](#)

[Different first page setting changed from on in original to off in modified.]

easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

~~(4)~~ ~~(4)~~—Any agreement or consent granted by National Grid under paragraph 23 (Retained apparatus: protection of electricity undertaker) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub- paragraph (1).

Removal of apparatus

~~21.21.~~ ~~(1)~~ ~~(1)~~ If, in the exercise of the powers conferred by this Order , the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub- paragraph (2) to (5).

~~(2)~~ ~~(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 National Grid advance written notice of that requirement, together with a plan 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 National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 22(1) below) the necessary facilities and rights—

~~(a)~~ ~~(a)~~—for the construction of alternative apparatus in other land of or land secured by the undertaker; and

~~(b)~~ ~~(b)~~—subsequently for the maintenance of that apparatus.

~~(3)~~ ~~(3)~~—If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or 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, National Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

~~(4)~~ ~~(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 National Grid and the undertaker.

~~(5)~~ ~~(5)~~—National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

~~22.22.~~ ~~(1)~~ ~~(1)~~ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

~~(2)~~ ~~(2)~~—If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 29 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

[Different first page setting changed from on in original to off in modified.]

[WORK\50248850\w.3](#)

[Different first page setting changed from on in original to off in modified.]

Retained apparatus: protection of electricity undertaker

~~23.23.~~ ~~(1)~~ (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

~~(2)~~ ~~(2)~~ In relation to specified works, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- ~~(a)~~ (a) the exact position of the works;
- ~~(b)~~ (b) the level at which these are proposed to be constructed or renewed;
- ~~(c)~~ (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- ~~(d)~~ (d) the position of all apparatus;
- ~~(e)~~ (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- ~~(f)~~ (f) any intended maintenance regimes;
- ~~(g)~~ (g) an assessment of risks of rise of earth issues; and
- ~~(h)~~ (h) a ground monitoring scheme, where required.

~~(3)~~ ~~(3)~~ In relation to any works which will or may be situated on, over, under or within 10 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, in addition to the matters set out in sub- paragraph (2), include a method statement describing; —

- ~~(a)~~ (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- ~~(b)~~ (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- ~~(c)~~ (c) details of load bearing capacities of trenches;
- ~~(d)~~ (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- ~~(e)~~ (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- ~~(f)~~ (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- ~~(g)~~ (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- ~~(h)~~ (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

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

~~(5)~~ ~~(5)~~ Any approval of National Grid required under sub-paragraph (4)—

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

~~(6)~~ ~~(6)~~ In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

~~(7)~~ ~~(7)~~ Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

~~(8)~~ ~~(8)~~ Where National Grid 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 National

[Different first page setting changed from on in original to off in modified.]

[Different first page setting changed from on in original to off in modified.]

Grid's satisfaction, , prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

~~(9)~~ ~~(9)~~—If National Grid in accordance with sub-paragraphs (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 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

~~(10)~~ ~~(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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

~~(11)~~ ~~(11)~~—The undertaker will not be 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with ~~subparagraph~~sub-paragraph (12) at all times.

~~(12)~~ ~~(12)~~—At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

~~24.24.~~ ~~(1)~~ ~~(1)~~ Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- ~~(a)~~ ~~(a)~~—any costs reasonably and properly incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - ~~(i)~~ ~~(i)~~—using its own compulsory purchase powers to acquire any necessary rights under paragraph 21(3); or
 - ~~(ii)~~ ~~(ii)~~—exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- ~~(b)~~ ~~(b)~~—in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- ~~(c)~~ ~~(c)~~—the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- ~~(d)~~ ~~(d)~~—the approval of plans;
- ~~(e)~~ ~~(e)~~—the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- ~~(f)~~ ~~(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.

~~(2)~~ ~~(2)~~—There will 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)~~ ~~(3)~~—If in accordance with the provisions of this Part of this Schedule—

- ~~(a)~~ ~~(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)~~ ~~(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,

[Different first page setting changed from on in original to off in modified.]
[WORK\50248850\3](#)

[Different first page setting changed from on in original to off in modified.]

-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 paragraph 29 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances 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)~~ ~~(4)~~—For the purposes of sub-paragraph (3)—

~~(a)~~ ~~(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)~~ ~~(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)~~ ~~(5)~~—Any amount which apart from this sub-paragraph would be payable to National Grid 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 National Grid 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.

~~(6) Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.~~

Indemnity

~~25.25.~~ ~~(1)~~ ~~(1)~~ Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, ~~and provided that at all times National Grid will be under an obligation to take reasonable steps to mitigate its loss,~~ the undertaker will—

~~(a)~~ ~~(a)~~—bear and pay on demand accompanied by an ~~appropriately detailed~~ invoice or ~~appropriately detailed~~ claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

~~(b)~~ ~~(b)~~—indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

~~(2)~~ ~~(2)~~—The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid 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)~~ ~~(3)~~—Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

[Different first page setting changed from on in original to off in modified.]
[WORK\50248850\3](#)

[Different first page setting changed from on in original to off in modified.]

(a) ~~(a)~~ any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) ~~(b)~~ any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid 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 7 (benefit of the 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-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph

25; and/or

(c) ~~(c)~~ any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) ~~(4)~~ National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) ~~(5)~~ National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) ~~(6)~~ National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) ~~(7)~~ Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied:

(a) ~~(a)~~ unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) ~~(b)~~ unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) ~~(8)~~ In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

~~26.26.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

~~27.27.~~ ~~(1)~~ (1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 21(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic

[Different first page setting changed from on in original to off in modified.]

[WORK\50248850\3](#)

[Different first page setting changed from on in original to off in modified.]

execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

~~(2) (2)~~—For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed, ~~and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National Grid acting reasonably.~~

Access

~~28.28.~~ If in consequence of the agreement reached in accordance with paragraph 20(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

~~29.29.~~ Save for differences or disputes arising under paragraph 21(2), 21(4), 22(1) and 23 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 48 (arbitration).

Notices

~~30.30.~~ Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (~~<https://lsbud.co.uk/>~~<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

[Different first page setting changed from on in original to off in modified.]
[WORK\50248850\3](#)

Summary report: Litera Compare for Word 11.4.0.111 Document comparison done on 01/02/2024 15:38:22	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://cloudimanager.com/ACTIVE/206178627/1	
Modified DMS: iw://cloudimanager.com/ACTIVE/206178374/1	
Changes:	
<u>Add</u>	129
Delete	193
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	1
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
Total Changes:	324

National Grid Electricity Transmission plc – Protective Provisions – Compare Table

Provision	Wording from draft DCO	Wording from NGET preferred form protective provisions	Reason for NGET's preferred wording
Paragraph 17 – On Street Apparatus	Except for paragraphs 18 (Apparatus of statutory undertakers in temporarily restricted streets), 23 (retained apparatus: protection of electricity undertaker) and 24 (expenses) of this Part 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 National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.	Except for paragraphs 18 (Apparatus of statutory undertakers in temporarily restricted streets), 23 (retained apparatus: protection of electricity undertaker) and 24 (expenses) <u>and 25 (indemnity)</u> of this Part 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 National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.	<p>The reference to paragraph 25 (indemnity) appears to have been removed in error and therefore needs reinstating. In any event, reference to paragraph 25 (indemnity) needs to be referenced here because:</p> <p>(1) the terms of paragraph 25 (indemnity) need to apply in respect of any/all powers exercised by the undertaker under the Order which affect the apparatus of NGET. NGET does not gain anything by the undertaker carrying out the authorised works; the authorised works benefit the undertaker and therefore if there is any damage/interruption to NGET's apparatus resulting in loss to NGET, it must be fully reimbursed by way of indemnity; and</p> <p>(2) there is precedent for this approach. Examples include the NGET protective provisions within the "A428 Black Cat to Caxton Gibbet Road Improvement scheme DCO" and within the "East Anglia THREE Offshore Wind Farm" DCO.</p>

<p>Paragraph 24(6) – Expenses</p>	<p>Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.</p>	<p>Paragraph deleted.</p>	<p>The existing, agreed wording at paragraph 24(1) requires NGET to provide "itemised invoices" for "all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid" as a result of the execution of the authorised works by the undertaker.</p> <p>The specific request by the undertaker for repayment of unspent anticipated costs by NGET within specified time periods is unique to the particular matter and creates an unwarranted administrative burden on NGET, particularly as there is already a requirement on NGET to provide itemised invoices. These accounting obligations are better dealt with by the parties outside of the protective provisions.</p>
<p>Paragraph 25(1) – Indemnity</p>	<p>Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule 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</p>	<p>Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule 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</p>	<p>The additional wording requiring NGET to mitigate its loss in respect of the indemnity is unnecessary and excessive as paragraph 25(6) of the protective provisions already obliges NGET to use reasonable endeavours to mitigate and minimise its loss. We have set out the wording of paragraph 25(6) below for your ease of reference:</p> <p><i>"National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is</i></p>

	<p>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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, and provided that at all times National Grid will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—</p> <p>(a) bear and pay on demand accompanied by an appropriately detailed invoice or appropriately detailed claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and</p> <p>(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.</p>	<p>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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, and provided that at all times National Grid will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—</p> <p>bear and pay on demand accompanied by an appropriately detailed invoice or appropriately detailed claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and</p> <p>indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.</p>	<p><i>within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant."</i></p> <p>Moreover, the addition of a requirement for "appropriately detailed" invoices and/or claims is vague language and introduces uncertainty into the drafting, for example, it is not clear who should decide what constitutes "appropriately detailed". This additional wording should therefore be omitted.</p>
--	---	---	--

Paragraph 27(2) – Co-operation

For the avoidance of doubt whenever National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed, and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National Grid acting reasonably.

For the avoidance of doubt whenever National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed, ~~and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National Grid acting reasonably.~~

If NGET's apparatus is damaged as a result of the authorised works, NGET needs to be reimbursed any cost NGET incurs in making good the damage or restoring the electricity supply and to be indemnified for any other expenses/costs incurred by NGET as a result, including if NGET becomes liable to a third party due to an interruption to the electricity supply. There can be no question as to whether such costs are payable by the promoter; this needs to be guaranteed to NGET because damage to its apparatus could have both safety implications and substantial knock-on effects to electricity supply in the UK which will need to be rectified immediately. It cannot be left to an arbitrator to determine whether NGET is "acting reasonably" in such circumstances as this could lead to damaging delays.

NGET therefore requires its preferred form of paragraph 27(2) to be included in the protective provisions.