

VIKING CCS PIPELINE PROJECT DCO
DEADLINE 5 SUBMISSIONS IN RESPECT OF NATIONAL GRID ELECTRICITY
TRANSMISSION PLC

1. INTRODUCTION

- 1.1 We are acting for National Grid Electricity Transmission Plc (“NGET”) in respect of the Viking CCS Pipeline Project DCO Application.
- 1.2 NGET has apparatus within the Order Limits for the DCO and is seeking protection for its interests and apparatus.

2. PROTECTIVE PROVISIONS

- 2.1 The Promoter and NGET have been in discussions and agree that protective provisions are required in the DCO to protect NGET’s apparatus and interests.
- 2.2 Good progress has been made and many points have been agreed between the parties. However, there remain some points which are still not agreed.
- 2.3 NGET’s preferred form of protective provisions is included at Appendix 1 to this submission.
- 2.4 The below table sets out the points on which there remains disagreement between the parties and sets out NGET’s reasoning for its position.
- 2.5 NGET is committed to continuing its negotiations with the Promoter to reach an agreed position if possible which provides satisfactory protection to NGET’s interests and assets and puts in place a framework which allows future important projects come forward in the most efficient way possible.

Paragraph Reference	Difference between parties	Comments
Future apparatus wording – through the PPs	<p>NGET has inserted provisions in respect of the proposed EGL3 and 4 Projects and the proposed Grimsby to Walpole Project which are NSIPs at the pre-application stage.</p> <p>The Promoter does not agree to the inclusion of this wording or that wording to protect unbuild assets should be included in the protective provisions.</p>	<p>NGET are currently developing a number of projects which will play a crucial role in upgrading the UK’s electricity system and in helping the UK meet its net zero and climate change obligations. It is important that these projects can be brought forward.</p> <p>The two projects which NGET is including in these protective provisions (EGL3/4 and Grimsby to Walpole) are both NSIPs which are supported as projects of Critical National Priority by the National Policy Statements.</p> <p>As such NGET feels it is important to include obligations in relation to coordination and cooperation where it is likely that there will be interactions between future apparatus. The wording generally requires cooperation and collaboration between the parties.</p>

		<p>The coordination between different NSIPs is becoming increasingly important and will need to be grappled with and NGET consider that including this wording in protective provisions will allow there to be a clear framework for managing such interfaces and ensuring that all projects can be brought forward in an efficient manner.</p> <p>The upgrading of the electricity transmission system is crucial for the UK and also essential to other developers of energy projects to ensure that there are sufficient connection opportunities to help benefits of energy projects be efficiently and effectively realised.</p> <p>Similar wording to that included within the protective provisions has previously been included within the Awel y Mor Offshore Wind Farm DCO.</p>
<p>Paragraph 19(2) [Removal of Apparatus]</p>	<p>The difference between the parties is shown by way of tracked changed in the text below. The Promoter’s preferred approach is to include ‘reasonable’ but NGET do not agree to this addition.</p> <p><i>“(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 subparagraph (3), secure any necessary consents for the</i></p>	<p>NGET cannot agree to the addition of ‘reasonable’ in this paragraph.</p> <p>NGET has a statutory duty to maintain an efficient, coordinated and economical system of electricity transmission. As part of this, NGET must ensure that the decision on whether any replacement apparatus required to facilitate other projects is reasonable must be at its absolute discretion to maintain the integrity of the electricity transmission system. Further, NGET has a crucial role to play in the decarbonisation of the electricity system and the move towards net zero. In accepting alternative apparatus NGET must ensure that they can still meet all statutory obligations and requirements and this cannot be subject to any ‘reasonableness’ provision.</p> <p>This wording and the requirement for NGET to have absolute discretion on this point has been accepted on many DCOs and we do not consider why there is anything which means that it should not be accepted in this case.</p>

	<i>alternative apparatus and afford to National Grid to its <u>reasonable</u> satisfaction (taking into account paragraph 22(1) below) the necessary facilities and rights.”</i>	
Paragraph 21 [Expenses], addition of new (6)	<p>The Promoter’s preferred protective provisions include a new sub-paragraph (6) which sets out “<i>Where in accordance with paragraph 24(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, and include an itemised accounting of the charges, costs and expenses reasonably and properly incurred for the three months following the issue of the itemised invoice or claim.</i>”</p> <p>NGET do not agree with the inclusion of this wording.</p>	<p>The inclusion of this wording is not accepted.</p> <p>In terms of the practicalities, if anticipated costs are incurred this is likely to be associated with either diversionary works or compulsory purchase (which are not anticipated on this scheme) in which case there will be a separate commercial agreement (such as a diversionary works agreement) which will apply and which will regulate expenditure and will be subject to these terms and liaison with many different parts of the business.</p> <p>If there are such works under agreements, these also may take a longer period of time to complete. We run the risk of funds needing to be returned under the drafting when they are still required for works being regulated under agreements entered into between the parties which would create an extra administrative burden for all parties.</p>
Paragraph 24(2) [Cooperation] – addition of catch all ‘reasonable provision’	<p>The Promoter in its preferred protective provisions has included the addition of the extra wording set out below at 24(2). NGET does not agree to the inclusion of this wording.</p> <p><u>“and any action, decision, cost and/or expense which may be claimed under this</u></p>	<p>NGET cannot agree to this wording.</p> <p>As set out in relation to paragraph 19 above, NGET has many obligations and requirements under statute which it must make sure are complied with which involves balancing the needs of different users of the electricity system. Compliance with such statutory duties cannot be subject to reasonableness and NGET must be able to ensure it cannot act to meet all obligations.</p>

	<p><u>Part of this Schedule shall at all times be subject to National Grid acting reasonably.”</u></p>	<p>The wording of the PPs already provides that NGET’s approval will not be unreasonably withheld or delayed and the additional proposed wording is unclear and in a number of cases duplicates wording which applies throughout the document. This could cause unacceptable confusion and delay which is unacceptable in the context of NGET meeting its statutory requirements.</p> <p>NGET’s standard wording has been accepted on many DCOs to date and we do see any reason why it should not be accepted here.</p>
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CMS CAMERON MCKENNA NABARRO OLSWANG LLP

2 SEPTEMBER 2024

APPENDIX 1: NGET'S PREFERRED FORM OF PROTECTIVE PROVISIONS