

Viking CCS Pipeline DCO Application
Deadline 7 Submission, 26 September 2024

Background

1. At Deadline 6, Uniper UK Limited (“Uniper”) stated in its submission [REP6-071] that, having shared its preferred protective provisions (“PPs”) with the Applicant, a small number of matters had not been agreed between the parties, that discussions were ongoing, and that a further update would be provided at Deadline 7. This document is that update.

Progress of discussions

2. Save for two points, Uniper and the Applicant have agreed PPs. The Applicant has suggested that the parties submit their preferred PPs into the Examination and for the Secretary of State to decide which PPs should be included in the DCO, should development consent be granted. Uniper’s preferred PPs are set out in the Appendix to this document. The two outstanding points concern (i) as-built records (paragraph 224(12) of the draft PPs) and (ii) indirect loss (paragraph 227(2)(b)).

As-built records

3. Paragraph 224(12) of Uniper’s preferred draft PPs states –

“(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined “as-built” records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. The undertaker must submit to Uniper, no later than twenty (20) business days after the completion of the specified works [i.e. works which affect Uniper], all “as-built” records. Uniper may specify the number of copies of any “as built” records acting reasonably”.
4. The Applicant seeks to amend this provision to reflect the fact that they do not intend to produce “as built” records until the authorised development is complete. The Applicant therefore wishes to amend sub-paragraph (12) as follows –

“(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined “as-built” records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. **After completion and once the undertaker is in receipt of and is satisfied with the final versions of the complete “as-built” records the**, ~~The~~ undertaker must submit to Uniper, no later than twenty (20) business days **there**after ~~the completion of the specified works~~, all **the** “as-built” records. Uniper may specify the number of copies of any “as built” records acting reasonably”.
5. Uniper does not consider this amendment should be made. Uniper notes that Chapter 3 of the ES [APP-045] describes the construction of the proposed development and paragraphs 3.12.13 and 3.12.14 state –

“3.12.13 The construction process would be programmed **as a series of concurrent work packages along the length of the pipeline, where possible, to ensure that the construction programme is minimised. A work package may focus on a specific area or location where a group of construction workers would carry out a particular aspect of the main**

pipeline construction activities, including topsoil stripping, trench excavation, pipe installation and backfilling of trenches.

3.12.14 Subject to the grant of a DCO, it is currently anticipated that site preparation would commence in late 2025, with main construction taking place in 2026 and the Proposed Development becoming operational in 2027.”

[Emphasis added].

6. It will be appreciated that Uniper are concerned by the prospect of not receiving their records until the full 55km of pipeline has been built, particularly if it transpires that they must carry out any of their own works before receiving those records. There does not seem to be any technical impediment to the Applicant providing the records in the way sought by Uniper and that the Applicant’s approach, which is potentially detrimental and dangerous to Uniper’s undertaking, is being followed because of administrative convenience. Uniper considers the Applicant’s approach to be unreasonable and unjustifiable and requests that the Secretary of State does not depart from Uniper’s preferred drafting.
7. It will also be remembered that the Secretary of State has, in the last two months, made two DCOs which include, for Uniper’s benefit, the as-built records sub-paragraph which Uniper seek to have included in the instant Order. (See, for example paragraph 192(14) of Part 14 of Schedule 15 to the Cottam Solar Project Order 2024 (SI 2024/943) – where the undertaker must provide the records within 5 working days of completion of the specified works – and paragraph 224(12) of Part 17 of Schedule 14 to the Gate Burton Energy Park Order 2024 (SI 2024/807)), where the undertaker has 20 working days to provide the records. Uniper does not consider that the Applicant has provided reasonable justification for departing from these recent precedents and considers the status quo should prevail.

Indirect loss

8. Paragraph 227(2)(b) of Uniper’s preferred draft PPs states –

“(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

...

(b) 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”.

9. The Applicant considers the restriction in respect of “any third party” should also apply to Uniper on the basis “it is considered standard to exclude liability for indirect or consequential losses that are not reasonably foreseeable. That effectively replicates the default legal position in the absence of protective provisions and has been accepted by the other statutory undertakers to whom PPs have been granted”. This would involve amending the sub-paragraph as follows –

“(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

...

(b) any indirect or consequential loss of **Uniper or** 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”.

10. Uniper does not consider this amendment should be made, not least since the Secretary of State has in the last two months made two DCOs which include, for Uniper’s benefit, the sub-paragraph which Uniper seek to have included in the instant Order. (See, for example paragraph 195(2)(b) of Part 14 of Schedule 15 to the Cottam Solar Project Order 2024 (SI 2024/943) and paragraph 227(2)(b) of Part 17 of Schedule 14 to the Gate Burton Energy Park Order 2024 (SI 2024/807)). Moreover, the fact that other statutory undertakers have agreed different wording is not relevant: PPs are discreet to each undertaker and what is acceptable to one might not be acceptable to another. If this was not the case there would only be one set of PPs, applicable to all undertakers.

11. Furthermore, Uniper have undertaken a review of recently made DCOs and the table below sets out 31 examples of PPs, included in twenty Orders, which include provisions identical to, or almost identical to, the sub-paragraph set out above. Uniper have restricted their review to DCOs made in the last three years and, in doing so, have been unable to find any DCO which includes a provision drafted as requested by the Applicant. Similarly, the Applicant has not provided Uniper with an example of a DCO which includes the Applicant’s preferred drafting on this point. Uniper therefore consider their preferred provision reflects orthodox DCO drafting and, for that reason as well, the instant Order should include their preferred drafting.

Table – examples of PPs which include indirect loss provisions identical to, or almost identical to, those sought by Uniper

No.	Order	Provision
1.	Cottam Solar Project Order 2024 (SI 2024/943)	<p><u>Schedule 15 (protective provisions)</u></p> <p><u>Part 3 (for the protection of National Grid Electricity Transmission PLC as electricity undertaker)</u></p> <p>Paragraph 28(3)(c) states</p> <p>(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—</p> <p>...</p> <p>(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.</p> <p><u>Part 14 (for the protection of Uniper UK Limited)</u></p> <p>Paragraph 195(2)(b) states</p> <p>(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—</p>

		<p>...</p> <p>(b) 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.</p>
2.	Gate Burton Energy Park Order 2024 (SI 2024/807)	<p><u>Schedule 14 (protective provisions)</u></p> <p><u>Part 9 (for the protection of National Grid Electricity Transmission PLC as electricity undertaker)</u> Paragraph 107(3)(c) –per the National Grid PPs in row 1., above.</p> <p><u>Part 12 (for the protection of Exolum Pipeline System Ltd.)</u> Paragraph 159(2) – per the Uniper PPs in row 1., above.</p> <p><u>Part 17 (for the protection of Uniper UK Limited)</u> Paragraph 227 (2)(b) – per the Uniper PPs in row 1., above.</p>
3.	Sunnica Energy Farm Order 2024 (SI 2024/802)	<p><u>Schedule 12 (protective provisions)</u></p> <p><u>Part 6 (for the protection of National Grid Electricity Transmission PLC as electricity undertaker and National Gas Transmission PLC as gas undertaker)</u> Paragraph 69(3)(c) – per the National Grid PPs in row 1., above.</p>
4.	Mallard Pass Solar Farm Order 2024 (SI 2024/796)	<p><u>Schedule 15 (protective provisions)</u></p> <p><u>Part 3 (for the protection of National Gas Transmission PLC as gas undertaker)</u> Paragraph 27(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 4 (for the protection of National Grid Transmission PLC as electricity undertaker)</u> Paragraph 43(3)(c) – per the National Grid PPs in row 1., above.</p>
5.	Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (SI 2024/564)	<p><u>Schedule 14 (protective provisions)</u></p> <p><u>Part 6 (for the protection of National Gas Transmission PLC as gas undertaker)</u> Paragraph 11(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 7 (for the protection of National Grid Transmission PLC as electricity undertaker)</u> Paragraph 11(3)(c) – per the National Grid PPs in row 1., above.</p>
6.	HyNet Carbon Dioxide Pipeline	<p><u>Schedule 10 (protective provisions)</u></p>

	Order 2024 (SI 2024/436)	<p><u>Part 3 (for the protection of National Grid Transmission PLC as electricity undertaker)</u> Paragraph 25(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 4 (for the protection of National Gas Transmission PLC as gas undertaker)</u> Paragraph 41(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 8 (for the protection of SP Manweb)</u> Paragraph 106(3)(c) – per the National Grid PPs in row 1., above.</p>
7.	National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 (SI 2024/393)	<p><u>Schedule 15 (protective provisions)</u></p> <p><u>Part 7 (for the protection of National Gas Transmission PLC as gas undertaker)</u> Paragraph 91(4)(c) – per the National Grid PPs in row 1., above.</p>
8.	Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (SI 2024/70)	<p><u>Schedule 12 (protective provisions)</u></p> <p><u>Part 3 (for the protection of National Grid Transmission PLC as electricity undertaker)</u> Paragraph 29 (3)(c) – per the National Grid PPs in row 1., above.</p>
9.	A12 Chelmsford to A120 Widening Development Consent Order 2024 (SI 2024/60)	<p><u>Schedule 11 (protective provisions)</u></p> <p><u>Part 5 (for the Cadent as gas undertaker)</u> Paragraph 60(3)(c) – per the National Grid PPs in row 1., above.</p>
10.	Awel y Môr Offshore Wind Farm Order 2023 (SI 2023/1033)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 2 (for the protection of Dwr Cymru Cyfyngedig)</u> Paragraph 19(2)(c) – per the Uniper PPs in row 1., above.</p> <p><u>Part 4 (for the protection of SP Manweb as electricity undertaker)</u> Paragraph 49(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 7 (for the protection of Rhyl Flats Wind Farm Limited)</u> Paragraph 88(3)(b) – per the National Grid PPs in row 1., above.</p> <p><u>Part 11 (for the protection of North Hoyle Wind Farm Limited)</u> Paragraph 159(3)(b) – per the Uniper PPs in row 1., above.</p>

11.	A38 Derby Junctions Development Consent Order 2023 (SI 2023/923)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 5 (for the Cadent as gas undertaker)</u> Paragraph 59(3)(c) – per the National Grid PPs in row 1., above.</p>
12.	Hornsea Four Offshore Wind Farm Order 2023 (SI 2023/800)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 3A (for the protection of National Grid Electricity Transmission PLC)</u> Paragraph 11(3)(c) – per the National Grid PPs in row 1., above.</p> <p><u>Part 3B (for the protection of National Grid Gas PLC)</u> Paragraph 27(3)(c) – per the National Grid PPs in row 1., above.</p>
13.	East Northamptonshire Resource Management Facility Order 2023 (SI 2023/110)	<p><u>Schedule 6 (protective provisions)</u></p> <p><u>Part 1 (for the protection of Anglian Water Services Limited)</u> Paragraph 6(3)(c) – per the Uniper PPs in row 1., above.</p>
14.	A57 Link Roads Development Consent Order 2022 (SI 2022/1206)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 5 (for the Cadent as gas undertaker)</u> Paragraph 55(3)(c) – per the National Grid PPs in row 1., above.</p>
15.	A47/A11 Thickthorn Junction Development Consent Order 2022 (SI 2022/1070)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 5 (for the Cadent as gas undertaker)</u> Paragraph 58(3)(c) – per the National Grid PPs in row 1., above.</p>
16.	A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (SI 2022/934)	<p><u>Schedule 9 (protective provisions)</u></p> <p><u>Part 8 (for the Cadent as gas undertaker)</u> Paragraph 105(3)(c) – per the National Grid PPs in row 1., above.</p>
17.	Sizewell C (Nuclear Generating Station) Order 2022 (SI 2022/853)	<p><u>Schedule 19 (protective provisions)</u></p> <p><u>Part 5 (for the protection of National Grid as electricity undertakers)</u> Paragraph 52(3)(c) – per the National Grid PPs in row 1., above.</p>
18.	A47 Blofield to North Burlingham	<p><u>Schedule 9 (protective provisions)</u></p>

	Development Consent Order 2022 (SI 2022/738)	<u>Part 4 (for the Cadent as gas undertaker)</u> Paragraph 43(3)(c) – per the National Grid PPs in row 1., above.
19.	M25 Junction 28 Development Consent Order 2022 (SI 2022/573)	<u>Schedule 9 (protective provisions)</u> <u>Part 6 (for the Cadent as gas undertaker)</u> Paragraph 64(3)(c) – per the National Grid PPs in row 1., above.
20.	M54 to M6 Link Road Development Consent Order 2022 (SI 2022/475)	<u>Schedule 9 (protective provisions)</u> <u>Part 3 (for the Cadent as gas undertaker)</u> Paragraph 28(3)(c) – per the National Grid PPs in row 1., above.

Conclusion

12. For the reasons set out above, if the Secretary of State decides to grant development consent for the instant application, Schedule 9 to the DCO should include Uniper’s preferred PPs, as set out in the Appendix to this document.

Appendix – Uniper’s preferred PPs

PART 14

FOR THE PROTECTION OF UNIPER UK LIMITED

218. For the protection of Uniper as referred to in this Part of this Schedule, the following provisions will, unless otherwise agreed in writing between the undertaker and Uniper, have effect.

219. In this part of this Schedule—

“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 (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker or its contractor with a limit of indemnity of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as approved by Uniper, whether arising pursuant to the undertaker or any person on its behalf. Such insurance must be maintained for the construction and operational period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider” (including any replacement insurance pursuant to sub-paragraph 227(6)), such policy must include—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of Uniper; and
- (b) contractors’ pollution liability for third party property damage and third party bodily damage arising from pollution, contamination or environmental harm with cover of £10,000,000 (ten million pounds) per event or £20,000,000 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of Uniper to cover the undertaker’s liability to Uniper to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty five million pounds) (in a form reasonably satisfactory to Uniper and where required by Uniper, 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) including any replacement parent company pursuant to sub-paragraph 227(6); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of Uniper to cover the undertaker’s liability to Uniper for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) (in a form reasonably satisfactory to Uniper) which includes any replacement bank bond or letter of credit pursuant to sub-paragraph 227(6);

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

“apparatus” means—

(a) any fixed and moveable items, which forms, or may form, part of Uniper’s system, including cavities, chambers, pipelines, valves, ventilators, pumps, compressors, pumping or compression systems, control systems and any associated cables (including high voltage, low voltage and datacoms) and any equipment in which electrical conductors are used, supported, or otherwise form, or may form, part of the system, cathodic protection systems, roads, compounds and equipment owned by Uniper; or

(b) any other equipment or apparatus belonging to or maintained by Uniper or apparatus and such other equipment or apparatus constructed that becomes operational for the purposes of Uniper’s functions including any structure in which equipment or apparatus is, or will be, lodged or which gives, or will give, access to apparatus; or

(c) any replacement equipment or apparatus as required or determined by Uniper;

“as-built” records” means each as-built record or document prepared by the undertaker or delivered to the undertaker by its subcontractors or any other person carrying out the specified works;

“authorised development” has the same meaning as in article 2 of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Part of this Schedule;

“commence ” has the same meaning as in article 2 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 site preparation works, remediation works, environmental (including archaeological) surveys and investigation, site, utility or soil survey, erection of temporary fencing to site boundaries or marking out of site boundaries, installation of temporary amphibian and reptile fencing, the diversion or laying of services or environmental mitigation measures and any such temporary accesses that may be required in association with these;

“confidential information” means information exchanged during the negotiation or performance of this Part of this Schedule, which is identified in writing by the furnishing party as being confidential at the time of disclosure to the other party;

“emergency works” has the meaning given to it in section 52 of the 1991 Act;

“good industry practice” means exercising the degree of skill, diligence, prudence, foresight and care reasonably expected of a skilled and experienced solar developer, which includes obtaining all necessary permits and compliance with any safety rules;

“functions” includes powers and duties;

“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;

“insolvency related event” means, in respect of any person, any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of such person in relation to the Insolvency Act 1986 special resolution regime or for a moratorium, composition, compromise or arrangement with creditors, administration, liquidation (other

than for the purposes of amalgamation or reconstruction), dissolution, receivership (administrative or otherwise), distress (or the taking control of goods procedure set out in the Tribunals, Courts and Enforcement Act 2007) or execution in any jurisdiction or such person becomes insolvent or is unable or is deemed unable to pay its debts, suspends making payments on its debts, as they fall due in accordance with the law of any application jurisdiction;

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

“parent company” means—

(a) a parent company of the undertaker acceptable to and which must have been approved by Uniper acting reasonably; or

(b) where a parent company is subject to an insolvency related event, a replacement parent company approved by Uniper acting reasonably;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and mitigation measures (including but not limited to integrity reports), earthing philosophies, proposed land and road crossings and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“representative” means Uniper’s directors, officers, employees, agents, consultants and advisers;

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

(a) will or may be situated over, under, across, along, upon or within 15 metres measured in any direction of any apparatus, excluding any high pressure pipelines to which paragraph (b) below shall apply;

(b) will or may be situated over, under, across, along, upon or within 50 metres measured in any direction of any high pressure pipeline; or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 225 or otherwise.

“Uniper” means Uniper UK Limited incorporated in England with company number 2796628 and Uniper UK Gas Limited incorporated in England with company number 02436332 and whose registered office is at Compton House 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE.

220. Except for paragraphs 221 (apparatus of Uniper in stopped up streets), 224 (retained apparatus), 225 (removal or replacement of apparatus), 226 (expenses) and 227 (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 Uniper, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Uniper are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Uniper in temporarily closed, altered or diverted streets

221. Regardless of the temporary closure, alteration or diversion of any street under the powers of article 12 (temporary restriction of use of streets), Uniper is at liberty at all times to take all necessary access across any such temporarily closed, altered or diverted street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary closure, alteration or diversion in respect of any apparatus which at the time of the temporary closure, alteration or diversion was in that street.

Protective works to buildings

222. The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must exercise those powers in accordance with paragraph 224 of this Part of this Schedule, so as not to obstruct or render less convenient the access to any apparatus or alternative apparatus.

Acquisition of land

223.— Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement with Uniper.

Retained apparatus

224.—(1) (1) Not less than 56 days before the commencement of the execution of any specified works the undertaker must submit to Uniper at the address stated in paragraph 232, a plan in respect of those works.

(2) The plan to be submitted to Uniper under sub-paragraph (1) must include all comprehensive risk assessments (including any quantitative risk assessments) and any method statement describing—

- (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;
- (f) any changes to the land drainage systems, temporary crossing designs, traffic management plans, health and safety management plans, emergency response plans, planned changes or rerouting of any assets and their corresponding design codes, earth schedules and earthing risk assessments;
- (g) any recommendations or mitigation measures to avoid interference with, or loss or damage to the apparatus (including damage caused by passing over the apparatus by heavy construction machinery) and related remedies should such mitigation measures fail;
- (h) any intended maintenance regimes; and
- (i) a programme of the works, including any proposed start dates and the anticipated duration of the works.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Uniper has given written approval of the plan so submitted and the undertaker and Uniper have used reasonable endeavours to carry out a joint site walk in the period 4 weeks before commencement of the works. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by Uniper, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(4) Any approval of Uniper required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (5) or (8); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker must provide any additional information or documentation as reasonably requested by Uniper and Uniper may require 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4) and (5), as approved or as amended from time to time by agreement between the undertaker and Uniper and in accordance with all conditions imposed under sub-paragraph 4(a) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper (or its representative) is entitled to attend any meetings related to the specified works and watch, monitor and inspect the execution of those works.

(7) If, during the carrying out of the authorised development, any aspect of it poses a risk of interference with or loss or damage to the apparatus, the undertaker must immediately notify Uniper, in writing, and submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 224 (Retained Apparatus) will apply to, and in respect of, the revised plan. If Uniper (or its representative) identifies a potential risk of interference with or loss or damage to the apparatus while watching, monitoring or inspecting the execution of the specified works, then Uniper (or its representative) may request suspension of such works. The undertaker must then submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 224 (Retained Apparatus) will apply to, and in respect of, the revised plan. Uniper's (or its representative's) failure or delay in exercising this right, or the undertaker's failure to suspend the specified works upon request by Uniper (or its representative), will not relieve the undertaker of its responsibility for any interference with, loss of, or damage to the apparatus.

(8) Where Uniper 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 Uniper's satisfaction (acting reasonably).

(9) 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 will apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works, provided that—

- (a) in respect of danger to persons it must give to Uniper notice as soon as is reasonably practicable by calling Uniper's emergency telephone line on 0800 389 4795 or such other telephone number notified by Uniper to the undertaker in writing; and
- (b) in respect of danger to property it must notify Uniper in accordance with sub-paragraph (10)(a) above, before any emergency works are commenced by or on behalf of the undertaker, and, in each case, as soon as is reasonably practicable give to Uniper a plan of those works and must—
 - (i) comply with sub-paragraphs (5), (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
 - (ii) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with, and use reasonable endeavours to procure compliance by any party acting on its behalf with, all applicable law and good industry practice. The undertaker must procure that any party carrying out any works on the land on its behalf has knowledge of the apparatus, its location

(including as illustrated by a site map) and procure that the obligations contained in this Part of this Schedule are adhered to by such parties working on the land on its behalf.

(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined “as-built” records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. The undertaker must submit to Uniper, no later than twenty (20) business days after the completion of the specified works, all “as-built” records. Uniper may specify the number of copies of any “as built” records acting reasonably.

Removal or replacement of apparatus

225.—(1) The undertaker is not permitted to remove, move or replace any apparatus in land without the prior written consent of Uniper (such consent not to be unreasonably withheld or delayed).

(2) If, in the exercise of the powers conferred by the Order, the undertaker has exercised its compulsory purchase powers to acquire any interest in or possesses temporarily any Order land in which any apparatus is placed and has the power to move, replace or remove that apparatus, it must not do so under this Part of this Schedule and any right of Uniper 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 Uniper in accordance with sub-paragraphs (3) to (6) inclusive.

(3) If, for the purpose of executing any specified works in, on, under or over any land held, appropriated or used under this Order pursuant to exercising its compulsory purchase powers the undertaker requires the replacement or removal of any apparatus placed in that land it must give to Uniper no less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and where applicable, the proposed replacement apparatus or the position of any alternative apparatus to be provided or constructed and in that case provided that where—

(a) the undertaker requires the replacement of any apparatus placed in that land, it must be replaced with identical apparatus, provided that if identical apparatus is not available, it must be either—

(i) replaced with apparatus on a similar or equivalent basis (i.e. like-for-like basis); or

(ii) where it cannot be replaced on a similar or equivalent basis, then it must be replaced with enhanced apparatus. For the avoidance of doubt, no apparatus may be replaced with anything less advanced than the apparatus being replaced;

(b) the undertaker requires the removal of any apparatus placed in that land (or if in consequence of the exercise of any of the powers conferred by this Order Uniper reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (4), secure any necessary consents for the alternative apparatus and afford to Uniper to its satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the undertaker and subsequently for the maintenance of that apparatus, and prior to any removal or any replacement of the apparatus pursuant to this paragraph 225, the parties must agree the value attributable to such apparatus or alternative apparatus, prior to any replacement or removal. If such value cannot be agreed between the parties, such value will be determined in accordance with paragraph 231 (arbitration).

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere other than in 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must take all steps required in the circumstances to assist Uniper to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) 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 the undertaker and Uniper.

(6) Uniper must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written agreement having been entered into between the parties and the grant to

Uniper of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

Expenses

226.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Uniper within 30 days of receipt of an invoice, all charges, costs and expenses reasonably anticipated or incurred by Uniper in, or in connection with, the inspection, removal, relaying or replacing, alteration, repair, remediation or restoration of or protection of any apparatus or alternative apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any powers conferred on the undertaker, pursuant to the Order (including in the execution of any authorised development as is referred to in this Part of this Schedule) including—

- (a) in connection with the cost of the carrying out of any assessment of Uniper's apparatus under Pipelines Safety Regulations 1996 and Gas Safety (Management) Regulations 1996 reasonably necessary as a consequence of the authorised development;
- (b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised development;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (e) 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) For the purposes of calculating the sums payable pursuant to sub-paragraph (1) above, in the case of the replacement or removal of apparatus, the following applies—

- (a) where apparatus is removed under the provisions of this Part of this Schedule and which will not be re-used as part of the apparatus or alternative apparatus, there will be excluded from any sum payable under sub-paragraph (1) the value of the apparatus being removed; and
- (b) subject to sub-paragraph 225(3)(a), when replacing existing apparatus, there will be deducted from any sum payable under sub-paragraph (1) the value of that apparatus being removed under the provisions of this Part of this Schedule and which is not re-used as part of the apparatus or alternative apparatus, except that the value of any apparatus or alternative apparatus used to replace the apparatus being removed will be included in the sum payable under sub-paragraph (1), such value being agreed between the parties (or as determined in accordance with paragraph 231 (arbitration) prior to any removal or replacement of the apparatus, provided that, in each case, all charges, costs and expenses reasonably incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with the works required for the removal or replacement of such apparatus will be included in the sum payable under sub-paragraph (1).

(3) If, in accordance with sub-paragraph 226(2) of this Part of this Schedule, any existing apparatus is replaced with enhanced apparatus where the undertaker's consent has not been obtained by Uniper (or where disputed in accordance with paragraph 231 (Arbitration), decided not to be necessary), then, if the construction expenses for this replacement surpass the construction expenses that would have been paid for similar or equivalent apparatus then any excess costs will be borne by Uniper, except where it is not possible to obtain similar or equivalent apparatus, full costs will be payable by the undertaker.

(4) Any amount which is payable to Uniper 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

Uniper 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

227.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 them) 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 loss or damage is caused to any apparatus, alternative apparatus or property of Uniper, or there is any interruption in any services provided, or in the supply of any goods, or in the use of the apparatus or alternative apparatus (as applicable) by Uniper, the undertaker must—

(a) bear and pay the costs reasonably and properly incurred by Uniper in making good such loss or damage or in restoring the supply or its use;

(b) make compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper, by reason or in consequence of any such loss, damage or interruption; and

(c) indemnify Uniper for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Uniper, by reason or in consequence of any such damage or interruption or Uniper becoming liable to any third party (an “Indemnity Claim”).

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Uniper or its representatives; or

(b) 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.

(3) Uniper must give the undertaker reasonable notice of an Indemnity Claim and no settlement or compromise is to be made that is prejudicial to the undertaker without the consent of the undertaker (not to be unreasonably withheld) which, if it withholds such consent, it will assume the sole conduct of the Indemnity Claim, provided that if the undertaker does not assume the sole conduct of the Indemnity Claim within 30 days of the Indemnified Claim being notified to it, Uniper, or a person designated by Uniper, may conduct the Indemnity Claim in such manner as it may deem appropriate and the undertaker will indemnify Uniper for any costs and expenses incurred in connection with defending any such Indemnity Claim.

(4) The undertaker must assist Uniper, as requested, in connection with an Indemnity Claim (including circumstances where Uniper reasonably believes may give rise to an action, claim or demand by a third party).

(5) The undertaker undertakes not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by Uniper or in respect of which Uniper has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of Uniper’s apparatus (except in respect of any high pressure pipelines) or within 50 metres of Uniper’s high pressure pipelines until the following conditions are satisfied—

(a) unless and until Uniper 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 will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction the authorised development) and Uniper has confirmed the same to the undertaker in writing; and

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

(6) The undertaker agrees that if, at any time, the acceptable security or acceptable insurance expires or terminates, ceases to fulfil the criteria of acceptable security or acceptable insurance, ceases to be in full force and effect or becomes invalid or unenforceable for the purpose of this Part of this Schedule or an insolvency-related event occurs in respect of the undertaker, then the relevant security or insurance will no longer constitute acceptable security or acceptable insurance and will promptly be replaced by the undertaker with alternative acceptable security or acceptable insurance as approved by the undertaker, to the extent any acceptable insurance and acceptable security is still required under this Part of this Schedule.

(7) In the event that the undertaker fails to comply with sub-paragraph (4) nothing in this Part of this Schedule will prevent Uniper from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) Uniper 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 Uniper'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 Uniper's control and if reasonably requested to do so by the undertaker Uniper must provide an explanation of how the claim has been minimised, where relevant.

Co-operation

228.—(1) Where in consequence of the proposed construction of any of the authorised development, Uniper makes requirements for the protection or alteration of apparatus under paragraphs 224(5) or 224(7), 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 execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of Uniper's apparatus and Uniper must use its best endeavours to cooperate with the undertaker for that purpose.

(2) Where Uniper's consent, agreement or approval is required in relation to plans, documents or other information submitted by Uniper or the taking of action by Uniper, it must not be unreasonably withheld or delayed.

Access

229. If in consequence of the agreement reached in accordance with paragraph 223(1) of this Part or otherwise as granted by this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Uniper (or representative) 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 Uniper (or its representative) to maintain or use the apparatus no less effectively than was possible before such obstruction. For the avoidance of doubt, Uniper (or its representative) will be entitled to access its apparatus in the land at all times.

Confidentiality

230.—(1) Each party must treat any confidential information as private and confidential. The party in receipt of any confidential information from the other party may not use it for a purpose other than for the performance of its obligations under this Part of this Schedule and must not disclose confidential information received from the other party to any person, provided that a party may disclose confidential information to any of its directors, other officers, employees, contractors, customers, affiliates, insurers, funders, advisers or consultants

to the extent that disclosure is reasonably necessary for the purposes of this Part of this Schedule.

(2) Sub-paragraph 230(1) does not apply to confidential information—

- (a) which is at the date of commencement, or at any time after that date becomes, publicly known other than by breach of sub-paragraph 230(1);
- (b) which was known by the receiving party before disclosure by the other party to the receiving party, provided that such confidential information was lawfully obtained; or
- (c) to the extent disclosure of the confidential information is required by law, the instructions of a competent governmental authority or such competent authority acting on behalf of such governmental authority, or the rules of a relevant and recognised stock exchange.

Arbitration

231. Any difference or dispute arising between the undertaker and Uniper under this Part of this Schedule must be determined by arbitration in accordance with article 48 (arbitration) unless otherwise agreed between those parties acting reasonably.

Notices

232. Any notice, statement, request, plan or any other written communication (including the plan to be provided at paragraph 224) to be given or made in respect of this Part of this Schedule by the undertaker must be given or made in writing to the address stated below or such other address as Uniper may have notified to the undertaker from time to time.

Name-Uniper Pipelines Team

Address-Pipelines Office, Uniper Killingholme Power Station, Chase Hill Road, Killingholme, North Lincolnshire, DN40 3LU

Contact - Lead Pipeline Engineer