

3 OCTOBER 2024

**INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010
THE H2 TEESIDE PROJECT**

**WRITTEN REPRESENTATION ON BEHALF OF NATIONAL GAS TRANSMISSION
PLC**

&

**RESPONSE TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS &
REQUESTS FOR INFORMATION [PD-008]**

REF: TWHI/3011593.11



Bryan Cave Leighton Paisner

Bryan Cave Leighton Paisner LLP

Governor's House 5 Laurence Pountney Hill London EC4R 0BR
Tel: +44 (0)20 3400 1000 Fax: +44 (0)20 3400 1111

WRITTEN REPRESENTATION ON BEHALF OF NATIONAL GAS TRANSMISSION PLC

&

RESPONSE TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS & REQUESTS FOR INFORMATION [PD-008]

1 INTRODUCTION

- 1.1 National Gas Transmission Plc ("**NGT**") made a relevant representation in this matter on 1 July 2024 [**RR-017**] in order to protect apparatus owned by NGT.
- 1.2 NGT does not object in principle to the development proposed by H2 Teesside Limited ("**the Applicant**") and as defined as the "**Authorised Development**" in the draft Development Consent Order (the "**Draft Order**") [**APP-027**].
- 1.3 NGT does, however, continue to **object** to:
- (a) the Authorised Development being carried out in close proximity to its apparatus in the area unless and until suitable protective provisions and related agreements have been secured to its satisfaction, to which see further at Paragraph 7; and
 - (b) any compulsory acquisition powers for land or rights or other related powers to acquire land temporarily, override or otherwise interfere with easements or rights or stop up public or private rights of access being invoked which would affect its land interests, rights apparatus, or right to access and maintain its apparatus. This is unless and until suitable protective provisions and any necessary related amendments have been agreed and included in the Draft Order.

2 NGT'S ROLE & RESPONSIBILITIES

- 2.1 NGT is the sole owner and operator of the gas transmission system in Great Britain. NGT has licences to operate the gas transmission network, and is required to comply with the terms of these licences in the delivery of its statutory responsibilities.
- 2.2 NGT is under a statutory duty (under section 9 of the Gas Act 1986) to, inter alia, develop and maintain an efficient and economical network for the conveyance of gas.

3 NGT'S ASSETS

- 3.1 The following existing assets owned and/or operated by NGT (together the "**NGT Assets**") are situated within close proximity to the proposed Order Limits:
- (a) FM13 – Cowpen Bewley to Bishop Auckland;
 - (b) FM06 – Little Burdon to Billingham ICI;
 - (c) FM06 – Cowpen Bewley to Teesside Terminal; and
 - (d) FM06 – Billingham ICI to Enron (Billingham) PS.

- 3.2 The NGT Assets form an essential part of the gas transmission network in England, Wales and Scotland.
- 3.3 In respect of the NGT Assets (and any other NGT infrastructure located within the current Order limits, or in close proximity to the Authorised Development and associated works), NGT will require protective provisions to be put in place to ensure:
- (a) that all NGT interests and rights, including rights of access to Feeder Mains and the AGI's, are unaffected by the powers of compulsory acquisition, temporary possession, and the grant and/or extinguishment of rights as set out in the Draft Order; and
 - (b) that appropriate protection for Feeder Mains and AGI's and any other retained apparatus is maintained during and after construction of the Authorised Development in accordance with both the protective provisions and the relevant safety standards below.

4 **REGULATORY PROTECTION FRAMEWORK**

- 4.1 Relevant guidance in respect of standards and protocols for working in the vicinity of high pressure gas pipelines applies in the form of "*National Grid Guidance for Safe Working in the vicinity of High Pressure Pipelines T/SP/SSW/22*," which is aimed at parties carrying out work in the vicinity of high pressure gas pipelines and associated installations and is provided to ensure that those planning and undertaking work take appropriate measures to prevent damage.
- 4.2 The requirements in T/SP/SSW/22 are also in line with the IGE (Institution of Gas Engineers) recommendations in "*IGE/SE/18 Edition 2 – Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations*" and HSE's guidance document "*HS (G) 47 Avoiding Danger from Underground Services*."
- 4.3 NGT requires specific protective provisions to be put in place to provide for an appropriate level of control and protection for all retained assets (including Feeder Mains) and assurance that industry standards will be complied with in connection with works to and in the vicinity of the same.

5 **PROPERTY ISSUES**

- 5.1 NGT asserts that maintaining appropriate property rights to support its assets and protecting these from compulsory acquisition and related powers in the Draft Order is a fundamental safety issue.
- 5.2 Insufficient property rights would have the following safety implications:
- (a) inability for qualified personnel to access apparatus for its maintenance, repair and inspection;
 - (b) risk of strike to buried assets if development occurs within the easement zone which seeks to protect such apparatus; and
 - (c) risk of inappropriate development within the vicinity of the assets, thereby increasing the risk of damage to the asset and to the integrity of the gas transmission network.

6 **WORKING IN PROXIMITY TO NGT'S ASSETS**

6.1 NGT seeks to protect its statutory undertakings, and requests that in respect of connections and work in close proximity to its apparatus as part of the Authorised Development the following procedures are complied with by the Applicant:

- (a) NGT is in control of the plans, methodology and specification for works within specified distances of any retained Apparatus;
- (b) works within the vicinity of NGT's apparatus are not authorised or commenced unless protective provisions are in place preventing compulsory acquisition of NGT's land or rights or the overriding or interference of the same. Any acquisition of rights must be subject to NGT's existing interests and rights and not contradict or cut across such rights; and
- (c) appropriate surety and insurance provisions are in place to back up an uncapped indemnity to protect NGT from any damage, losses or claims arising from the Authorised Development.

6.2 NGT maintains that without an agreement or qualification on the exercise of unfettered compulsory powers or connection to its apparatus, the following consequences will arise:

- (a) failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk;
- (b) any damage to apparatus has potentially serious hazardous consequences for individuals located in the vicinity of the apparatus if it were to fail; and
- (c) prevention of NGT's ability to access its land or exercise its rights over land caused by the Authorised Development could inhibit NGT's ability to comply with its duties as statutory undertaker to provide gas transmission.

7 **PROTECTIVE PROVISIONS**

Overview

7.1 Taking account of the points made above, NGT will require protective provisions to be included within the Draft Order to ensure that:

- (a) all existing interests and rights are unaffected by the powers of compulsory acquisition and temporary use and possession as presently sought by the Applicant;
- (b) NGT's rights of access to inspect, protect, maintain, renew, repair and retain such apparatus must also be maintained at all times and must not be restricted; and
- (c) appropriate protection for retained apparatus is maintained during and after construction of the Authorised Development. This includes compliance with all relevant standards and guidelines for working in proximity to high pressure gas transmission apparatus.

7.2 Where the Applicant intends to acquire land or rights, or interfere with any of NGT's interests in land, NGT will require further discussion with the Applicant and where such land or rights are to be acquired for the benefit of NGT, it is imperative that

NGT's prior consent and approval must be obtained in respect of the nature and extent of any rights to be secured.

Current Position

7.3 As noted in NGT's Relevant Representation, a form of protective provisions for the benefit of NGT has been unilaterally included by the Applicant in Part 5 of Schedule 12 to the Draft Order.

7.4 Those protective provisions remain materially deficient from NGT's perspective.

7.5 As explained in NGT's Relevant Representation:

"In particular, where the Applicant intends to acquire land or rights held by NGT compulsorily or to take temporary possession of the same, or otherwise to interfere with any of NGT's interests in land, any such acquisition, temporary possession or interference must be with the prior agreement and consent of NGT. A failure to secure such agreement risks compromising the safety and integrity of NGT's operational assets, in addition to inhibiting the proper discharge of NGT's statutory obligations and functions.

No explanation has been provided by the Applicant as to the omission of the relevant elements of drafting from the protective provisions, noting the established line of precedent which supports the position adopted by NGT (and, indeed, other statutory undertakers) as to the need for a restriction on the actual exercise of powers of compulsory acquisition and/or temporary possession."

7.6 Having provided the Applicant with its comments on the protective provisions on 1 July 2024, and despite numerous subsequent requests for engagement, NGT has received no substantive response from the Applicant on these matters.

7.7 NGT would welcome prompt engagement from the Applicant on these matters, in addition to reassurances as to how the Applicant's works pursuant to the Draft Order (if made) will ensure protection for those NGT assets which will remain in situ, along with facilitating all future access and other rights as are necessary to allow NGT to properly discharge its statutory obligations.

7.8 Should it not be possible to reach agreement with the Applicant, NGT reserves its right to attend a Compulsory Acquisition Hearing to address the required format of the protective provisions and any necessary amendment to the Draft Order.

7.9 If this is necessary, NGT also reserves the right to provide further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage.

7.10 For current purposes, and in the absence of an agreed form of protective provisions containing all necessary (and usual) safeguards, NGT must continue to **object** to what would otherwise amount to an unfettered ability for the Applicant to exercise powers of compulsory acquisition and/or temporary possession in respect of NGT's Assets, land or rights over its land.

8 RESPONSE TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS & REQUESTS FOR INFORMATION [PD-008]

8.1 NGT's response to ExQ1 Q1.2.7 is as follows:

ExQ1	Question To:	Question:	Response:
Q1.2.7	Applicant	<p>Connection Corridor Routing (Hydrogen Pipeline Corridor) – Clarification.</p> <p>Please explain in more detail the relationship of the Proposed Development and 'Project Union' and the National Gas Distribution Network. For example is it intended to connect to 'Project Union' at both to the National Gas Grid's AGI near Billingham Industrial Park and the National Gas Network natural gas AGI at Cowpen Bewley as set out in Paragraph 6.7.4 of ES Chapter 6 (Needs, Alternatives and Design Evolution) [APP-058]?</p>	<p>The Proposed Development is intending to create a connection to 'Project Union' which is NGT's proposal to advance UK wide hydrogen transmission infrastructure connecting producers, consumers, and storage. The potential of repurposing existing natural gas pipelines to hydrogen duty, where possible, is being assessed.</p> <p>It is understood that the Proposed Development is only intending to create a connection to Project Union at a single location.</p> <p>If the 'Project Union' connection point is at Billingham, this would be based on repurposing the existing Feeder 6 pipe corridor between the Billingham AGI and Cowpen Bewley AGI. This route is subject to providing an alternative gas supply to the industrial consumers in the area, pipeline integrity and process safety assessments, as well as pipeline and AGI connection design feasibility assessment currently being undertaken.</p> <p>It is also understood the Applicant has also taken forward a connection corridor to Cowpen Bewley AGI to ensure that if repurposing is not possible, hydrogen can still be delivered to Cowpen Bewley AGI, and a connection made to 'Project Union'.</p>

Bryan Cave Leighton Paisner LLP

For and on behalf of National Gas Transmission Plc

3 October 2024