

22 JANUARY 2025

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE H2 TEESSIDE PROJECT

WRITTEN SUBMISSION AT DEADLINE 6A

ON BEHALF OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

REF: TWHI/2026502.572



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WRITTEN SUBMISSION AT DEADLINE 6A ON BEHALF OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

1 INTRODUCTION

- 1.1 National Grid Electricity Transmission Plc ("**NGET**") made a Relevant Representation in this matter on 1 July 2024 [**RR-024**], a Written Representation on 3 October 2024 [**REP2-068**] and a detailed written submission on 20 December 2024 [**REP5-064**] (together the "**Existing Representations**").
- 1.2 NGET also attended Compulsory Acquisition Hearing 2 ("**CAH2**") which was held virtually on 13 January 2025.
- 1.3 NGET's overall position in this matter, as stated in Paragraphs 1.2 to 1.4 of [**REP5-064**], remains unchanged and, accordingly NGET continues to maintain its **strong objection** to those elements of the Authorised Development (as defined in the draft Order [**REP5-006**]) which will impact upon NGET's current and future operational assets and land rights, and specifically those in proximity to Saltholme 275kV and 132kV Substation.
- 1.4 This Written Submission, which is provided at Deadline 6A (22 January 2025), is comprised of the following elements:
- (a) A Written Summary of NGET's oral submissions made at CAH2 on 13 January 2025;
 - (b) A preliminary response to relevant sections of the Applicant's own response to Action Point CAH2-AP4 [**EV7-002**] entitled "*Change Notification 2 and response to CAH2-AP4*" [**AS-045**], a copy of which was issued to NGET by the Applicant on 17 January 2025; and
 - (c) In light of the foregoing, a request that the ExA convenes a further Compulsory Acquisition Hearing as soon as possible before the close of the Examination.
- 1.5 NGET would be pleased to provide the ExA with clarification on any of the matters contained within this Written Submission.

2 SUMMARY OF ORAL SUBMISSIONS MADE AT CAH2

- 2.1 Appendix 1 to this Written Submission summarises the oral submissions which NGET advanced in respect of Agenda Items 4(i) and 5(ii) at CAH2, noting the procedural decision taken by the ExA during CAH2 for those agenda items to be considered together as a single item.
- 2.2 As the ExA will appreciate, NGET's oral submissions at CAH2 were necessarily limited to responses to matters raised in oral submissions advanced on behalf of the Applicant regarding the progression of a "compromise solution" which would seek to ensure that the Authorised Development can be brought forward in a manner which does not cause serious detriment to NGET's own statutory undertaking.

- 3 **RESPONSE TO THE APPLICANT'S RESPONSE TO ACTION POINT CAH2-AP4**
- 3.1 The Applicant has provided NGET with a copy of "Change Notification 2 and response to CAH2-AP4" [AS-045] which was submitted into the Examination on 17 January 2025 in response to Action Point CAH2-AP4 [EV7-002].
- 3.2 NGET remains committed to seeking to reach agreement with the Applicant before the end of the Examination regarding the "compromise solution" (referred to in [AS-045] as "Change Area 4") and still expects that the outputs of its ongoing technical engineering review of the Applicant's latest proposals to be available before the 31 January 2025. Engagement with the Applicant and its appointed land agent, Dalcour Maclaren, regarding the grant of voluntary land rights required in order to allow the Applicant to construct and operate the "compromise solution" is also progressing.
- 3.3 NGET is, however, disappointed at the Applicant's characterisation and presentation of certain matters related to Change Area 4 in [AS-045] and, particularly so, given those written submissions are somewhat at odds with the Applicant's oral submissions at CAH2 (the substance of which led to an entirely different examination of the issues during CAH2).
- 3.4 Dealing with each of the matters in [AS-045] as relevant to Change Area 4 in turn:
- 3.5 **Paragraph 2.1.15:** *"As discussed at CAH2, over the course of Examination, post-application, NGET has been bringing forward proposals for the extension of Saltholme Substation. This was not known by the Applicant at the time of consultation or on submission of the DCO application."*
- (a) The Applicant's pre-application engagement with NGET was limited, with inherent confusion as to whether or not the emerging proposals for the Authorised Development would include the permanent acquisition of land (including rights within land) within NGET's ownership in the immediate vicinity of Saltholme Substation.
- (b) Attempts were only made by the Applicant to seek to acquire interests in land within NGET's ownership in April 2024, *after* the submission of the DCO Application in March 2024. Even as late as 26 June 2024, NGET received correspondence from the Applicant's appointed land agent, Dalcour Maclaren, which stated: *"The Project is not looking to acquire the freehold but are seeking rights to lay a pipeline through and build an AGI on the NGET freehold land outside the operational boundary of the substation."*
- (c) It was as a direct consequence of this engagement that NGET informed the Applicant of its emerging proposals at Saltholme Substation and made clear the likelihood of incompatibility as between the respective developments.
- 3.6 **Paragraph 2.1.17:** *"The Applicant's position is that NGET's work is at an early stage and that it is not yet evidenced (whilst the reports submitted at Deadline 5 are acknowledged, they are still based on an early design stage) that an extension of the Saltholme Substation could not be brought forward alongside development of the Proposed Scheme, even if that included an AGI."*
- (a) NGET is surprised by the Applicant's position, noting both its apparent willingness in recent weeks to pursue a "compromise solution" and the complete absence of any oral submissions during CAH2 regarding the detailed evidence submitted by NGET at Deadline 5. As the ExA will be aware, the Applicant's submissions during CAH2 were couched in terms that a further change to this element of the Authorised Development was a

necessity. Had NGET understood that its technical evidence was to be called into question, it would have sought to address these points in detail during CAH2 through its own expert witnesses present at the hearing.

- (b) Appendix 1 to NGET's Written Submission at Deadline 5 [**REP5-064**] contains an Engineering Constraints Report, Part 1 of which articulates, in detail, why the construction and operation of the relevant aspects of the Authorised Development are incompatible with the intended future expansion of Saltholme Substation pursuant to NGET's statutory duties and regulatory obligations. It is unclear to NGET what further detail or evidence the Applicant would expect to see as regard the need to expand Saltholme Substation. NGET rejects the Applicant's position that the evidence provided is insufficient to conclude that a substation could not be delivered on the site if the Proposed Development is delivered
- (c) Beyond the statement in the terms set out above, the Applicant has proffered no evidence of any kind to support its position that the Authorised Development (in its current form) and NGET's proposals at Saltholme Substation are compatible such that there would be no serious detriment caused to NGET's undertaking. The Applicant has had ample opportunity to provide such evidential justification, noting the contents of NGET's Relevant Representation of 1 July 2024 [**RR-024**] and further submissions made on behalf of NGET since then. NGET considers that the Applicant's stated intention to finally address the position as regard Section 127 Planning Act 2008 at Deadline 7 (6 February 2025), a mere three weeks prior to the end of the Examination, to be unreasonable. NGET is cognisant of the fact that such a submission at Deadline 7 leaves very little opportunity for important substantive matters to be considered by the ExA before the end of the Examination. This is deeply disappointing.
- (d) NGET's Response to ExQ2 Q2.6.5 (to which see [**REP5-064**]) is also of direct relevance.

3.7 **Paragraph 2.1.26:** *"As discussed in Section 1, the Applicant is working closely with NGET to seek to reach a position where the parties have sufficient certainty to enable a change in this area to be brought forward in Examination for the potential solution. However, a Change Request for this potential solution will not be brought forward by the Applicant unless it considers that it has been demonstrated to be a feasible and necessary solution for the Proposed Development."*

- (a) From NGET's perspective, there is an unequivocal need to bring forward a change request in respect of Change Area 4, for the reasons which have already been articulated in [**REP5-064**]. Noting that this point was not called into question by the Applicant during CAH2, NGET considers that this matter would benefit from further consideration during an additional CAH if it is to be disputed by the Applicant (to which see further below in Paragraph 4).
- (b) NGET acknowledges that the feasibility of the "compromise solution" has not yet been established (although the viability of three options for the future development of Saltholme Substation was demonstrated by NGET at Deadline 5). As noted above and in NGET's submissions during CAH2, the outputs of NGET's ongoing technical engineering review are expected to be known, and will be shared with the Applicant, before the 31 January 2025.
- (c) In any event, NGET would observe that the speed with which the Applicant has been able to identify a workable "compromise solution" (essentially

during the period, excluding public holidays, between Deadline 5 on 20 December 2024 and the technical meeting held between the parties on 7 January 2025) indicates a prior lack of detailed and robust consideration in respect of this aspect of its design proposals. Indeed, Paragraph 2.1.18 of the Applicant's Response to CAH2-AP4 refers to the "compromise solution" as being "*one potential solution*" which would allow the benefits of the Authorised Development to be developed alongside expansion of Saltholme Substation. It is noted that there is very limited information in the Applicant's Environmental Statement concerning the various design options considered to date.

- (d) Regardless of whether the "compromise solution" is deemed to be feasible, it is clear from the Applicant's own characterisation that other acceptable alternative options are likely to be found to exist if sufficient consideration is given to the same by the Applicant.
- (e) The "compromise solution" itself will, as described in Paragraph 2.1.22 of the Applicant's Response to CAH2-AP4, allow for a significant downgrading in respect of the land rights required for this element of the Authorised Development. With reference to Section 6 of the Applicant's Statement of Reasons [**APP-024**], in circumstances where the "compromise solution" (or, indeed, any other solution) is found to be technically feasible, it is unclear how the Applicant could continue to justify the need for powers of compulsory acquisition of land over, amongst others, Plot 3/19.
- (f) From NGET's perspective, neither the statutory tests in Section 122(2)(a) and (b) of the Planning Act 2008 ("*the land is required for the development to which the DCO relates or is required to facilitate or is incidental to the development*") nor the general considerations under Paragraphs 8 to 10 of the existing DCLG 'Guidance related to procedures for the compulsory acquisition of land' (September 2013) can be said to be satisfied where there remains the potential for the Applicant to bring forward this particular element of the Authorised Development in a different manner to that which has previously been proposed.
- (g) Further, it remains NGET's position that the inclusion, in the draft Order, of unfettered powers of compulsory acquisition in respect of land, rights and other interests held by, or belonging to, NGET will give rise to serious detriment in the context of the carrying on of NGET's statutory undertaking, and thus the statutory tests in Section 127(2) and 127(5) of the Planning Act 2008 are not capable of being satisfied.
- (h) NGET would welcome prompt clarification from the Applicant on these points but, in any event, considers this to be a crucial matter for the ExA and, indeed, the Secretary of State to have regard to in the context of NGET's existing objection, notwithstanding whether or not a change request is ultimately brought forward by the Applicant, or accepted by the ExA, in respect of Change Area 4.

4 **REQUEST FOR A FURTHER CAH**

- 4.1 Taking account of the submissions made in Paragraph 3 of this Written Submission, and noting the very real and serious risk posed to NGET's statutory undertaking if the matters currently at issue remain unaddressed, NGET considers the particular circumstances (including the position of the Applicant) are such that it is necessary for the ExA to convene a further CAH as soon as possible before the close of the Examination.

- 4.2 NGET shares the view of other interested parties that there remains sufficient opportunity for a further CAH to be scheduled before the close of the Examination on 28 February 2025.

Bryan Cave Leighton Paisner LLP

For and on behalf of National Grid Electricity Transmission Plc

22 January 2025

Appendix 1

Summary of Oral Submissions made on behalf of NGET at CAH2 on 13 January 2025

1 ATTENDEES

1.1 NGET was represented at CAH2 by the following:

- (a) Daisy Noble (Counsel, Francis Taylor Building);
- (b) Tariq Ajumal (Regional Connections Manager, NGET);
- (c) Aileen Smith (Head of Central Consents, NGET);
- (d) Julian Barnett (Onshore Interface Manager, NGET) and
- (e) Tom White (Senior Associate, Bryan Cave Leighton Paisner LLP).

2 SUMMARY OF ORAL SUBMISSIONS

Agenda Item	Summary of Oral Submissions
Item 4(i): an update in respect of negotiation of Protective Provisions for the benefit of NGET & Item 5(ii): statutory undertakers' land	<u>Overview of NGET's Position at CAH2:</u> <i>The ExA invited NGET to respond to the oral submissions made on behalf of the Applicant during CAH2 summarising recent engagement between the Applicant and NGET on matters related to the interaction between the Authorised Development and the expansion of Saltholme Substation.</i> NGET agreed that the Applicant's oral submissions during CAH2 were an accurate summary of where matters stood as of 13 January 2025.

Agenda Item	Summary of Oral Submissions
	<p>The fundamental issue from NGET’s perspective remained that the Applicant’s proposed reliance on compulsory acquisition and temporary possession powers to enable the construction and operation of those parts of the Authorised Development adjacent to Saltholme Substation would render it impossible for NGET to develop its Saltholme site in pursuance of its statutory and regulatory duties. This fundamental objection is not capable of being resolved by protective provisions.</p> <p>As a matter of principle, the Applicant’s proposal to move the AGI to the northwest of NGET’s freehold land would go a considerable way to resolve NGET’s objections to the proposals.</p> <p>However, even if the “compromise solution” is brought forward, NGET maintain two concerns:</p> <ul style="list-style-type: none"> (a) Concerns about timeline: NGET will need to interrogate the change from an engineering perspective to confirm definitively that this new proposal will address the matters raised in NGET’s objection; and (b) Concerns about other matters raised in NGET’s Existing Submissions (in particular, Part 2 of the Engineering Report submitted at Deadline 5): in order to operate and maintain existing assets and infrastructure, NGET would still require protective provisions and other contractual protections to be secured in the usual way. <p><u>Expansion of Saltholme Substation:</u></p> <p><i>The ExA requested clarification from NGET as to when NGET’s objections regarding the interaction between the Authorised Development and Saltholme Substation were first raised with the Applicant.</i></p> <p>The expansion of Saltholme Substation was not under active consideration by NGET prior to the H2 Teesside DCO application being brought forward, noting that existing customer connection requirements are such that an expanded Saltholme Substation is unlikely to be required to be operational until 2035.</p> <p>NGET’s Relevant Representation dated 1 July 2024 [RR-024] made clear that NGET was undertaking technical engineering assessments on the impact of the H2 Teesside proposals in relation to planned customer connections into Saltholme. More design work had since been undertaken, leading to NGET’s detailed confirmation of incompatibility</p>

Agenda Item	Summary of Oral Submissions
	<p>with the Authorised Development as currently proposed (as set out in NGET’s Written Submissions at Deadline 5 [REP5-064]).</p> <p><i>The ExA requested clarification from NGET as to whether the “compromise solution” proposal put forward by the Applicant in the technical meeting on 7 January 2025 was an entirely new concept from NGET’s perspective.</i></p> <p>NGET confirmed that the technical meeting was organised in direct response to recent senior-level engagement between the Applicant and NGET, with both parties agreeing to work together in order to identify practicable alternative solutions. The “compromise solution” proposal put forward by the Applicant was new at the meeting on 7 January 2025.</p> <p>NGET is continuing to work with the Applicant to look at whether the “compromise solution” is technically feasible.</p> <p><i>The ExA requested clarification from NGET as to the timescales for technical review of the “compromise solution” proposal put forward by the Applicant.</i></p> <p>NGET confirmed that it anticipated that the further technical engineering review would be complete by the end of January. <i>(Post-hearing note: this remains the case at Deadline 6A).</i></p> <p><u>Proposed Change Application:</u></p> <p><i>The ExA invited NGET to provide closing submissions in response to the Applicant’s stated proposal to bring forward a change application in order to address the “compromise solution” (if found to be feasible).</i></p> <p>NGET welcomed the Applicant’s proposal to bring forward a change application in order to seek to give effect to the “compromise solution” and, further, endorsed the ExA’s recommendation that a timetable be prepared by the Applicant in order to set out the likely necessary procedural steps in this regard.</p> <p>NGET’s continued commitment to work with the Applicant in this respect was reiterated.</p>