

SCHEDULE 43

FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED

Interpretation

1. For the protection of NZT, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“H2T Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised development;

“NZT Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by NZT within the Shared Area;

“NZT Order” means The Net Zero Teesside Order 2024;

“NZT Project” means the construction, operation or maintenance of Project A as is defined by the NZT Order;

“NZT Project Site” means –

(a) land on which any NZT Apparatus is situated; and

(b) land on which NZT Apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the NZT Project (insofar as the same has been notified by NZT in writing to the undertaker);

“NZT Specified Works” means so much of the NZT Project as is within the Shared Area;

“NZT” means Net Zero Teesside Power Limited (company number 12473751) whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP;

“Parties” means NZT and the undertaker;

“Plans” includes so far as is reasonably relevant: sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation by the undertaker of any land for purposes of the Shared Area Works;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means land included within both the NZT Project Site and the authorised development;

“Shared Area Works” means any part of the authorised development taking place within the Shared Area;

Consent to Shared Area Works

3.—(1) Subject to sub-paragraph (8), the undertaker must not except with the prior written agreement of NZT under this paragraph carry out any Shared Area Works or any part of it.

(2) Prior to the commencement of any Shared Area Works, or any part of it, the undertaker must submit to NZT Plans of the relevant Shared Area Works (or part of it) and such further particulars available to it as NZT may request within 21 days of receipt of the Plans reasonably requested.

(3) The Plans that will be provided with the request which must identify—

(a) the land that will or may be affected;

(b) which Works Nos. as set out in Schedule 1 (authorised development) any powers under the Order sought to be used or works to be carried out relate to;

(c) the identity of the contractors carrying out the work;

(d) the proposed programme for the power under the Order to be used or works to be carried out; and

- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(4) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any of the Shared Area Works, new Plans in respect of that Shared Area Works in substitution of the Plans previously submitted, and the provisions of this paragraph shall apply to the new Plans.

(5) Any Shared Area Works must not be constructed except in accordance with such Plans as are approved in writing by NZT.

(6) Any approval of NZT required under this Schedule –

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
- (c) may be given subject to such reasonable requirements as NZT may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NZT Project or otherwise for the protection of the NZT Apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to expert determination in accordance with paragraph 10.

(7) Where conditions are included in any consent granted by NZT pursuant to this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by NZT or by an expert to which such conditions are referred under sub-paragraph (6).

(8) NZT must employ reasonable endeavours to respond to the submission of any Plans as soon as is reasonably practicable but in any event within a period of 56 days from the date of submission of the Plans. If NZT require further particulars, such particulars must be requested by NZT no later than 21 days from the submission of Plans and thereafter NZT must employ reasonable endeavours to respond to the submission as soon as is reasonably practicable and no later than within 56 days from receipt of the further particulars and if by the expiry of the 56 day period NZT has failed to notify the undertaker of its decision NZT is deemed to have given its consent, approval or agreement without any terms or conditions.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NZT by recorded delivery and addressed to the Owners Representative.

Interaction with the NZT Project

4.—(1) Without limiting any other provision of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the NZT Project. For the purposes of this paragraph, "reasonable endeavours" means –

- (a) undertaking consultation on the detailed design and programming of the Shared Area Works and all works associated with or ancillary to the Shared Area Works to ensure that the design and programme for the Shared Area Works does not unreasonably impede or interfere with the NZT Project;
- (b) having regard to the proposed programme of works for the NZT Project as may be made available to the undertaker by NZT and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NZT Project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping NZT informed on the programme of works for the authorised development.

(2) Prior to the seeking of any consent under this Schedule, the undertaker must invite NZT to participate in a design and constructability review for that part of the Shared Area Works which shall, at a minimum (unless otherwise agreed), include the following matters—

- (e) a Front End Engineering Design (FEED) level indicative construction work-pack;
- (f) a hazard and operability study; and

- (g) a construction hazard study.

Regulation of Shared Area Works

5.—(1) Where under paragraph 3(6) NZT requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of NZT.

(2) The undertaker must give to NZT not less than 28 days' written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NZT written notice of the completion and NZT will be entitled by its offer to watch and inspect the construction of such works.

(3) The undertaker is not required to comply with paragraph 3(5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to NZT notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 in so far as is reasonably practicable in the circumstances.

(4) The undertaker must at all reasonable times during construction of the Shared Area Works allow NZT and its officers, employees, servants, contractors, and agents access to the Shared Area Works and all reasonable facilities for inspection of the Shared Area Works.

(5) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from NZT requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(6) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (9), NZT may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(7) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area Works the access to any of the NZT Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NZT Specified Works as will enable NZT to construct, maintain or operate the NZT Project no less effectively than was possible before the obstruction.

(8) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NZT of the location of any part of its the NZT Specified Works.

(9) If any part of the Shared Area Works is constructed otherwise than in accordance with paragraph 3(5) above NZT may by notice in writing identify the extent to which the Shared Area Works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 3(5) of this Schedule or such alternative works as may be agreed with NZT or as otherwise may be agreed between the parties.

(10) Subject to sub-paragraph (11), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (9) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NZT may execute the works specified in the notice and any reasonable expenditure incurred by NZT in so doing will be recoverable from the undertaker.

(11) In the event of any dispute as to whether sub-paragraph (10) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NZT will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (10) until the dispute has been finally determined in accordance with paragraph 10.

Constructability Principles

6.—(1) The undertaker must (unless otherwise agreed, in an emergency relating to potential death or serious injury, or where it would render the H2T Apparatus, the Shared Area Works, the NZT Specified Works or NZT Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) carry out the Shared Area Works in such a way that will not prevent or interfere with the continued construction of the NZT Specified Works, or the maintenance or operation of the NZT Apparatus unless the action leading to such prevention or interference has the prior written consent of NZT;
- (b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NZT in respect of any NZT Apparatus will be of adequate specification to bear the loads;
- (c) prior to the carrying out of any of the Shared Area Works in any part of any Shared Area—
 - (i) where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), submit a construction programme and a construction traffic and access management plan in respect of that area to NZT for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of the Shared Area Works and may be subject to review if agreed between the Parties); and
 - (ii) where applicable and where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), confirm to NZT in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time;
- (d) at all times construct the Shared Area Works in compliance with the relevant approved construction traffic and access management plan;
- (e) notify NZT of any incidences which occur as a result of, or in connection with, the Shared Area Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
- (f) where requested in writing by NZT within 21 days of receipt of post-completion notice pursuant to paragraph 5(2), provide comprehensive, as built, drawings of the Shared Area Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Shared Area Works;

(2) In considering a request for any consent under the provisions of this Schedule, NZT must not request an additional construction traffic and access management plan if such a plan has already been approved pursuant to subparagraph (1)(c) (as relevant in respect of a traffic and access management plan).

Expenses

7.—(1) Save where otherwise agreed in writing between NZT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NZT within 30 days of receipt of an itemised invoice or claim from NZT all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NZT 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) 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;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (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;
- (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 Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (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) 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,

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 dispute resolution in accordance with paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 NZT 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) For the purposes of sub-paragraph (3)—

- (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) 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) Any amount which apart from this sub-paragraph would be payable to NZT 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 NZT 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 reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NZT are less than the amount already paid by the undertaker NZT will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

8.—(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 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 NZT, or there is any interruption in any service provided, or in the supply of any goods, by NZT, or NZT becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from NZT the cost reasonably and properly incurred by NZT in making good such damage or restoring the supply; and
- (b) indemnify NZT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NZT, by reason or in consequence of any such damage or interruption or NZT becoming liable to any third party other than arising from any default of NZT.

(2) The fact that any act or thing may have been done by NZT on behalf of the undertaker or in accordance with a Plan approved by NZT or in accordance with any requirement of NZT 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 NZT 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) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

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

- (b) any authorised works and/or any other works authorised by this Schedule carried out by NZT 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 8 (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 Schedule including this paragraph; and/or
- (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) NZT 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) NZT 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) NZT 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 NZT’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 NZT’s control and if reasonably requested to do so by the undertaker NZT must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

Miscellaneous provisions

9.—(1) NZT and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

Dispute resolution

10.—(1) Article 46 (arbitration) of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Schedule must be referred to—

- (a) a meeting of the Owners Representative to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by NZT and the undertaker or, in the absence of agreement identified by the President of the Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

(3) The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

(4) Where appointed pursuant to sub-paragraph (2)(b), the expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a) above;
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a) above; and
- (d) give reasons for the decision.

(5) The expert must consider where relevant—

- (a) the development outcomes sought by NZT and the undertaker;
- (b) the ability of NZT and the undertaker to achieve the outcomes referred to in sub-paragraph (a) above in a timely and cost-effective manner;

- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under the NZT Order or the Order, NZT's or the undertaker's outcomes could be achieved in any alternative manner without the NZT Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

(6) Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the Law Society.