

From: [Neil Bromwich](#)
To: [West Midlands Interchange](#)
Cc: [Andrew Hubbard \(ahubbald@westernpower.co.uk\)](#); [REDACTED]
[REDACTED] [Laura-bethHutton@eversheds-sutherland.com](#); [MoragThomson@eversheds-sutherland.com](#);
[peter.frost@kilbridegroup.com](#)
Subject: West Midland Rail Freight Interchange Order ref TR050005 [OC-OC_UK.FID3148335]
Date: 25 October 2018 16:30:56
Attachments: [Protective Provisions - WPD \(Agreed form\).PDF](#)

Dear Sirs,

We act for Western Power Distribution (West Midlands) Plc ("WPD") in connection with this matter.

WPD has numerous interests in the application site of the proposed DCO, together with significant apparatus and equipment. These interests, assets and equipment are all integral to its distribution of electricity in the surrounding areas. It is essential that the proposed development does not adversely affect WPD's operations in any way, and adequate arrangements must therefore be put in place in order to safeguard its undertaking.

WPD has engaged proactively with Four Ashes Ltd in advance of the application being submitted, in order to agree a set of protective provisions for the satisfactory protection of WPD. These protective provisions have now been agreed (in the form attached), and provided they are included within the DCO – WPD has no objection to the proposed scheme.

We therefore request that the agreed protective provisions (in the form attached to this representation) are included within the DCO if the application is granted.

We reserve WPD's right to make further representations in connection with the application in the event that the protective provisions in the agreed form are not included as part of the DCO application.

Yours faithfully

Neil Bromwich

Partner

T: + 44 (0) 117 917 4078

M: +44 (0) 7730 731144

for Osborne Clarke LLP

2 Temple Back East, Bristol BS1 6EG

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FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED

1. For the protection of WPD the following provisions are, unless otherwise agreed in writing between the undertaker and WPD, to have effect.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents or permissions required by WPD to permit a diversion of apparatus or to authorise the construction of alternative apparatus

“apparatus” means any conduit overhead electric lines cables ducts pipes or other apparatus or equipment belonging to or maintained by WPD for the purposes of electricity transmission and its distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“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 or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“WPD” means Western Power Distribution Limited (West Midlands) Plc (Company Registration Number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that WPD's apparatus is relocated or diverted, that apparatus shall not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land or gain access to it shall not be extinguished without the prior consent of WPD until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary all to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus—

- (a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.
- (b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (2)(a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2)(a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph 2(b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to subparagraph (2) shall be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 10.

(4) WPD shall, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 10.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert shall make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker shall submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of

the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (3) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker shall comply with WPD's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014)*, the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If WPD in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (3), sub-paragraphs (1) to (8) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(7) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(8) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

8. The undertaker shall repay to WPD the reasonable expenses incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection arising as a result of the powers conferred upon the Undertaker pursuant to this Order.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) make reasonable compensation to WPD for any other expenses, loss, damages, penalty or costs incurred by WPD, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Expert Determination

10.—(1) Subject to sub-paragraph (7) Article 49 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Schedule must be referred to and 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 the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) 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.

(5) The expert must—

- (a) invite the parties to make submission 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) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, 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 arbitration under article 49.