

# WS010005 / East Northants Resource Management Facility Western Extension

## Post-examination Submissions

**Last updated:** 2 November 2022

**Date Examination Closed:** 2 August 2022

**Date of Recommendation Report:** 2 November 2022

**Date of Decision:** 2 February 2023

This document lists submissions that have been submitted by any party either to the Planning Inspectorate or the Department and accepted since the examination closed.

The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

<b>Submissions made to the Planning Inspectorate during Recommendation stage</b>				
No.	Name / Organisation	On behalf of	Receipt Date	Sent to SoS
PIR-001	Addleshaw Goddard LLP	National Grid Gas plc	3 August 2022	2 November 2022
PIR-002	Osborne Clarke LLP	Western Power Distribution (East Midlands) Plc	25 August 2022	2 November 2022
PIR-003	MJCA	Augean South Ltd	2 September 2022	2 November 2022

## **A. Submissions made to the Planning Inspectorate during Recommendation stage**

Numbers: PIR-00, PIR-002 & PIR-003

**From:** [Jones, Charlotte](#)  
**To:** [East Northants Resource Management Facility Western Extension](#)  
**Subject:** East Northants Resource Management Facility Western Extension DCO - Network Rail Infrastructure Limited  
- Withdrawal of Objection [ADDGDD-LIVE.FID3710655]  
**Date:** 03 August 2022 13:36:25  
**Attachments:** [CURRENT DCO Protective Provisions - National Grid Gas - East Northants.PDF](#)

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Dear Sir or Madam

**IP Reference: 20029863**

In light of the Applicant and National Grid having entered into an agreement providing for, amongst other things, the inclusion and retention of National Grid's protective provisions in the Applicant's DCO, National Grid hereby withdraws its objection to the DCO Application. National Grid however notes that its withdrawal is subject to the Applicant's adherence to the terms of the agreement and it reserves the right to make further submissions to the Examining Authority and/or Secretary of State should the terms not be adhered to.

Attached are a copy of the protective provisions agreed for inclusion in the final form DCO.

I would be grateful if you could please confirm receipt of this submission.

Kind regards

Charlotte

**Charlotte Jones**

Associate

**[Addleshaw Goddard LLP](#)**

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# PROTECTIVE PROVISIONS

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER

#### Application

1.(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

1(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

1(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

#### Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“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 “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 with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works 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”, such policy shall include (but without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid; and

(b) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc to a total liability cap of

£100,000,000.00 hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, 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); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Gas Plc to cover the undertaker's liability to National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means:

National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Grid pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Grid’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Grid by any person or loss suffered by National Grid under the Network Code arising out of or in connection with any failure by National Grid to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Grid as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### **On Street Apparatus**

3. Except for paragraphs 7 (*retained apparatus: protection*) and 8 (*expenses*) and 9 (*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 National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of land**

4. (1) *Regardless* of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of

such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 9 or 10 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

5.—(1) If, the undertaker acquires any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan 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 National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other 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 (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour 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 the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) 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 National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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.

### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use,

maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) 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 less favourable on the whole to National Grid 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 matter may be referred to arbitration in accordance with paragraph 13 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of gas undertaker**

7.(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe —

- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid 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 National Grids' satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such



works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) 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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(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 will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 8.

## **Expenses**

**8.(1)** Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid 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) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); or
- (b) 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;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) 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) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part 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 Part 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 arbitration in accordance with paragraph 13 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of 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 National Grid 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 National Grid 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 National Grid 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**

9.—(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 Part of 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid 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 National Grid 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 National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid 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 7 (*consent to transfer benefit of 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 will be subject to the full terms of this Part of this Schedule including this paragraph 9.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, 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) National Grid 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) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied:

- (a) unless and until National Grid 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 shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works which constitute specified works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with 9(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**10.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

11.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 5(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7 the undertaker shall 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 works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

## **Access**

12. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

13. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 20 (*arbitration*).

## **Notices**

14. Notwithstanding article 19 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

**From:** [Arthur Hopkinson](#)  
**To:** [East Northants Resource Management Facility Western Extension](#)  
**Cc:** [Josh Taylor](#)  
**Subject:** WS010005 - Western Power Distribution (East Midlands) Plc - Withdrawal of objection to East Northants Resource Management Facility Western Extension DCO [OC-OC\_UK.FID4223730]  
**Date:** 25 August 2022 14:45:51  
**Attachments:** [0.png](#)  
[L to PINS - WS010005 - WPD - Withdrawal of Holding Objection - 25 August 2022.pdf](#)

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To whom it may concern,

We continue to act on behalf of Western Power Distribution (East Midlands) Plc in respect of the above DCO.

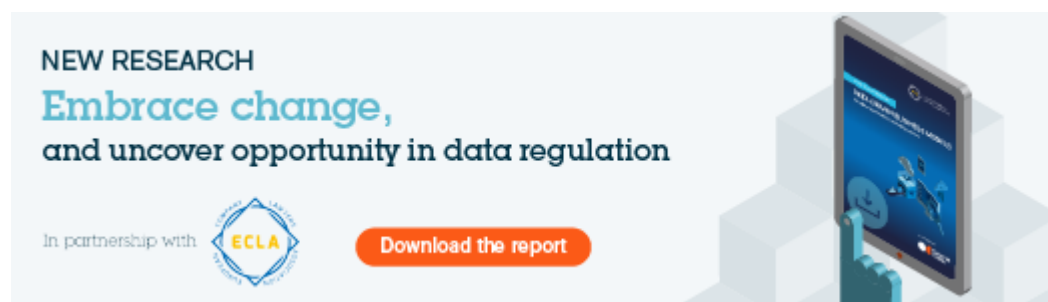
Please see the attached correspondence relating to WPD's outstanding relevant representation.

Yours faithfully,

Arthur

**Arthur Hopkinson**  
Associate  
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**FAO Simon Warder**  
Planning Inspectorate  
National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Our reference    AHPK/1156436

Your reference    WS010005

By email only to [ENRMFextension@planninginspectorate.gov.uk](mailto:ENRMFextension@planninginspectorate.gov.uk)

**25 August 2022**

To whom it may concern

**Application by Augean South Limited for an Order Granting Development Consent for the East Northants Resource Management Facility Western Extension (the "Application")  
Western Power Distribution (East Midlands) Plc – Withdrawal of Holding Objection**

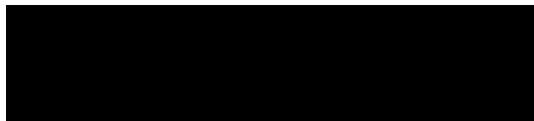
We act on behalf of Western Power Distribution (East Midlands) Plc (**'WPD'**) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

WPD objected to the Application in a relevant representation submitted to the Planning Inspectorate on 8 December 2021.

WPD and Augean South Limited have reached agreement on the commercial terms for the protection of WPD's apparatus and entered into an asset protection agreement on 24 August 2022.

Therefore, please accept this letter as WPD's withdrawal of its objection to the Application.

Yours faithfully



**Osborne Clarke LLP**



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**From:** [Leslie Heasman](#)  
**To:** [East Northants Resource Management Facility Western Extension](#)  
**Cc:** [Williams, Tracey](#); [Parker, Steven](#)  
**Subject:** East Northants Resource Management Facility (WS010005)  
**Date:** 02 September 2022 12:18:57  
**Attachments:** [7.5 SoCG between Augean South and Western Power.pdf](#)

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2 September 2022

Dear Steven

**East Northants Resource Management Facility (WS010005)**

We understand that Western Power Distribution (East Midlands) PLC have now sent a letter to PINS withdrawing their holding objection. Following conclusion of the legal agreements, please find attached the final signed version of the SoCG between Augean South Ltd and Western Power Distribution (East Midlands) PLC. We should be grateful if this document can be provided to the Examining Authority.

Kind regards

Leslie

Attachment

7.5 SoCG between Augean South and Western Power

[www.mjca.co.uk](http://www.mjca.co.uk)

Our ref: AU/KCW/SPS/1724/01/28396

*AU\_KCWp28396 FV*

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**FINAL FOR SUBMISSION TO PINS**

**EAST NORTHANTS RESOURCE MANAGEMENT  
FACILITY, STAMFORD ROAD,  
NORTHAMPTONSHIRE**

**STATEMENT OF COMMON GROUND BETWEEN  
AUGEAN SOUTH LIMITED AND WESTERN POWER  
DISTRIBUTION (EAST MIDLANDS) PLC**

Report reference: WS010005/SOCG/WP/V7  
August 2022

**PINS document reference: 7.5**



Technical advisers on environmental issues

---

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Table 1	Responses to the specific questions raised in Annex E to the Rule 6 letter dated 6 January 2022, matters raised in the Relevant Representation from Western Power and other matters
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This report has been prepared by MJCA with all reasonable skill, care and diligence, and taking account of the Services and the Terms agreed between MJCA and the Client. This report is confidential to the client and MJCA accepts no responsibility whatsoever to third parties to whom this report, or any part thereof, is made known, unless formally agreed by MJCA beforehand. Any such party relies upon the report at their own risk.

**1. Summary**

- 1.1 This document comprises a Statement of Common Ground agreed between Augean South Limited and Western Power Distribution (East Midlands) plc. It sets out the areas and issues on which the parties are agreed and identifies any material differences between the parties in order to assist the Examining Authority.

## 2. Introduction

2.1 This document comprises the Statement of Common Ground agreed between Augean South Limited and Western Power Distribution (East Midlands) plc (Western Power). The document has been prepared to assist the Examining Authority to identify the areas of agreement and any material differences between the parties.

2.2 Liaison between Augean and Western Power has been ongoing since December 2019. A meeting was held on 15 January 2021 to discuss the standoff to the water main, easement and crossing agreements for the diverted electricity cable together with the potential route for the diverted cable. The design drawings were provided to Western Power on 3 February 2021. The initial principal concerns for Western Power are the standoff distances, the design of the adjacent landfill areas and the location of the diverted electricity cable. Liaison has continued throughout the Examination period.

### **Environmental setting and description of the site**

2.3 The details of the site location, description and environmental setting and other information are set out in section 3 and Figures ES1.1 (PINS document reference 5.3.1.1) (APP-050), ES1.2 (PINS document reference 5.3.1.2) (APP-051), ES3.2 (PINS document reference 5.3.3.2) (APP-055), ES3.3 (PINS document reference 5.3.3.3) (APP-053) and ES5.1 (PINS document reference 5.3.5.1) (APP-054) of the Environmental Statement (PINS document reference 5.2) (APP-049) including the locations of and distances to properties and sites of ecological interest in the vicinity of the site.

2.4 There are a number of services which cross the proposed western extension and which are in the vicinity of the site. The services at and in the vicinity of the site are shown on Figure ES3.3. Overhead electricity cables owned by Western Power run along the western boundary of the existing ENRMF before turning in a north westerly direction across the northern section of the proposed western extension. Two water mains cross the northern part of the southern section of the proposed western extension.

### 3. The proposed development

- 3.1** The proposed development is described in sections 4 to 9 of the Environmental Statement.
- 3.2** Work No 5 in the draft DCO (PINS document reference 3.1) (REP6-003) and shown on the Works Plan (PINS document reference 2.3) (AS-008) comprises the diversion of the overhead electricity cable that crosses the proposed western extension to a trench to the north of the water pipelines across the proposed western extension and then follows the western margin of the site to the northern corner.
- 3.3** The principles of the current and proposed design of the engineered containment of the landfill site are described in section 5 and in detail in section 5.5 of the Environmental Statement. The landfill will be constructed in phases and each phase will be subject to the preparation of a detailed engineering design which will be submitted to the Environment Agency for approval under the Environmental Permit prior to its construction. The specification for the low permeability basal and side wall engineered liner and capping layer for the existing ENRMF landfill is agreed with the Environment Agency in accordance with the Environmental Permit through Construction Quality Assurance (CQA) Plans prepared and agreed for each area of engineering and these principles will continue for the proposed western extension. The design of the containment engineering includes a Stability Risk Assessment for the designed slopes. The construction of the engineered containment is the subject of independent CQA including testing as specified in the agreed CQA Plan and a Verification Report is issued to the Environment Agency following the completion of construction of each stage. Waste cannot be placed into a newly engineered area until the Environment Agency have approved the Verification Report.
- 3.4** The restoration contours for the final restored landform are shown on Figure ES5.5 (PINS document reference 5.3.5.5) (APP-059). In accordance with good practice for landfill sites the final profile of the landfilled waste and the low permeability capping layer is designed to form a stable slope which will encourage shedding of rainfall to minimise infiltration and as a consequence to minimise the generation of leachate which is the contaminated liquid formed when water infiltrates into the waste and which is collected in the base of the site. The proposed afteruse of the restored site is to a mixture of woodland with shrubby edges, flower meadow grassland, scattered trees

and hedgerows. Surface water will be managed during the operation of the site and following the completion of the restoration.

#### 4. Design of the site

- 4.1** As stated in Section 3 the design of the site is the subject of a Stability Risk Assessment which has been submitted to the Environment Agency as part of the Environmental Permit variation application for the landfill to incorporate the western extension. The design is consistent with that used for the current landfill site. The risk assessments submitted with the Environmental Permit application, including the Stability Risk Assessments will be reviewed and approved by the Environment Agency as part of the consideration of the Environmental Permit variation application to extend the boundary of the landfill facility.
- 4.2** All excavated side slopes in the western extension area will be cut at a maximum gradient of 1v:2.5h. The basal lining system will comprise a minimum 1m thick compacted low permeability clay liner with a 2mm thick smooth high density polyethylene (HDPE) geomembrane. Once landfilling operations have been completed in each phase the phase will be capped. A 1m to 1.5m thickness of restoration materials will be placed over the cap.
- 4.3** As described in paragraph 6.3 of this document, a standoff distance of 20m will be retained either side of the water pipeline. Fencing will be erected on the agreed standoff line. The electricity cable will be located within the 7m to 30m standoff from the water pipeline and will be a minimum distance of 3.5m from the water pipeline. The landfill excavation limit will be at a minimum of 2.5m from the fencing to provide access for site operations. The restoration soils will not extend beyond the fencing.

**5. Specific issues raised in the Rule 6 letter**

- 5.1** A number of issues have been identified by the Examining Authority in Annex E to the Rule 6 letter dated 6 January 2022 which should be considered in this Statement of Common Ground. These points are listed in Table 1 to this document together with the other matters raised in the Relevant Representation and agreed comments in response to each.



## 6. Requirements in the draft DCO

6.1 Protective Provisions are referred to in Article 15 of the draft DCO and are presented in Schedule 6. The parties have agreed the Protective Provisions appended to the draft DCO at Part 2 of Schedule 6.

6.2 In Schedule 2 of the draft DCO, Requirement 3 (1) states that the authorised development must be carried out in accordance with the (b) works plan (PINS document reference 2.3) (AS-008), (c) the boundary design principles (Appendix B of PINS document reference 6.5) (REP6-008) and (d) the restored landform profile (PINS document reference 2.9) (AS-010). The works plan shows the existing overhead electricity cable route together with the proposed diversion route for the electricity cable.

6.3 The standoffs from the diverted electricity cable are presented at Appendix B of the DCO Environmental Commitments document v3 (boundaries H, G, F and C shown on Figure DEC B1 and in Table DEC B1 in PINS document reference 6.5) (REP7-008).


- **Boundary H** – There will be between a standoff distance of 20m from the water pipelines. Fencing will be erected at the agreed standoff from the water pipeline. There will be a minimum 3.5m standoff from the water pipeline to the diverted electricity cable and a 3.5m distance to the fencing from the diverted electricity cable. The excavation limit will be at a minimum 2.5m standoff from the fencing. The restoration soils will not extend beyond the pipeline or diverted cable standoff.
- **Boundary G** – The electricity cable will be outside the root protection area but within the 10m ecological standoff area. The fencing will be erected on the boundary of the 10m ecological standoff area. The excavation limit will be at a minimum 2.5m standoff from the fencing. The restoration soils will not extend beyond the line of the fencing.
- **Boundary F** - The electricity cable will be outside the root protection area but within the 10m ecological standoff area. The fencing will be erected on the boundary of the 10m ecological standoff area. The excavation limit will be at a minimum 2.5m standoff from the fencing. The restoration soils will not extend beyond the line of the fencing.

- **Boundary C** - The electricity cable will be outside the root protection area but within the 10m ecological standoff area. The fencing will be erected on the boundary of the 10m ecological standoff area. The excavation limit will be at a minimum 2.5m standoff from the fencing. The restoration soils will not extend beyond the line of the fencing.
- 6.4** The protective provisions which have been agreed by the parties together with the details set out in Paragraphs 6.1 and 6.2 will be sufficient to protect the Western Power interests.
- 6.5** It will be necessary for Augean to cross the diverted electricity cable during the operation of the western extension. Augean will enter into crossing agreements at the appropriate time once the exact location of the diversion route is known to enable crossing of the electricity cable.
- 6.6** It is agreed that the DCO does not contain any powers of compulsory acquisition, therefore Augean will not have the power to override, extinguish or interfere with the existing rights Western Power have.

**7. Agreement**

**7.1** This statement has been agreed between Augean South Limited and Western Power

Signed:



On behalf of Augean South Limited

On behalf of Western Power Distribution  
(East Midlands) plc

Date: 31 August 2022

Table 1

**Responses to the specific questions raised in Annex E to the Rule 6 letter dated 6 January 2022 and matters raised in the Relevant Representation from Western Power**

Issues raised at Annex E to the Rule 6 letter	
Issues raised	Position of the parties
The overhead line which crosses the site and the proposal for its diversion	<p>The parties agree that, as stated in paragraph 3.2 of this document, the route for the proposed electricity cable diversion is shown on the Works Plan (PINS document reference 2.3) (AS-008).</p> <p>The parties agree that the exact route will be within the limits shown on the Work Plan but will be determined based on the ground conditions when the works are undertaken.</p>
The protective provisions set out in the dDCO and other matters raised in Relevant Representation (RR-012)	<p>The Protective Provisions have been agreed and are included in the draft DCO.</p> <p>The inclusion of the agreed protective provisions between Augean and Western Power will allow there to be no detrimental impact on Western Power's electricity network.</p> <p>The draft DCO does not contain any powers of compulsory acquisition, therefore Augean will not have the power to override, extinguish or interfere with the existing rights Western Power have.</p> <p>Western Power and Augean have concluded in principle their discussions in respect of Western Power's assets and outlined the position under a commercial agreement, the terms of which are confidential. The commercial agreement has been executed and completed by both parties.</p>

Issues raised at Annex E to the Rule 6 letter	
Issues raised	Position of the parties
	Following completion of the commercial agreement on 24 August 2022, WPD submitted a letter to PINS for the purpose of withdrawing its holding objection on 25 August 2022.

Other matters	
Other matters	Position of the parties
Following the diversion of the electricity cable rights of access to inspect, maintain, renew and repair the apparatus will be retained	The wording of the draft easement that will be granted by the landowner for the diverted cable route has been agreed as part of the commercial agreement and will be entered into at the appropriate time.
The electricity cable will be diverted within the 7m stand off for the water pipeline	The standoff distances are set out in Paragraph 6.3. The electricity cable will be diverted within the 7m-30m standoff from the Anglian Water pipeline.
The diverted electricity will be 3.5m from the water pipeline	The standoff distances are set out in Paragraph 6.3. The diverted electricity cable will be a minimum of 3.5m from the water pipelines.
Crossing agreements	Augean will enter into crossing agreements at the appropriate time to enable crossing of the diverted electricity cable.