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DCO Application Reference: EN010115
National Grid Electricity Transmission's Reference: 20049242

Dear Mr Johansson

**Five Estuaries Offshore Wind Farm's ('Five Estuaries') DCO Application
Update on the Negotiations between Five Estuaries and National Grid Electricity
Transmission ('NGET')**

We are instructed to represent NGET in respect of Five Estuaries DCO application.

By way of update, the confidential Co-operation Agreement between Five Estuaries, North Falls and NGET is agreed in principle, subject to all parties sign off and execution processes.

Accordingly, it is our understanding that Five Estuaries and NGET are in agreement that NGET's bespoke Protective Provisions (as appended at Appendix 1) should be included in Five Estuaries' draft DCO submitted at Deadline 8.

In any event to avoid any oversight we would be grateful if the Examining Authority could ensure that NGET's bespoke Protective Provisions, which are agreed with the promoter are included in the final DCO as made. These are enclosed with this letter.

If you have any queries, please contact [REDACTED] [@bcplaw.com](mailto:[REDACTED]@bcplaw.com)

Yours sincerely

[REDACTED]

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APPENDIX 1

Bespoke NGET Protective Provisions

Application

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2. In this Part:

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid together with any replacement apparatus, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"EACN Substation Area" means the land shown in the lands plans as plots 17-031, 18-001 and 18-002 within which National Grid intend to construct the New National Grid Substation

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised development;

"National Grid" means National Grid Electricity Transmission Plc, Company Number [02366977, and having its registered office at 1 - 3 Strand, London, WC2N 5EH], which company is promoter of the NTT project;

"New National Grid Substation" means the substation to be constructed by National Grid within the EACN Substation Area as part of the NTT project, and into which the undertaker will connect as part of the authorised development;

"New National Grid Substation Boundary" means the area forming the new National Grid substation located within the EACN Substation Area, which lies or will lie within the final fenceline of that substation site and within which the connection agreement between the undertaker and National Grid Electricity System Operator applies;

"NTT project" means the Norwich to Tilbury Grid reinforcement project, for which National Grid intend to submit a Development Consent Order application.

"Specified Works" means any of the onshore works or activities undertaken in association with the onshore works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus; and/or
- (b) may in any way adversely affect any apparatus; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

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"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGEESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC;

Compulsory acquisition of land and rights

3. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not acquire any interest in land or any apparatus or override any easement or other interest of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not acquire any interest in the part or parts of plots [17-031, 18-001 and 18-002] which is or will be within the New National Grid Substation Boundary, provided that notification of the final location of that substation is received from National Grid prior to the exercise of any power to compulsorily acquire rights over plots [17-031, 18-001 and 18-002] being exercised.

5. Where the undertaker acquires any right in land that is subsequently notified to the undertaker as being within the New National Grid Substation Boundary, the undertaker may not exercise, rely on such right within that boundary unless otherwise agreed.

6.(1) Subject to sub-paragraph (2), the undertaker must not permanently acquire any interest in plots 17-031, 18-001 and 18-002 until the design of the New National Grid Substation has been finalised, and the final location of the undertaker's connection bay has been identified and notified to the undertaker, and the extent of land rights necessary for the connection (cable route location and extent of access rights and easement) has been agreed with National Grid.

(2) Where, before the design of the New National Grid Substation has been finalised and the final location of the undertaker's connection bay has been identified and notified to the undertaker;

- (a) it is reasonably necessary to maintain the undertaker's construction programme, or
- (b) the expiry of temporary possession powers in plots 17-031, 18-001 and 18-002 means that it is necessary for the Undertaker to acquire permanent land rights in plots 17-031, 18-001 and 18-002;

then the undertaker may:

exercise powers under this Order to compulsorily acquire the necessary rights for the cables and access thereto over all of plots 17-031, 18-001 and 18-002 .

7. In so far as National Grid has acquired an interest in plots 17,001, 18,001 and 18,002 and/or is in occupation of any part of those plots, the undertaker may not exercise Temporary Possession Powers over plots 17,001, 18,001 and 18,002 without the prior agreement of National Grid to such exercise being obtained which consent must not be unreasonably withheld or delayed.

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Protection of National Grid apparatus

8.(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not, under the powers of this Order, adjust, remove, alter, divert or interfere with any apparatus owned by National Grid (including any future electric transmission infrastructure in the vicinity of the Order Land which National Grid may require to discharge its statutory duties) otherwise than by agreement.

(2) The undertaker will not seek to acquire or exercise any rights to remove any National Grid apparatus under compulsory powers granted by this Order, including but not limited to the power to:

“install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers)”.

without the prior written consent of National Grid to any such acquisition or exercise being obtained.

9. National Grid’s rights, including without limitation rights to retain, access and maintain its apparatus and any future apparatus where that apparatus is located in the vicinity of the Order Land, which National Grid may require to discharge its statutory duties, will not be impeded throughout any period of temporary possession or survey works authorised by this Order. In exercising such rights within any area of which the undertaker is in temporary possession, National Grid will have reasonable regard to any request by the undertaker which the undertaker advises National Grid is necessary to comply with health and safety obligations and/or any requirement under the Construction (Design and Management) Regulations 2015 as to how National Grid exercises such rights and carries out any works.

Works in the EACN Substation Area

10. At all times after NGET has commenced construction and when the undertaker is:

- (a) working within plots 17-001, 18-001 and 18-002; and
- (b) within any area within the ownership or control of National Grid; and/or
- (c) are carrying out any Specified Works; but
- (d) excepting any works which are works regulated by the connection agreement between the undertaker and National Grid Energy Systems Operator (or a successor thereto) and carried out within the New National Grid Substation Boundary which will be governed solely by that agreement and not this Part;

to comply with paragraphs [11] and [12] of this Part

11.(1) Not less than 56 days before the commencement of any works to which paragraph [10] applies, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to works to which paragraph [10] applies, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe (in so far as is relevant to those works)—

- (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;
- (d) the position of all apparatus;

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- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

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

(5) Any approval of National Grid required under sub-paragraph (4):

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) 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.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), 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 (6) or (8) 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.

(8) 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 Grid's reasonable satisfaction prior to the commencement of the work(s) for which

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protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity in accordance with sub-paragraphs (6) or (8) 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, sub-paragraphs 6 to 8 apply as if the removal of the apparatus had been required by the undertaker.

(10) 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 works to which paragraph [10] applies, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as either 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.

(12) At all times when carrying out any works to which paragraph [10] applies, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Indemnity

12. Where paragraph [10] applies, the undertaker must comply with the following indemnity provision:

(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction use or maintenance or failure of any works to which paragraph [10] applies 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 property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, 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 accompanied by an invoice or claim from National Grid 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 and including STC Claims or an Incentive Deduction 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;

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- (b) any works to which paragraph [10] applies 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 works to which paragraph [10] applies yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph [11]; 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) National Grid 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) 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) National Grid 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 National Grid'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 National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

13. Any dispute arising between the undertaker and National Grid under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 48 (arbitration).