

FAO Graham Sword
Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PM

Our reference JTY/10026163/O170271041.1/JTY

Your reference EN010141

11 September 2026

Dear Graham Sword

RWE Generation UK Plc ("RWE") - Response to Rule 17 Request dated 27 August 2026

We act for RWE whose registered office is Trigonos, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB.

We write on behalf of RWE in response to your letter dated 27 August 2026 requesting RWE to provide you with its suggested form of protective provisions for inclusion within the East Park Energy Development Consent Order (the "**Order**" or "**DCO**").

Background and engagement to date

RWE submitted a relevant representation [REP-1116] on 13 January 2026. RWE has had minimal engagement with the Applicant since its relevant representation and only recently (since August 2026) has engagement on a commercial agreement taken place. Notwithstanding this, RWE is hopeful that it can reach agreement with the Applicant in short order. However, unless and until agreement is reached then RWE maintains a holding objection to the project.

RWE's statutory undertaking

RWE holds an electricity generation licence under Section 6(1) of the Electricity Act 1989 (the "**EA 1989**") and is entitled to exercise powers conferred by Schedules 3 and 4 of the EA 1989. As such, RWE is a deemed statutory undertaker under section 8(1)(a) of the Acquisition of Land Act 1981 and a statutory undertaker for the purposes of Section 127 of the Planning Act 2008.

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RWE is an interested party to the Order by virtue of its retained operational interest in the 400kV underground electricity cable connection (and associated fibre optics and communication cables) between RWE's Little Barford Power Station and Eaton Socon substation. The Little Barford Power Station¹ is a 750MW power station that is crucial to providing electricity – particularly at times of peak demand – to over half a million households.

RWE has long standing existing rights since the mid-1990s in the land immediately surrounding the substation, which is located in the south west of the proposed Order limits. RWE has identified that its interest specifically relates to plots 14-9, 14-12, 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20 of the Order.

The continued and uninterrupted operation of RWE's apparatus is essential to the discharge of RWE's statutory functions in providing security of supply at times of peak demand and to meeting the station's capacity market obligations during grid system stress events. Any interference with or damage to RWE's apparatus, or any obstruction of access to them, would have serious consequences for RWE's ability to fulfil its statutory obligations.

Risk of serious detriment to the statutory undertaking

RWE is concerned that, as currently proposed, the development authorised by the DCO would cause serious detriment to the carrying on of RWE's statutory undertaking, within the meaning of section 127 and/or section 138 of the 2008 Act. In particular, RWE is concerned about:

1. **Compulsory acquisition and/or temporary possession of RWE's apparatus:** the DCO seeks powers of compulsory acquisition and/or temporary possession over the land and interests in apparatus held by RWE. The acquisition of operational land, or the temporary interference with RWE's rights, could materially and seriously impact RWE's ability to carry on its statutory undertaking.
2. **Physical interference with, or proximity of works to, the apparatus:** the construction and/or operation of the DCO project has the potential to cause physical damage to, or interference with RWE's apparatus, including through excavation, vibration, drilling, ground movement, electromagnetic interference, or otherwise. RWE therefore requires an adequate "specified works" trigger to afford RWE the opportunity to engage with the applicant prior to such specified works being undertaken.
3. **Obstruction of or restriction on access:** the carrying out of the authorised development may obstruct or restrict RWE's access to its apparatus for the purposes of inspection, maintenance, repair, renewal, or emergency response, thereby compromising RWE's ability to maintain the safety and integrity of the apparatus and to fulfil its statutory obligations. Such access is essential to RWE's undertaking and **must** be retained by RWE continuously "24/7" and 365 days a year, for the purposes of ensuring that supply of electricity from the power station is maintained without interruption.
4. **Insurance, indemnities and securities:** in view of the critical national infrastructure that RWE is operating, it requires greater levels of protections and assurances in the form of insurance and securities to cover any damage, outages, and/or interference with RWE's statutory undertaking.

The standard form protective provisions included at Part 1 of Schedule 13 of the Order do **not** provide sufficient protection to RWE or coverage of the above points to ensure that there will be no serious detriment to its undertaking.

¹ Little Barford CCGT power plant: <https://uk.rwe.com/locations/little-barford-ccgt-power-plant/>

Bespoke Protective Provisions and side agreement

Accordingly, RWE encloses a set of bespoke protective provisions to provide **suitable protection to its undertaking** in respect of the above points. These protective provisions will need to sit alongside a commercial side agreement which, once completed, will mean that RWE can withdraw its objection to the Order.

To be noted that the protective provisions included at Appendix 1 are in line with 'industry standard' provisions for 400kV apparatus of this nature – as demonstrated by similar provisions included at Part 5 of Schedule 11 and Part 13 of Schedule 11 of the recently made Beacon Fen Energy Park Order 2026².

Conclusion

RWE does not oppose the principle of the development in general terms but has significant and unresolved concerns regarding the impact of the proposed development upon its statutory undertaking, apparatus, land and/or operational infrastructure. Those concerns will only be capable of resolution through the inclusion of adequate and enforceable protective provisions within the DCO (included at **Appendix 1** of this letter) and an associated commercial agreement.

Once RWE is satisfied that appropriate protections are in place it will write to the Examining Authority and/or Secretary of State to confirm the same.

Yours sincerely


Associate Director

for Osborne Clarke LLP

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² <https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010151-001060-Development%20Consent%20Order%20as%20Made%20by%20the%20Secretary%20of%20State.pdf>

APPENDIX 1

Protective provisions for the benefit of RWE Generation UK Plc

FOR THE PROTECTION OF RWE GENERATION UK PLC (RWE)

Application

1. For the protection of RWE the following provisions have effect, unless specific provision to the contrary is agreed in writing between the undertaker and RWE.

Interpretation

2. In this Part of this Schedule—

“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 general third-party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the specified works; and (b) after the construction period of the specified works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of RWE;
- (b) pollution liability for third party property damage and third-party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from the parent company in favour of RWE to cover the undertaker's liability to RWE to a total liability cap of £25,000,000 (Twenty Five Million Pounds) (in a form reasonably satisfactory to RWE and, where required by RWE, 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 RWE to cover the undertaker’s liability to RWE for an amount of not less than £10,000,000 (Ten Million Pounds) per asset per event up to a total liability cap of £25,000,000 (Twenty Five Million Pounds) (in a form reasonably satisfactory to RWE);

“alternative apparatus” means alternative apparatus adequate to the satisfaction of RWE to enable RWE to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by RWE in order to permit or authorise a diversion and to permit or authorise RWE to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant (as defined in the 1989 Act) and any associated fibre optics and communications cables including any structure or support, belonging to or maintained by RWE and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as is given in article 2(1) (interpretation) of this Order;

“emergency works” has the same meaning as in section 52 of the New Roads and Street Works Act 1991;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by RWE (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 RWE'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 or upon land;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by RWE acting reasonably;

“specified works” means any of the authorised development 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 adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2);

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

On street apparatus

3. Except for paragraphs 7 (*retained apparatus*), 8 (*expenses*) and 9 (*indemnity*) of these Protective Provisions which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of RWE, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and RWE are regulated by the provisions of Part 3 (Street works in England and Wales) 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 must not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus of RWE; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of RWE

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 development (or in such other timeframe as may be agreed between RWE and the undertaker) that is subject to the requirements of these Protective Provisions that will cause any conflict with or breach the terms of any easement or other legal or land interest of RWE or affect the provisions of any enactment or agreement regulating the relations between RWE and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as RWE reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between RWE and the undertaker acting reasonably and which must be no less favourable on the whole to RWE unless otherwise agreed by RWE, 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) Save where otherwise agreed in writing between the undertaker and RWE, the undertaker and RWE agree that where there is any inconsistency or duplication between the provisions set out in these Protective Provisions 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 RWE and/or other enactments relied upon by RWE as of right or other use in relation to the apparatus, then the provisions in these Protective Provisions shall prevail.

(4) Any agreement or consent granted by RWE under paragraph 7 or any other paragraph of these Protective Provisions, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

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 RWE's apparatus is relocated or diverted, that apparatus may not be removed under this Part of this Schedule and any right of RWE to maintain that apparatus in that land and to gain access to it may not be extinguished until alternative apparatus has been constructed and alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation, and access to it has been provided, to the reasonable satisfaction of RWE in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give to RWE 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 RWE reasonably needs to remove or divert any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to RWE the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in other land of the undertaker and 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 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, RWE must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and RWE is unable to obtain such alternative rights as are mentioned in sub-paragraph (3), the undertaker and RWE shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), RWE may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between RWE and the undertaker.

(5) Any alternative apparatus to be constructed in land of 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 RWE and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(6) RWE must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration) and after the grant to RWE of any such facilities and alternative rights as are referred to in sub-paragraph (2) to (4), 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.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to RWE in question 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 controlled by the undertaker, that work, instead of being executed by RWE, must be executed by the undertaker –

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and RWE, or, in default of agreement in accordance with article 43 (arbitration); and

(b) without unnecessary delay under the superintendence and to the reasonable satisfaction of RWE.

(8) Nothing in sub-paragraph (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to RWE facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and RWE or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(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 in the opinion of the arbitrator less favourable on the whole to RWE than the facilities and alternative 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 arbitrator must make such provision for the payment of compensation by the undertaker to RWE as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 56 days before the undertaker intends to start the commencement of any specified works the undertaker must submit to RWE a plan in respect of those works.

(2) In relation to specified works, the plan to be submitted to RWE 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;
- (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;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

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

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

- (a) may be given subject to reasonable requirements for any purpose mentioned in sub-paragraphs (5) or (8) provided that any requirements are communicated to the undertaker within a period of 56 days beginning with the date on which a plan is submitted to RWE in accordance with sub-paragraph (1); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any specified work to which sub-paragraphs (1) and/or (2) apply, RWE 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 provided that RWE must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to RWE.

(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 RWE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (8) by RWE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and RWE will be entitled to watch and inspect the execution of those works.

(7) If RWE, in accordance with sub-paragraph (5) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker.

(8) Where RWE 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 RWE's reasonable satisfaction prior to the commencement of any specified works for which protective works are required and RWE must give notice of its requirement for such works within 56 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(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 shall 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 RWE notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6) and (8) insofar as is reasonably practicable in the circumstances.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to RWE (within 30 days of receipt of an itemised invoice or claim from RWE) the reasonable expenses incurred or anticipated by RWE in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus or the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus which may be required in consequence of the powers conferred upon the undertaker pursuant to this Order including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by RWE in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (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 supervision and surveillance of all specified works by RWE and its engineers including the cost of travel; and
- (g) 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 is to 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,

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 article 43 (arbitration) to be necessary as a consequence and for the purpose of the authorised development, 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 RWE by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to RWE in respect of works by virtue of sub-paragraph (1), 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 RWE any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to 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 of authorised development or specified work or any subsidence resulting from any of those works, 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 RWE, or there is any interruption in any service provided, or in the supply of any goods, by RWE, the undertaker must—

- (a) bear and pay the cost reasonably incurred by RWE in making good such damage or restoring the supply; and
- (b) indemnify RWE for any other expenses, loss, damages, penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption or RWE becoming liable to any third party other than arising from any default of RWE.

(2) The fact that any act or thing may have been done by RWE on behalf of the undertaker or in accordance with a plan approved by RWE or in accordance with any requirement of RWE as a consequence of the authorised works 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 RWE 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) imposes any liability on the undertaker in respect of:

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of RWE, its officers, servants, contractors or agents;
- (b) any specified works and/or any other works authorised by this Part of this Schedule carried out by RWE 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 5 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”) any specified works yet to be executed and

not falling within this sub-section 2(b) will be subject to the full terms of this Part of this Schedule including this paragraph 9;

- (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) RWE must give the undertaker reasonable written notice of any such claim or demand and no settlement, admission of liability or compromise, unless payment is required in connection with a statutory compensation scheme, is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) RWE 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) RWE must use all reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within RWE'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 RWE's control and if reasonably requested to do so by the undertaker RWE must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for costs expenses, loss, demands, and penalties reasonably and properly incurred by RWE.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by RWE or in respect of which RWE has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of RWE's apparatus unless and until the undertaker has procured acceptable insurance and acceptable security (and provided evidence to RWE that it shall maintain such acceptable insurance and acceptable security for the construction period of the specified works from the proposed date of commencement of construction of the specified works).

Enactments and agreements

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking 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 specified works the undertaker or RWE requires the removal of apparatus under paragraph 5(2) or RWE makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of RWE's undertaking and RWE shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Whenever RWE'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 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 RWE 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 RWE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RWE, be determined by arbitration in accordance with article 43 (arbitration).