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Our reference AHPK/1262303

Your reference EN010142

14 April 2025

To whom it may concern

Application for a development consent order for the Tillbridge Solar Project (Reference: EN010142)

National Grid Electricity Distribution (East Midlands) plc – Relevant Representation

We act on behalf of National Grid Electricity Distribution (East Midlands) plc ("**NGED**"), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

Background

NGED is the licensed distribution network operator under Section 6 Electricity Act 1989 (the "**EA 1989**") for the area in which the Tillbridge Solar Order 202* (the "**Order**") is proposed to have effect.

Section 9 of the EA 1989 places a duty on NGED as the electricity distributor to develop and maintain an efficient, co-ordinated and economical system of electricity distribution.

The land over which the Order is proposed to have effect includes land in or upon which NGED has legal interests and where NGED may have assets including (but are not limited to) high voltage electricity cables.

NGED needs to ensure that the wider powers being sought in the Order will not have a detrimental impact on NGED's electricity network and its duties under the EA 1989.

This includes ensuring any protective provisions proposed by Tillbridge Solar Limited (the "**Applicant**") are acceptable to NGED and pose no serious detriment to its statutory undertaking and interests.

Engagement between the parties

Recently, there has been engagement between the Applicant and NGED on proposed protective provisions for NGED's benefit to be included within the Order.

The proposed protections take the form of: (1) a set of protective provisions to be included at Part 18 of Schedule 15 to the Order; and (2) a separate commercial side agreement between the parties.

As it currently stands, neither the proposed form of protective provisions nor the commercial side agreement have been agreed between the parties.

There has been progress in negotiating an acceptable form of protective provisions for the benefit of NGED. However, there is one outstanding point yet to be agreed between the parties.

For the avoidance of doubt, the form of protective provisions at Part 18 of Schedule 15 to the draft Order submitted by the Applicant at Deadline 6 [\[REP005\]](#) is the Applicant's preferred version and has not been agreed by NGED.

Separately, NGED provided a draft of the commercial side agreement to the Applicant on 1 April 2025. We are currently awaiting a response from the Applicant on the terms of the commercial side agreement.

In the event that a form of protective provisions and commercial side agreement which is acceptable to NGED cannot be agreed between the parties, NGED considers that the granting of the Order has the potential to cause serious detriment (for the purpose of Section 127 of the Planning Act 2008) to NGED's assets and interests which form part of its undertaking.

Outstanding points between the parties

1. Commercial side agreement

As noted above, the commercial side agreement has not yet been agreed between the parties.

However, we remain hopeful that a form of commercial side agreement acceptable to NGED can be agreed between the parties and completed prior to the Examining Authority submitting its Recommendation Report to the Secretary of State in respect of the Order's application.

2. Protective provisions

As noted above, the protective provisions have not yet been agreed between the parties.

The outstanding point of disagreement relates to Paragraph 286(3) of Part 18 of Schedule 15 to the draft Order submitted at Deadline 6. This Paragraph sets out the ability of NGED to settle cost claims for which the Applicant is responsible for under the protective provisions.

For clarity, we have set out the Applicant's preferred form wording against NGED's required form wording in the table below.

Applicant's preferred wording	NGED's required wording
<i>NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.</i>	<i>NGED must give the undertaker reasonable notice of any 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.</i>

We note that the Applicant, while not prepared to accept NGED's required wording for the benefit of NGED, **has accepted identical form wording for other interested parties in Schedule 15 to the Applicant's final Order submitted at Deadline 6.**

The other interested parties whom benefit from identical wording are as follows:

1. **Cottam Solar Project Limited – Part 5, Paragraph 58(3)**
2. **Gate Burton Energy Park Limited – Part 6, Paragraph 74(3)**
3. **West Burton Solar Project Limited – Part 7, Paragraph 90(3)**
4. **Cadent Gas Limited – Part 9, Paragraph 105(4)**
5. **EDF Energy (Thermal Generation) Limited – Part 16, Paragraph 256(4)**
6. **National Grid Electricity Transmission PLC – Paragraph 272(4)**

Additionally, the Applicant has provided its rationale for this wording in the Applicant's Closing Statement submitted at Deadline 6 [[REP-055](#)] on Page 37. For clarity, we have set out the Applicant's position and NGED's response to the Applicant's position in the table provided at **Appendix 1** to this Representation.

Given that the Applicant has included NGED's required wording for the benefit of other interested parties within the final draft Order, NGED considers that it is reasonable for NGED to benefit from the same level of protection being offered to others.

Therefore, we request that NGED's preferred form of protective provisions as appended to this letter at **Appendix 2** are included as part of any Order which the Secretary of State is minded to grant.

Summary of NGED's Position

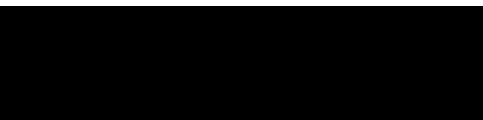
If either:

1. the Applicant's preferred form of protective provisions is included in the final Order, or
2. the parties are unable to agree and complete an acceptable form of commercial side agreement prior to the Secretary of State making its decision with regards to the Order,

NGED considers that the granting of the Order has the potential to cause serious detriment (for the purpose of Section 127 of the Planning Act 2008) to NGED's assets and interests which form part of its undertaking.

Please let us know if we can provide any further information as to NGED's position at this time.

Yours sincerely,



Senior Associate
for **Osborne Clarke LLP**

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Appendix 1

Applicant's position	NGED's response
<p><i>"[the Applicant's preferred wording] ensures approval by the Applicant of any settlement or compromise made on such demands, which is appropriate given the Applicant will ultimately be liable for these claims"</i></p>	<p>NGED's position is that NGED's required wording provides a sufficient degree of protection to the Applicant from a costs claim perspective to allay its concerns. NGED is obligated to: (1) consult the Applicant with regards to any cost claims; and (2) consider their representations with regards to them.</p> <p>This is the same degree of protection provided to the Applicant by six other interested parties on this the same scheme.</p> <p>Additionally, the Applicant's preferred wording prevents the ability for NGED to settle costs claims which NGED is required to do as a matter of law under a statutory compensation scheme.</p> <p>As a distribution network operator, NGED has statutory obligations (including the payment of compensation) to its customers in the event of a network failure or outage.</p> <p>Therefore, NGED's required wording is necessary to ensure that NGED does not breach its statutory obligations to pay compensation because of the need to obtain consent from the Applicant to settle such compensation claims.</p>
<p><i>"The Applicant also considers it is appropriate for the approach [under Paragraph 286(3)] to align between the four Lincolnshire solar projects, given the works in the vicinity of NGED assets may be undertaken by any of the four undertakers"</i></p>	<p>Whilst the alternative wording (preferred by the Applicant) may have made its way into the final Orders on a limited number of other projects, NGED has the right to specify such protective provisions as it considers necessary on a project-by-project basis.</p> <p>NGED also considers it to be unreasonable that its previously agreed protections can be used to fetter its ability to negotiate such protections as it considers reasonable on a project-by-project basis.</p>
<p><i>"The Applicant therefore requests that the Secretary of State prefer the wording it has included for paragraph 286(3) within the Order"</i></p>	<p>For the reasons set out above and the fact the Applicant has accepted identical form wording for six other interested parties in the final draft Order, we request that the Secretary of State includes NGED's required wording if it is minded to grant the Order.</p>

Appendix 2

PART 18
FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION
(EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

Application

275. For the protection of National Grid Electricity Distribution (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (East Midlands) plc, have effect.

Interpretation

276. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED 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 NGED in order to permit or authorise a diversion and to permit or authorise NGED 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(a), belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties; “in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act;

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

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

Precedence of 1991 Act in respect of apparatus in streets

277. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act. No acquisition except by agreement.

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

Removal of apparatus

279.—(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 requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(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 NGED 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.

(3) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker 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 this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED 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), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act 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 NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 287.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with paragraph 287(2) and, after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed by the undertaker under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED 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 NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 287(2); and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) 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 point of connection or disconnection.

Facilities and rights for alternative apparatus

280.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED 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 NGED or in default of agreement settled in accordance with paragraph 287(2).

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

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and

conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

281.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 282, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3).

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

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

(6) If NGED, in accordance with sub-paragraph (2) 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 under paragraph 282(3).

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

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

282.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over

and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(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 authorised development; 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 a utility undertaker 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 the utility undertaker 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.

283.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those 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 those works) or property of NGED the undertaker is to—

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

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

(3) NGED must give the undertaker reasonable notice of any 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

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, claims, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract in respect of each diversion shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

284.—(1) Article 43 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and

Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

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

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 43.