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14 August 2025

Secretary of State for Energy Security and Net Zero
Department for Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2AW

Sent by email to:
TillbridgeSolarProject@planninginspectorate.gov.uk

Planning Inspectorate reference: EN010142

Dear Secretary of State

TILLBRIDGE SOLAR PROJECT - APPLICANT'S RESPONSE TO THE SECRETARY OF STATE'S REQUEST FOR INFORMATION

This letter sets out the responses of Tillbridge Solar Project Limited ('the Applicant') to the Request for Information ('RfI') dated 7 August 2025 made by the Secretary of State for Energy Security and Net Zero ('the SoS').

Book of Reference
The SoS asked the Applicant to provide an update on the ownership of the following plots of land in the Book of Reference, due to questions raised by Mr Tony Cort: 2-04a, 2-04b, 2- 05, 2-08, 3-01, 3-03, 5-06, 6-01, 12-03, 13-05, 13-07, 13-10, 13-11b, 13-12, 13-14, 13-16, 13-17, 13-18, 13-19, 13-20, 15-02, 15-04, 15-06, 15-07, 16-01, 16-01a and 16-03.

In response to the Secretary of State's request the Applicant has reviewed the land ownership details for these plots. As at the date of this letter, the office copies at the Land Registry show:

- 2-04a, 2-04b, 2-05, 2-08, 3-01, 3-03, 5-06, 6-01, 13-10, 13-11b, 13-16, 13-17, 13-18 and 13-19 as being registered to C Nicholson No 1 Settlement (the 'Settlement').
- 12-03, 13-05, 13-07, 13-12, 13-14, 13-16, 13-17, 13-19, 13-20, 15-02, 15-04, 15-06, 15-07, 16-01, 16-01a, 16-03 as being registered to Tillside Ltd ('Tillside').

This aligns with the description of these plots within the Book of Reference **[REP7-008]**.

However, as part of its diligent inquiries for the Scheme the Applicant understands there have been transactions of land from the Settlement to 'Clifford Graham Rowles Nicholson' ('Mr Nicholson') and then again to Tillside. These are not yet reflected in the current registered titles as of 14 August 2025. The Applicant will continue to monitor the Land Registry in respect of these titles and can provide an update to the SoS if changes occur prior to the SoS's decision, should that be requested.

The Applicant and the Settlement are at an advanced stage in negotiations for option agreements, and Heads of Terms have also been agreed for Tillside.

The SoS also asked the Applicant to confirm if there are any other plots for which ownership has changed since the compulsory acquisition negotiations, and to provide evidence for any change where possible.

Notwithstanding the above response, the Applicant has not been made aware of any land interest changes since the most recent version of the Book of Reference **[REP7-008]** was submitted on 8 April 2025.

Protective Provisions
The SoS asked the Applicant to provide an update as to whether agreement has been met on the forms of the protective provisions for the benefit of National Grid Electricity Distribution ('NGED') and EDF Energy (Thermal Generation) Limited ('EDF Energy').

The Applicant can confirm that protective provisions were agreed with EDF Energy during the Examination, as confirmed by the Applicant at Deadline 6 in its Response to the Examining Authority's Third Written Questions **[REP6-054]** at pg 9, Q3.6.2. The protective provisions in the final draft Development Consent Order submitted at Deadline 7 **[REP7-003]** therefore reflects the agreed position between the parties. The Applicant understands this was further confirmed by EDF Energy to the SoS on 7 August 2025.

Since the close of Examination, the Applicant and NGED have continued discussions in respect of their protective provisions. As of the date of this letter, the two parties have agreed a final set of protective provisions for inclusion in the Order. That version is included at **Appendix A**, with tracked changes showing the difference from the version submitted at Deadline 7 for the Scheme.

While the parties are agreed as to the drafting of the protective provisions and an associated side agreement, these are going through the legal completion process. Once that process has completed, the Applicant understands NGED will be in a position to withdraw all outstanding representations to the project.

Acquisition of Land and Rights

Outstanding land interests
The SoS asked the Applicant to provide any updates on outstanding agreement(s) and negotiation(s) with respect to compulsory acquisition or temporary possession matters relating to Mr Nicholas Hill and Mrs Emma Ruth Hill, Mrs Nicola Jane Hulme and Mr Stephen Patrick Harness, and Mr Melville Roy Wilkinson.

With regard to Mr Nicholas Hill and Mrs Emma Ruth Hill, site specific issues and differences between the parties as to what constitutes acceptable commercial terms mean that no agreement has been reached and the position remains as that given in the Schedule of Negotiations and Powers Sought **[REP7-010]**.

Similarly, the status of negotiations with Mrs Nicola Jane Hulme and Mr Stephen Patrick Harness remains as given in **REP7-010**. While the Affected Person has indicated a willingness to enter into a constructive dialogue with the Applicant, no agreement has yet been reached.

Mr Melville Roy Wilkinson has stated that they are opposed to the principle of the development and do not wish to enter into a voluntary agreement with the Applicant. This position has not changed since the end of the Examination.

The Applicant will continue to try to progress voluntary agreement with the above interests, where possible.

Crown Estate
The SoS also asked the Applicant to provide an update on whether agreement has been reached with the Crown Estate for a section 135(1) consent and easement(s).

Both the Applicant and the Crown Estate remain cognisant of the date by which the SoS is required to publish their decision and continue to engage regularly on the s135(1) and (2) consent to narrow the issues. The Applicant is currently considering the latest comments received from the Crown Estate on 13 August 2025 and based on these is confident that the parties are close to reaching agreement to allow the consents to be granted. The Applicant hopes to update the SoS on this matter shortly, and within the timeframes for the SoS's decision.

The Applicant has continued its dialogue with the Crown Estate's agents for their proposed lease of easement for the River Trent crossing.

The Applicant issued a full suite of comments on the Heads of Terms to the Crown Estate's agents on 5 June 2025, and an initial response was received on 18 June 2025.

To summarise discussions to date for the benefit of the SoS, excluding the consideration offer, there are broadly nine items outstanding within the Heads of Terms. At present, the Applicant awaits a substantive response to the comments provided regarding those matters, on 5 June 2025. The Applicant maintains that they are committed to reaching agreement with the Crown Estate on the Heads of Terms prior to the SoS's decision.

Additional Sub-Paragraph in Requirement 8 – Biodiversity Net Gain
The SoS has asked the Applicant to comment on the following proposed additional sub-paragraph to Requirement 8 of the dDCO, in respect of biodiversity net gain (BNG):

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 64.44% biodiversity net gain in area-based habitat units, a minimum of 17.28% biodiversity net gain in hedgerow units, and 22.94% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using a biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body.

While the Applicant considers the original drafting of Requirement 8, by referring to the BNG as secured within the Landscape and Ecological Management Plan (LEMP), provided certainty that the BNG proposed by the Scheme would be delivered, it also recognises the drafting of requirements within recently made Orders which specify the exact percentages of BNG directly within the requirements themselves.

With this context in mind, the Applicant is willing to accept the figures set out within its BNG Report **[AS-062]** being included directly within Requirement 8. The Applicant is confident

that the Report has been robustly and conservatively drafted such that the Scheme would be able to be able to meet these figures even with intervening factors between the assessment and time of final design, such as changes in the baseline environment or minor detailed design adjustments.

The Applicant would however prefer a minor amendment to the drafting of Requirement 8(2) as proposed, such that it would read:

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 64.44% biodiversity net gain in area-based habitat units, a minimum of 17.28% biodiversity net gain in hedgerow units, and 22.94% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' Statutory Metric (February 2024), ~~a biodiversity metric approved by~~ or other biodiversity net gain metric agreed between the undertaker and the relevant planning authority in consultation with the relevant statutory nature conservation body.

These amendments ensure the metric used to calculate the percentages align with the metric used for the production of the BNG Report for the application. This is the basis on which the Scheme has been assessed, and which the Applicant is therefore certain can be met by the Scheme.

The amendments do however retain the flexibility for a different metric to be used, where agreed between the undertaker and the relevant planning authority, in consultation with the relevant statutory nature conservation body. This enables flexibility for a more recent metric to be used if considered appropriate. This amendment also makes it explicitly clear that a change in metric would be where agreed by both the undertaker and the relevant planning authority, as it was considered the drafting proposed by the SoS could have been read to enable a relevant planning authority to unilaterally impose a new metric, without input by the undertaker. This again is to ensure certainty for the Applicant that it will be able to meet the BNG figures committed to.

Addition of Natural England as Consultee to various Management Plans

The SoS asked the Applicant to comment on proposed amendments to several requirements to provide for the inclusion of Natural England as a required consultee for the finalisation of the following Management Plans and documents:

- LEMP (Requirement 7)
- Biodiversity Net Gain Strategy (Requirement 8)
- Construction environmental management plan (Requirement 12)
- Operational environmental management plan (Requirement 13)
- Soil Management Plan (Requirement 19)
- Decommissioning environmental management plan (Requirement 21)

The Applicant notes that Natural England did not make submissions before or during the Examination for the Scheme requesting its addition as a consultee to these documents, which is the reason it is not listed as a required consultee alongside other statutory bodies (such as the Environment Agency, who did request addition as a consultee). The Applicant does not have an issue with Natural England being added as a consultee to these requirements, should Natural England now request this in response to the SoS RFI.

Additional Sub-Paragraph in Requirement 19 – Soil Management Plan

The SoS asked the Applicant to comment on the proposed addition of the following sub paragraph to Requirement 19 – Soil Management Plan:

(4) The soil management plan must set out a programme of soil health monitoring to be undertaken throughout the operational phase of the project.

The Applicant does not consider this addition is necessary, for the following reasons:

- The Framework Soil Management Plan **[REP6-020]** already requires the final Soil Management Plan to "*set out a programme of soil health monitoring to be undertaken throughout the operation of the Scheme to understand the full impact of solar development on soil health*" at paragraph 5.6.6.
- Requirement 19 already includes the requirement at sub-paragraph (2) that "*The soil management plan must be substantially in accordance with the framework soil management plan*"
- The Applicant considers that it is a matter of good drafting, in accordance with Advice Note 15: drafting Development Consent Orders at 16.2, that requirements in respect of management plans can be used to secure mitigation, with the mitigation and control measures themselves being located within the relevant management plans.
- This approach has been taken for all other requirements within Schedule 2 of the draft Development Consent Order – that is, details of what should be included within the final management plans have been captured within the framework version, and the framework version has been secured by the requirement.
- Should the new sub-paragraph (4) be added to Requirement 19, it would be inconsistent with the drafting of the other requirements in the Order, and open the question of what details in those management plans need to be pulled out into the requirements. The Applicant is concerned this would make the requirements overly detailed, and appear to prioritise some elements of the framework management plans over others.

For clarity, the Applicant is not opposed to soil health monitoring during operation, which is why the Applicant included the requirement for it within the drafting of the Framework Soil Management Plan. The Applicant considers the SoS can appropriately rely on the existing drafting of Requirement 19 to secure that framework management plan and its implementation post-consent, as with the other framework management plans proposed.

Flood Risk Assessment

The SoS asked the Applicant to confirm if the updates made on 25 March 2025 by the Environment Agency to the Flood Map for Planning and flood zones have any implications for the Flood Risk Assessment in the Environmental Statement for the Proposed Development, and to provide revised documents if necessary.

Within the **Examining Authority's Written Questions 3 (ExQ3) [PD-012]**, the Examining Authority (ExA) requested the Applicant and the Environment Agency (EA) to review the new National Flood Risk Assessment (NaFRA) dataset launched by the EA in 2024 to understand the context of this new assessment for the Scheme, see ExQ3.14.2.
It was assumed that the ExA was referencing the NaFRA data released in March 2025 and the reference to 2024 was made in error.

The Applicant undertook a review of the NaFRA dataset released in 2025 in response to ExQ3.14.2, which is presented within the **Applicant's Response to Examining Authority's Third Written Questions [REP6-054]**. The results of this review were discussed and agreed with the EA, as presented within the **Statement of Common Ground with the Environment Agency [REP6-042]**, see **Table 2**, Ref. 3.13 on pages 28-31. **Table 1** below presents the summary findings of the NaFRA data review in the context of the Scheme.

Table 1 NaFRA 2025 Data Review

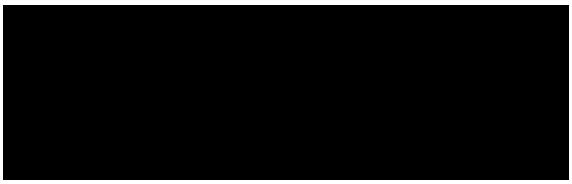
Element of the Scheme within the updated extent of flooding from rivers	Review
Fields 51, 56 and 57	**Appendix 10-3: Flood Risk Assessment** of the ES **[REP4-018]** provided a detailed review of flood risk to these fields on the basis of which a minimum solar panel height of 20.06m AOD within these fields was specified within the **Outline Design Principles Statement [REP4-020]**. The newly published flood mapping indicates a greater flood extent within Field 56, above 20.06m AOD; however, **Appendix 10-3: Flood Risk Assessment** of the ES **[REP4-018]** provides a more detailed assessment of flood risk to these fields, compared to the high-level mapping published for the Yawthorpe Beck. As such the assessment presented within **Appendix 10-3: Flood Risk Assessment** of the ES **[REP4-018]** is considered to remain valid.
Field 70	The updated NaFRA data indicate the extension of flood extents into Field 70. However, the flood extents only extend into areas of proposed landscaping, with no overlap with proposed solar infrastructure.
Principal Site Access 3	The updated NaFRA data indicate the extension of flood extents across Principal Site Access 3. This is an existing access that is proposed to be used during the operation of the Scheme only. No raising of ground levels is proposed at this location and as such, the use of the access for operational purposes will not impact on flood risk.
Field 77	From a review of the topographical survey and the mapping extents for flooding for up to the worst case extent, for up to 1.2m depth, the maximum depth the water would reach in this field is approximately 200mm; with panels set a minimum 600mm above ground level. On this basis it is considered mitigation to raise panels in Field 77 is not required.
Field 68	The lowest ground levels along the southern boundary of Field 68 fall from east to west, from 17.56m AOD, to 16.76m AOD. Comparing the topographical survey to the long-term fluvial flood risk mapping and applying the mapping extents for up to the worst case extent, for up to 1.2m depth, the maximum flood depths relative to the lowest perpendicular ground levels are no greater than 240mm (i.e. in cross section across the floodplain). With a minimum panel height of 600mm above ground, the flood depth at any given point for

Element of the Scheme within the updated extent of flooding from rivers	Review
	solar PV panels in Field 68 will not reach the base of the panel with at least 300mm freeboard still afforded. Therefore, it is considered no mitigation is required within Field 68.

To conclude, the review of the NaFRA dataset released in March 2025 does not result in any changes to **Appendix 10-3: Flood Risk Assessment** of the ES **[REP4-018]** and its conclusions or the design of the Scheme.

The Applicant considers the above response addresses all matters raised within the letter dated 7 August 2025. However, if you have any questions about this letter or the Scheme, please do not hesitate to contact a member of the project team on **info@tillbridgesolar.com** or 0800 046 9643.

Yours sincerely,



Luke Murray

Project Director, Tillbridge Solar Limited

APPENDIX A

Agreed amendments to NGED Protective Provisions

PART 18

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

Application

278. 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

279. 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

280. 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.

281. 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

282.—(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

(a) 1989 c. 29. The definition of "electrical plant" (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27)

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 (expert determination).

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with paragraph 287(2) (expert determination) 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) (expert determination); 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

283.—(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) (expert determination).

(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

284.—(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 (removal of apparatus), 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) (removal of apparatus).

(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

285.—(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.

286.—(1) Subject to sub-paragraphs (2) to (5), 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 ~~such~~third party claim or demand and no settlement, admission of liability or compromise ~~is to~~must, unless payment is required in connection with a statutory compensation scheme, be made without ~~the consent of~~first consulting 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~~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

287.—(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~~ sub-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.