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Closing Statement of Network Rail Infrastructure Limited in relation to The Tween Bridge Solar Farm Order [202[*]] (DCO)

Planning Inspectorate Reference Number: EN010148
Registration Identification Number: FFCFAE925
Applicant: RWE Renewables UK Solar and Storage Limited
Application: Order Granting Development Consent for the Tween Bridge Solar Farm Project

Introduction

Further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Written Representations submitted on 7 May 2026 (**Written Representations**) which confirmed that NR was negotiating the form of protective provisions for the benefit of railway interests (**Protective Provisions**) and a private agreement with RWE Renewables UK Solar and Storage Limited (**Applicant**) (NR and the Applicant together referred to as the **Parties**), we are writing to provide a further update on this matter at Deadline 7.

In advance of Deadline 8, we have been provided with a copy of the form of Protective Provisions which the Applicant intends to submit at Deadline 8. NR acknowledges that some amendments have now been made to the Applicant's proposed Protective Provisions which make the form of such Protective Provisions more aligned with NR's required form of Protective Provisions. However, there are still a number of key matters which remain unresolved, as set out in these representations.

Following our review of the Protective Provisions, NR's position is that these still do not adequately safeguard Network Rail's interests. In particularly the current draft:

(a) Omits a provision restricting the exercise of compulsory acquisition powers by the Applicant in respect of railway property without NR's prior consent;

(b) Excludes indirect and consequential losses from the indemnity under which NR can recover its reasonable costs, charges, damages and expenses incurred as a result of the authorised development from the Applicant. This would prevent NR from recovering any liabilities it incurs as a result of being obliged to pay compensation to train operators under existing train operator company agreements where, for instance, disruption to a train operator's service is caused as a result of the construction or maintenance of authorised development; and

(c) Applies a standard of reasonableness under the ordinary interpretation of the word. As a statutory undertaker, NR is bound to a higher standard of reasonableness due to its statutory obligations to secure the safe and efficient operation of the railway. Where the Applicant's proposed Protective Provisions require NR to act reasonably we would require that wording is added to provide that such reasonableness should be that of a reasonably prudent railway undertaker.

On this basis, NR must maintain its objection to the DCO.

Network Rail requests that the longstanding principle of compulsory acquisition powers not being granted in respect of railway property without NR's prior consent be included in the Protective Provisions which are to be included in the order if made. For the reasons set out in this representation, an absence

of such protection for Network Rail will have a detrimental effect on Network Rail's ability to carry out its statutory undertaking, comply with its Network Licence and safely operate the railway network.

Protective Provisions

The Application includes provisions which would, if granted, authorise the Applicant to carry out works in and in close proximity to operational railway land belonging to Network Rail and to acquire permanent interests in such land. Network Rail must accordingly ensure that the Application is granted subject to protective provisions which provide appropriate protection for the safe and efficient operation of the railway.

A number of elements of the Applicant's proposed Protective Provisions to be submitted at Deadline 8 reflect NR's preferred form and are, to that extent, acceptable for inclusion in the DCO. However, the parties have been unable to agree the wording of paragraph 4, which concerns the restriction on the exercise of compulsory acquisition powers without NR's prior consent (such consent not to be unreasonably withheld). In addition, the exclusion of indirect and consequential losses from the indemnity would leave NR potentially exposed to costs arising from the Promoter's scheme.

Throughout this representation, the deletions requested by the Applicant in their proposed Protective Provisions are struck through, and inclusions are shown below in red.

CPO Restriction

The Promoter requires the deletion of the parts of NR's required form of provision 4 (paragraph 87 of the Protective Provisions on the Order) (as shown below), whereas NR requires the retention of these provisions:

4. (1) The undertaker must not exercise the powers conferred by—

~~(a) article [x] (*development consent granted by the Order*);~~

~~(b) article [x] (power to *maintain the authorised development*);~~

(c) article [x] (*discharge of water*);

(d) article [x] (*authority to survey and investigate the land*);

~~(e) article [x] (*compulsory acquisition of land*);~~

~~(f) article [x] (*compulsory acquisition of rights and imposition of restrictive covenants*);~~

~~(g) article [x] (*acquisition of subsoil only*);~~

~~(h) article [x] (*power to override easements and other rights*);~~

~~(i) article [x] (*temporary use of land* for carrying *out the authorised development*);~~

~~(j) article [x] (*temporary use of land for maintaining the authorised development*);~~

~~(k) article [x] *statutory undertakers*);~~

~~(l) article [x] (*private rights of way*);~~

(m) article [x] (*felling or lopping of trees or shrubs*);

~~(n) article [x] (*trees subject to tree preservation orders*);~~

~~(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~

~~(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article [x] (*statutory undertakers*), [article [x] (*power to override easements and other rights or private rights of way*)] or article [x] [*private rights over land*], in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

~~(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.~~

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or unreasonably delayed but may be given subject to reasonable conditions ~~but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).~~

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

NR is unable to agree to the proposed deletions shown above on the basis that NR cannot permit the exercise of compulsory purchase powers over its land without NR's prior consent being required.

As set out in NR's Written Representations, the Promoter is proposing to compulsorily acquire permanent rights over an operational railway line. If NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that the Applicant could compulsorily acquire an easement over railway land which would not be subject to the conditions, limitations and restrictions typically required by NR (including as required through the business and technical clearance process) to facilitate the safe and efficient operation of the railway.

Such a proposition is patently unacceptable as this compulsory acquisition of rights over railway land would result in NR no longer having control over its operational railway land. This clearly has the potential for catastrophic implications for the operational railway and poses a serious detriment to NR's carrying on of its statutory undertaking.

Although we understand the Applicant's concern that they do not wish to risk delays to the implementation of the DCO scheme, NR would not and could not by virtue of the Protective Provisions seek to delay consent unreasonably. NR's standard wording at paragraph 4 would provide sufficient comfort to the Promoter that NR is not to unreasonably withhold or delay the consent, and that this consent may be given subject to conditions.

The adverse implications of which are that NR may be compromised in its capacity as a statutory undertaker to:

(a) comply with its Network Licence; and
(b) (as a consequence of (a)) ensure the safe and efficient running of trains on the railway – a risk to the public.

NR is of course willing to engage with the Promoter and would be required to act reasonably in agreeing the terms of any easement by virtue of sub-paragraph (6). Further, we understand that negotiations relating to the terms of any easement have since commenced and are ongoing.

However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway and so its consent to the acquisition of such rights must not be circumvented by the powers in the Order.

Reasonableness

As included in our Written Representations, various additions have been made to qualify approvals and opinions of NR and their employees by a standard of reasonableness, e.g. in the reasonable opinion of the engineer at 5(2). Although NR would of course intend to be reasonable and would not seek to unreasonably withhold or delay consent or approvals, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway.

As such, they are bound to a significantly higher standard of reasonableness than that of an ordinary private entity or individual under typical legal standards of reasonableness which are that of the average person with no specific knowledge of railway matters or duties to railway safety.

As such, any standard of reasonableness, should be a higher standard of a reasonably prudent railway undertaker in compliance with its railway undertaking. We propose including the following wording in the protective provisions as a new paragraph:

(3) Where under this Part of this Schedule Network Rail is required to act reasonably, any standard of reasonableness required to be exercised by Network Rail shall constitute the standard of reasonableness to be expected of a prudent railway statutory undertaker acting in compliance with its statutory and regulatory duties.

Further, in respect of matters of ensuring railway safety, for which NR is the statutory undertaker with a statutory duty to uphold, these should be at NR's absolute discretion.

Programme

A new paragraph has been added by the Applicant in red below:

> *(5) Network Rail must have regard to the proposed programme of works for the authorised development as may be made available to Network Rail by the undertaker and ensure that it does not unreasonably impede, interfere with or delay the authorised development PROVIDED THAT impeding, interfering or delaying the authorised development for reasons of ensuring*

compliance with Network Rail's network licence or any other regulatory of statutory duties shall not be unreasonable.

NR acknowledges that the Applicant's proposed programme of works is likely to be an important consideration for the Applicant and does not wish unreasonably to impede, interfere with or delay the delivery of the authorised development.

However, NR does not consider it appropriate for the Protective Provisions to oblige it to have regard to a programme which is discretionary, has not been provided to NR, and appears still to be in the process of being developed. The programme is not a document before the Examination and is, in any event, a commercial construction timetable which may change over time.

More importantly, NR's statutory and regulatory obligations, including its obligations under its Network Licence, must take precedence over any indicative or developing commercial construction programme. NR cannot be required to organise or exercise its railway operations by reference to a programme which has not been agreed with it, particularly where doing so could affect railway safety or the safe and efficient operation of the railway.

Although the proposed proviso recognises that interference or delay arising from compliance with Network Rail's regulatory or statutory duties would not be unreasonable, NR considers that the paragraph remains unnecessary and potentially creates uncertainty as to the extent to which its operational decisions must be assessed against the Applicant's programme.

Carving out recovery of Indirect/Consequential Losses

The Promoter has included at paragraphs 6(2), 9(2), 14, 15(1) an exclusion for indirect and consequential losses as shown below in red.

6. *(2) If any damage to railway property or any such interference or obstruction ~~is~~ shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.*

9. *(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work during a period of 12 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions (subject to Article [X] (no double recovery).*

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which

in the reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any direct loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

14. *Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order as a direct result of and consequence of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.*

15. *(1)The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to the remaining provisions of this part of this Schedule and to article [x] (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—*

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission provided always that Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the

engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

These references limiting recovery to direct losses, while carving out recovery of indirect and consequential losses cannot be agreed as the indemnity required in NR's PPs includes recoverability for indirect costs incurred by NR pursuant to claims made by train operator companies under train operator company agreements.

To provide some further context, NR is liable to train operators under Train Operator Company Agreements (copies of which are publicly available) via automatic, formula-driven mechanisms defined in those agreements.

Where the Promoter's authorised development works trigger an entitlement to compensation for a train operator under those agreements (for example where NR has agreed to book a track possession for the Promoter to carry out works and this disrupts a train operator service) NR automatically pays out compensation to the train operator in a regular payment cycle. Where third parties such as the Promoter trigger those compensation claims, the third parties must be liable for the disruption caused.

The Protective Provisions need to provide that NR's liability is passed onto the third parties causing the disruption which is why the carve out for indirect/consequential losses could extend to include "relevant costs" incurred under such agreements. Otherwise NR, as a public body, would be incurring significant losses as a result of third party schemes disrupting the railway. If such liabilities are not incurred by NR then the Promoter is not required to pay them under the indemnity and so the Promoter is no worse off by their inclusion.

As such this additional carve out wording needs to be deleted from the Protective Provisions, Alternatively, as a compromise, it would be acceptable to include express wording confirming that the exclusion of indirect and consequential losses does not apply to "relevant costs" as defined in the Protective Provisions, thereby preserving recoverability of those costs while excluding other indirect or consequential losses.

These are standard elements of NR's usual indemnity provisions and are reasonably required to enable recovery of such costs where they are incurred.

Further, the proposed addition to paragraph 9(1), which would limit the period within which NR may recover the costs of protective works necessitated by the Applicant's works to 12 months following completion, is not acceptable. For example, if subsidence affecting the track were to occur 13 months after completion of the Applicant's works to lay cables beneath the railway, and protective works were required to ensure the safety of the railway, NR would remain liable for the associated costs notwithstanding that those costs arose as a result of the Applicant's works.

NR understands that the Applicant is seeking to quantify and limit its liability. However, the proposed 12-month limit is too short and would not allow sufficient time for serious or latent defects to become apparent. As a compromise, the shortest period NR could reasonably accept is 36 months following completion, to allow adequate time for any significant issues arising from the works to come to light.

Network Licence

NR operates under a Network Licence granted by the Office of Rail and Road (**ORR**) (a copy of which is appended to this representation). Under the Network Licence, NR is obliged to ensure compliance with a wide number of standards imposed by the Rail Safety and Standards Board that pertain to maintaining the safe and efficient running of trains on the railway. In order to regulate its ability to comply

with such standards, NR must retain stringent restrictions, controls and procedures over any interferences with the railway by third parties, including by reason of persons exercising rights on or over railway land.

Accordingly, where a right is compulsorily acquired over railway land, such right is created without NR's control and may not be subject to the necessary restrictions and conditions that NR would regard as sufficient so as to enable it to comply with its Network Licence. For example, NR may require that rights granted to the Applicant are subject to reservations allowing NR to interrupt the exercise of such right in certain circumstances (such as enabling NR to deal with emergencies on the railway or carry out necessary works). There is a risk of reservations such as this not being imposed where a right over railway land is compulsorily acquired and as a result NR's control over its ability to appropriately manage the safety of the railway could be compromised. The consequences of which could be catastrophic. Moreover, this could lead to a failure by NR to comply with its Network Licence which is not position which can be accepted by NR, nor would it be acceptable to the ORR as NR's regulator.

NR is of course willing to engage with the Applicant to agree the terms of the rights sought and is under a duty to act reasonably in doing so. However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway.

Other Schemes

A restriction on the compulsory acquisition of rights over railway land without NR's consent affected by a promoter scheme is a widely accepted and longstanding principle.

This restriction on the use of compulsory powers on railway land and provision of an indemnity has been accepted by the Examining Authority and Secretary of State on numerous DCOs, a non-exhaustive table of projects including both these provisions is below.

Name of DCO	Paragraph containing Restriction on CPO Powers
A47/A11 Thickthorn Junction DCO	Schedule 9, Part 6, Paragraph 67
Thurrock Flexible Generation Plant DCO	Schedule 8, Part 6, Para 4
Tillbridge Solar Project DCO	Schedule 15, Part 12, Paragraph 143
Sunnica Energy Farm DCO	Schedule 14, Part 10, Para 109
Longfield Solar Farm DCO	Schedule 15, Part 7, Para 71
Hornsea Four Offshore Wind Farm Order	Schedule 9, Part 4, Para 4
Viking CCS Carbon Dioxide Pipeline DCO	Schedule 9, Part 6, Para 66
The Mallard Pass Solar Farm	Schedule 15, Part 7, Para 76
Gate Burton Energy Park	Schedule 14, Part 10, Para 116
East Yorkshire Solar Farm DCO	Schedule 14, Part 6, Para 59
Pear Tree Solar Farm	Schedule 11, Part 7, Para 74
Beacon Fen Energy Park	Schedule 11, Part 10, Para 116
Five Estuaries Offshore Wind Farm	Schedule 9, Part 5, Paragraph 46

Accordingly, there is a wealth of support for these provisions being included in other schemes promoted by the Applicant as well as a number of other solar farm projects.

The purpose of the restriction on compulsory acquisition powers is not to impede the implementation of the Applicant's scheme, but to secure the necessary protection to NR as a statutory undertaker in order that it can properly regulate the rights to be exercised over its railway network and which is appropriate function and purpose of protective provisions. Further, the provision of an indemnity for the benefit of statutory undertakers is a well-established provision to secure necessary protection to statutory undertakers for reasonable and properly incurred costs as a result of the promoter's scheme.

It is accepted that there is some protection for the railway in the currently proposed Protective Provisions, as the Applicant must both (i) enter into an asset protection agreement and (ii) seek NR's prior approval of any plans, before any works commence. However, whilst these requirements secure some comfort for NR in the context of providing some protection for the railway during the carrying out of any works, these protections would not regulate the exercising of the right by the Applicant and the removal of NR's control over such regulation of the right cannot be accepted.

For the reasons set out above, NR must maintain its objection to the application for the DCO and must insist on the inclusion of the form of provision 4 of the Protective Provisions as appended to this representation.

S.127 and S.138 of the Planning Act 2008

In addition to the points set out above 1, without the inclusion of the restrictions on compulsory acquisition at paragraphs 4(1)-(7), NR must also maintain its objection to the DCO on the basis that the proposed compulsory acquisition of rights over railway property does not satisfy the test in section 127 Planning Act 2008 in that:

(a) the rights cannot be acquired without serious detriment to the carrying on of the undertaking; and

(b) such detriment cannot be made good by Network Rail by use of other railway property.

The reason for which is that:

1) the Plot (over which rights are proposed to be compulsorily acquired and temporary possession is proposed to be taken) comprise of operational railway line and/or assets;

2) unless NR has the ability to require its prior consent and require the Applicant to enter into an asset protection agreement prior to the acquisition of such rights/temporary possession in order to ensure any such rights can be carried out in harmony with the operational railway the proposed rights/temporary use have the capacity to cause serious detriment to the carrying on of NR's undertaking as it could interfere with the operational railway line, in particular potentially compromising the safe running of trains and the safety of users of the railway. It is inconceivable that a third party should have compulsory powers to acquire the rights to use railway land without first seeking NR's consent; and

3) as this is an operational railway line such detriment cannot be made good as the line cannot be relocated to other land in the possession of NR (and not least to say requiring NR to relocate its operational railway to facilitate such rights would be entirely disproportionate both in cost and nature).

Accordingly, in order for such proposed compulsory acquisition and temporary possession of the Plot to pass the test in section 127 Planning Act 2008, paragraphs 4(1)-(7) of the Proposed PPs requiring NR's prior consent to be sought must be imposed before powers authorising the compulsory acquisition of such rights are exercised. Network Rail's position is that in the absence of such, the test in section 127 is not satisfied.

In addition, to the extent that the proposed compulsory acquisition of rights and temporary possession over the Plots does involve the extinguishment of any rights or the removal of any apparatus belonging to NR, NR submits that the test in section 138 is not satisfied on the same grounds as set out above.

Conclusion

Network Rail therefore requests that the Examining Authority gives due consideration to the matters raised in this submission and ensures that the final form of the protective provisions adequately safeguards Network Rail’s operational interests and statutory obligations. Further, it should be noted that retention of NR’s preferred protective provisions was acceptable in the Pear Tree Solar DCO, One Earth Solar Farm DCO, Beacon Fen DCO and Five Estuaries DCO.

NR's required form of the Protective Provisions