

PLANNING ACT 2008

Rosefield Solar Farm Development Consent Order Application

EN010158

Deadline 6 Submission

Statkraft UK Limited

Date	12 August 2026
-------------	----------------

Contents

1.	Introduction	3
2.	The East Claydon Project: Interests and Objection	3
3.	Progress of the co-operation and crossing agreements.....	5
4.	Policy context and the need for protective provisions	5
5.	Protective Provisions	6
6.	Compulsory acquisition and the public interest test.....	7
7.	Conclusion.....	8
	SCHEDULE 1.....	9

1. Introduction

- 1.1 Eversheds Sutherland (International) LLP is instructed by Statkraft UK Limited (**Statkraft**) in relation to the application submitted by Rosefield Energyfarm Limited (the **Applicant**) for a Development Consent Order (**DCO**, per the **draft DCO [REP5-006]**) for the 'Rosefield Solar Farm Project' as more particularly described in the application documents (the **Rosefield Project**).
- 1.2 East Claydon Energy Limited (**ECEL**) (a wholly owned subsidiary of Statkraft UK Limited) is the developer of the East Claydon Greener Grid Park (the **East Claydon Project**); a project comprising a battery energy storage system (**BESS**) paired with grid balancing technology to promote grid stability without reliance on fossil fuels, and ancillary infrastructure, in Buckinghamshire. ECEL has secured option agreements for property rights and planning permission for the East Claydon Project.
- 1.3 Statkraft submitted a Relevant Representation on 12 December 2025 [**RR-252**] (the **Relevant Representation**) setting out the nature of Statkraft's interests in relation to the proposed Rosefield Project. Statkraft's Written Representation was submitted on 10 March 2026 [**REP1-134**] (the **Written Representation**), further noting that discussions had been initiated with the Applicant on an interface agreement in relation to the interface between the East Claydon Project and the Rosefield Project. It was noted at that time that Statkraft would endeavour to engage productively with the Applicant to try to find a suitable co-existence arrangement for the projects. In the case that a satisfactory agreement was not capable of being reached between Statkraft and the Applicant, Statkraft maintained its objection to the Rosefield Project and reserved the right to add to, and expand upon, the points set out in its Relevant Representation and Written Representation, including requiring protective provisions to be included in any DCO granted for the Rosefield Project, should that be necessary in due course. This was further confirmed in Statkraft's response to the Examining Authority's First Written Questions [**REP2-108**].
- 1.4 In the period since Statkraft's Relevant Representation, Statkraft has made every effort to engage with the Applicant and progress an interface agreement comprised of a co-operation agreement and crossing agreement (the **Interface Agreement**). Statkraft has received limited engagement from the Applicant in response, including the first set of comments from the Applicant on the Interface Agreement not being issued to Statkraft until more than two months after Statkraft provided the draft Interface Agreement. The Applicant only issued its second round of comments on the Interface Agreement three working days before the date of this submission, which is the final deadline of the examination for third party submissions on the Rosefield Project.
- 1.5 Accordingly, Statkraft submits that its objection has not been addressed by the Applicant, and an interface agreement has not been concluded, nor appears to be close to conclusion. The Applicant has not otherwise addressed Statkraft's objection by amending the powers sought over the relevant land or providing appropriate protective provisions. Statkraft therefore requests that the Secretary of State includes protective provisions for the protection of ECEL in any Development Consent Order granted for the Rosefield Project. Statkraft has provided the required protective provisions at Schedule 1 to this representation.
- 1.6 This submission addresses the questions directed to Statkraft by the Examining Authority in the Examining Authority's Rule 17 Request for Further Information dated 3 August 2026.
- 1.7 Unless otherwise stated, this Written Representation adopts the definitions for terms applied in Statkraft's Relevant Representation.

2. The East Claydon Project: Interests and Objection

- 2.1 As set out in Statkraft's Relevant Representation and Written Representation [**REP1-134**], the East Claydon Project comprises a large BESS, grid balancing equipment in the form of synchronous compensators comprising large electrical machines with flywheels which can replace the spinning turbines of a traditional power station but without emitting any carbon dioxide, and associated infrastructure. It will connect to the grid via the replacement East

Claydon 400kV Substation (the **Replacement Substation**) which is planned to the west of the existing substation. The East Claydon Project will help achieve zero carbon emissions by providing energy storage and stabilising the grid in times of changing energy supply and demand. Consequently, the East Claydon Project plays a critical role in the transition to renewable energy as its deployment of both BESS and synchronous compensators ensures a consistent flow of electricity can be delivered to the grid, without needing to rely on fossil fuels. The East Claydon Project is an essential infrastructure project, delivering much needed energy security whilst enabling the transition towards a zero-carbon economy. It represents a significant investment in the UK's energy infrastructure and will support the Government's Clean Power 2030 objectives.

- 2.2 ECEL (on behalf of Statkraft) has interests within the Order Land by virtue of the Option which grants ECEL an option to acquire rights over the land for the development of energy storage and associated infrastructure. ECEL has secured planning permission with reference 25/01297/APP granted by Buckinghamshire Council on 31 July 2026 for the East Claydon Project (the **EC Planning Permission**). Accordingly, ECEL is a well advanced, consented project with the benefit of land rights and a strong degree of certainty in its deliverability and contribution towards the UK's energy transition objectives.
- 2.3 The interface between ECEL's interests and the Rosefield Project are set out in detail in section 4 of Statkraft's Relevant Representation, along with plans showing the Option Land subject to the Option in favour of ECEL, the redline boundary of the EC Planning Permission, and the proposed layout of the East Claydon Project at Appendices 1, 2 and 3 of Statkraft's Relevant Representation. The interface between ECEL's land interests and the Order Land is the area marked "SA57" on Sheet 7 of the Works Plan (forming part of Work No. 6 Grid Connection Cabling Corridor) and shown as Plot 7/2 of the Land Plans (subject to creation and compulsory acquisition of new rights including where necessary a right to impose restrictive covenants) for the Rosefield Project (referred to as the Interface Land).
- 2.4 The Applicant is seeking, pursuant to Articles 24, 25, 31 and 32 of the draft DCO, powers for the permanent acquisition of new rights (or the imposition of restrictive covenants) over the Interface Land, powers to extinguish or suspend private rights over that land, and additional rights to temporarily use the land during construction or for maintenance purposes. According to Schedule 9 of the draft DCO ('Land in which only new rights etc may be acquired'), the rights over plot number 7/2 are for the purposes of "substation connection rights". This reflects the requirement for the Rosefield Project to connect to the National Electricity Transmission System via a point of connection at the Replacement Substation.
- 2.5 All of plot 7/2 (i.e. the Interface Land) subject to the powers under the draft DCO noted above is located within the area subject to the Option in favour of ECEL, with this encompassing the majority of the Option Land to the south of East Claydon Road.
- 2.6 The Interface Land is critical to the East Claydon Project as it comprises the area through which the East Claydon Project's grid connection infrastructure must pass to connect to the Replacement Substation. The Site Layout Plan of the Planning Permission (see the Planning Application Site Layout Plan at Appendix 3 of Statkraft's Relevant Representation) includes an indicative redline to the northwestern part of the Interface Land for underground cabling to the point of connection for the East Claydon Project at the Replacement Substation. The exact location of the Replacement Substation is not yet known, and the boundary of the East Claydon Project within plot 7/2 is indicative only. ECEL's Option Agreement secures rights over the entirety of plot 7/2 to ensure that ECEL can seek sufficient land rights and any further planning consents necessary to complete the grid connection works up to the Replacement Substation, wherever that may ultimately be located. The permanent acquisition of the Interface Land, exercise of the related powers, or related works to deliver the grid connection for the Rosefield Project in a manner that precludes the grid connection works for the East Claydon Project risks frustrating delivery of the East Claydon Project.
- 2.7 The East Claydon Project is plainly not viable unless it can connect to the grid. It follows that the permanent acquisition of the Interface Land, exercise of the related powers under Articles 24, 25, 31 and 32 of the draft DCO, or related works to deliver the grid connection from the Rosefield Project to the Replacement Substation, risks sterilising the entire East

Claydon Project. Without adequate protection, the compulsory acquisition powers sought by the Applicant pose a material risk to the deliverability of the East Claydon Project.

3. Progress of the co-operation and crossing agreements

- 3.1 Statkraft has made extensive, proactive efforts to reach agreement with the Applicant on an Interface Agreement that would enable both projects to proceed without prejudice to either. Statkraft does not object in principle to the Rosefield Project and has sought to engage constructively throughout. Regrettably, the Applicant has failed to engage in a timely manner, causing significant delay in progressing this matter. The efforts made by Statkraft, and responses from the Applicant, are summarised below.
- 3.2 On 30 April 2026, Statkraft's solicitors issued a comprehensive, balanced and well-advanced draft co-operation agreement and draft crossing agreement (forming the Interface Agreement) to the Applicant following on from the Written Representation and initial discussions with the Applicant. These were bespoke drafts tailored to the two projects and the interface between the parties' infrastructure, presenting a balanced position in order to promote efficient agreement on the terms.
- 3.3 The Applicant did not provide its comments on the Interface Agreement until 8 July 2026, at which time it provided partial, provisional comments on the drafts. In the interim, Statkraft had repeatedly requested the Applicant's comments by correspondence on 14 May, 8 June, 16 June, 19 June, 23 June, 30 June, 2 July, and 7 July.
- 3.4 Statkraft responded to the Applicant's first round of comments promptly on 16 July 2026 and advised that accelerated engagement would be required to agree the terms of the Interface Agreement by 31 July 2026 in order to settle the matter before the close of the examination of the Rosefield Project.
- 3.5 The Applicant did not send its further responses on the Interface Agreement until 7 August 2026, three working days before the date of this submission and the final deadline of the examination for third party submissions on the Rosefield Project.
- 3.6 The result of the Applicant's failure to engage is that the parties have been unable to conclude a negotiated interface agreement prior to the close of examination. This is not for want of effort on Statkraft's part. The Applicant's conduct in the course of the examination – in terms of providing delayed and insubstantial responses to Statkraft's correspondence and repeated requests for engagement – gives Statkraft little confidence that the Applicant will act promptly and proactively engage in relation to the interface between the two projects going forward.

4. Policy context and the need for protective provisions

- 4.1 The UK Government has established a clear policy framework that supports the delivery of low-carbon energy infrastructure. NPS EN-1 (2025) establishes that there is a "critical national priority" for the provision of nationally significant low carbon infrastructure. Battery energy storage systems are urgently required to support the transition to renewable energy sources and NPS EN-1 expressly states that "storage has a key role to play in meeting the Clean Power 2030 Mission, achieving net zero and providing flexibility to the energy system" (paragraph 3.3.26, NPS EN-1).
- 4.2 Statkraft UK is a major provider of grid stability services to support NESO's target to deliver a fully low carbon electricity system by 2035. It is clear that battery storage deployment is a central component of the Government's sustainable energy strategy, with industry and Government being expected to work in partnership and at pace to deliver a decarbonised grid by 2030 and net zero by 2050.
- 4.3 The East Claydon Project represents urgently needed low carbon infrastructure to meet the Government's low carbon and net zero objectives. The East Claydon Project increases the resilience of power supply whilst enabling a greater reliance upon renewable sources of energy. The facility will also provide energy security during outages from other energy generators and provide stabilisation services. BESS infrastructure plays an essential role in

balancing supply with demand and supporting the integration of renewable generation into the electricity system. The advanced stage of the East Claydon Project, as a consented development in position to draw down its agreed land rights and commence construction (subject to progress on the Replacement Substation), makes it well positioned to deliver on its essential role in the short term. That delivery is anticipated to be substantially in advance of the Rosefield Project, but uncertainty around the impact of the Rosefield Project risks delaying the East Claydon Project. Protections that provide certainty for the East Claydon Project must be in place to ensure that its contribution to urgently required low carbon infrastructure is not undermined by the yet-to-be consented Rosefield Project.

- 4.4 Statkraft does not dispute the importance of the Rosefield Project. However, appropriate mechanisms must be in place to ensure that both the East Claydon Project and the Rosefield Project can be delivered. Without protections for the East Claydon Project, the Rosefield Project could materially prejudice the delivery of the East Claydon Project. To the extent that the projects could co-exist, the nature of the construction works to deliver the Rosefield Project at this location, with the associated rights of compulsory acquisition and temporary use sought by the Applicant, could have significant implications for the timely delivery of the East Claydon Project.

5. **Protective Provisions**

- 5.1 Given that an Interface Agreement has not been concluded, despite Statkraft's efforts, for the reasons set out above, protective provisions are the appropriate mechanism to achieve this outcome. In order to ensure that the Rosefield Project does not impede delivery of the East Claydon Project, Statkraft requires protective provisions which ensure that the East Claydon Project apparatus which has the potential to be under construction or already in place prior to construction of the Rosefield Project is appropriately protected and that compulsory acquisition powers will not be exercised in relation to the Interface Land without Statkraft's consent. To facilitate this, Statkraft has provided protective provisions for the protection of ECEL in the Schedule to this submission (the **ECEL Protective Provisions**) and requests that the Examining Authority includes the ECEL Protective Provisions in any Development Consent Order granted for the Rosefield Project.
- 5.2 The ECEL Protective Provisions are aligned with industry standard provisions for interfaces of this nature, and have been included in DCOs on similar terms for interfaces between solar Nationally Significant Infrastructure Projects and other renewable developments and grid infrastructure, such as Cottam Solar Project Order 2024 and the protective provisions in Schedule 15 of that Order for the protection of Gate Burton Energy Park Limited (Part 11), West Burton Solar Project Limited (Part 12), Tillbridge Solar Project Limited (Part 17) and EDF Energy (Therman Generation Limited) (Part 18).
- 5.3 The inclusion of protective provisions for ECEL in the any DCO granted for the Rosefield Project is necessary to ensure that:
- 5.3.1 the Applicant cannot appropriate, acquire, extinguish, suspend, override or interfere with any land, interest, easement, right or apparatus of ECEL otherwise than by express written agreement;
 - 5.3.2 prior to the removal of any apparatus belonging to ECEL, alternative apparatus has been constructed and is in operation to ECEL's reasonable satisfaction;
 - 5.3.3 adequate facilities and rights are provided for the construction, use, maintenance and protection of any alternative apparatus;
 - 5.3.4 ECEL's apparatus is protected during the construction and operation of the authorised development through appropriate notification, plan approval and supervision requirements;
 - 5.3.5 the Applicant is required to indemnify ECEL against any damage to ECEL's apparatus or interruption to ECEL's services caused by the authorised development; and

- 5.3.6 the Applicant is required to provide acceptable security and insurance before commencing works that could affect ECEL's interests.
- 5.4 The Applicant has not proposed any other provisions for the protection of ECEL which would address the concerns raised by Statkraft in its Relevant Representation and Written Representation.
- 5.5 At the point of acquiring an electricity licence under the Electricity Act 1989, the East Claydon Project will fall within the scope of the provisions for the protection of electricity, gas, water and sewerage undertakers in Part 1 of Schedule 15 of the draft DCO. However, those general provisions are not sufficient to address the risks posed by the Rosefield Project to the East Claydon Project due to the nature of the rights in land currently held by ECEL and the likelihood of apparatus of the East Claydon Project being in situ or under construction at the time that the Rosefield Project is undertaking development activities.
- 5.6 Part 1 of Schedule 15 of the draft DCO would not protect the East Claydon Project against or even require its consent to the Applicant extinguishing ECEL's rights under the Option Agreement. Part 1 of Schedule 15 would only require ECEL's consent to the Applicant's acquisition of its apparatus. This limited protection would hamper progress on the East Claydon Project by exposing the Option Agreement or any lease drawn from it to being extinguished or overridden by the Applicant, therefore putting the land rights required for delivery of the East Claydon Project at risk. Legal certainty on the rights already secured by ECEL is necessary for Statkraft to continue to progress and deliver the consented, essential infrastructure forming the East Claydon Project. Moreover, the potential for the East Claydon Project apparatus to be in place or under construction at the time of works being undertaken for the Rosefield Project necessitates appropriate insurance and security provisions, a fixed buffer between the East Claydon Project and works of the Rosefield Project, and provision requiring the Applicant to share detailed plans, method statements and other information on works within that buffer: none of these are appropriately addressed in Part 1 of Schedule 15 of the draft DCO.
- 5.7 Consequently, the ECEL Protective Provisions in Schedule 1 are necessary to protect the well-advanced and consented East Claydon Project and ensure that delivery of this essential low carbon infrastructure is not impeded by uncertainty over its deliverability due to insufficient protections.
6. **Compulsory acquisition and the public interest test**
- 6.1 Section 122 of the Planning Act 2008 provides that compulsory acquisition powers may only be included in a DCO if the Secretary of State is satisfied that the land (which is not common land, open space, or a fuel or field garden allotment) is required for the development to which the consent relates or is required to facilitate or is incidental to that development. Importantly, the Secretary of State must also be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 6.2 It is not in the public interest for indiscriminate areas of land to be acquired in a manner that would prejudice delivery of other critical low carbon infrastructure such as the East Claydon Project. The Planning Act 2008 guidance related to procedures for the compulsory acquisition of land requires the Applicant, amongst other matters, to satisfy the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored, and that the land to be acquired is no more than is reasonably required for the purposes of the development (*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*, UK Government, September 2013).
- 6.3 At present, the Applicant has not demonstrated that the entirety of the land forming Plot 7/2 on the Land Plans is reasonably required for the Rosefield Project, particularly taking into account the level of negotiations with Statkraft to date on a negotiated solution. Any compelling case for the acquisition of the land is also diminished in relation to the Interface Land by the strong case in the public interest for the East Claydon Project, delivery of which is at risk of being prejudiced by the compulsory acquisition powers sought. At present, Statkraft is not aware of any alternatives or modifications that have been explored by the Applicant with regard to the acquisition of rights over the Interface Land. The extent of

Interface Land subject to compulsory acquisition is not justifiable in terms of the legal tests and guidance. The effect of the compulsory acquisition powers sought under the DCO would be to override ECEL's rights as secured by its Option Agreement and/or extinguish the rights under any lease drawn down pursuant to the Option Agreement. Statkraft considers that reasonable efforts have not been made by the Applicant to negotiate an agreement with Statkraft.

7. Conclusion

- 7.1 Statkraft's position remains that it does not object in principle to the Rosefield Project, provided that adequate protections are in place to safeguard the East Claydon Project. Statkraft has sought, in good faith and with considerable effort, to engage constructively with the Applicant to negotiate an Interface Agreement that would manage the interaction between the two projects and enable Statkraft to withdraw its objection. Regrettably, the Applicant has not engaged in a timely or adequate manner, notwithstanding the approaching close of examination. The Applicant's position must be viewed in the context of its lack of meaningful engagement with Statkraft on the interface between the two projects.
- 7.2 Despite Statkraft providing comprehensive, balanced and well-advanced draft agreements on 30 April 2026, the Applicant did not respond substantively until July 2026 and provided its second round of comments only shortly before this final examination deadline for third party submissions. The Applicant has not proposed any other protections for the East Claydon Project.
- 7.3 In these circumstances, Statkraft requires the attached ECEL Protective Provisions to be included in Schedule 15 of the Rosefield DCO to safeguard its interests and protect the delivery of the East Claydon Project.
- 7.4 Statkraft respectfully requests that the Examining Authority recommends to the Secretary of State that the attached ECEL Protective Provisions be included in any grant of development consent for the Rosefield Project and pending inclusion of the ECEL Protective Provisions in the draft DCO, Statkraft maintains its objection to the Application.

Eversheds Sutherland (International) LLP
12 August 2026

SCHEDULE 1

**PROPOSED PROTECTIVE PROVISIONS FOR THE PROTECTION OF
EAST CLAYDON ENERGY LIMITED**

SCHEDULE 15
PROTECTIVE PROVISIONS

PART [X]

FOR THE PROTECTION OF EAST CLAYDON ENERGY LIMITED

Application

1.—(1) For the protection of ECEL, as referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and ECEL.

(2) Where the benefit of this Order is transferred or granted to another person under article 37 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between ECEL and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to ECEL on or before the date of that transfer or grant.

Interpretation

2.—In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc;

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

(i) a waiver of subrogation and an indemnity to principal clause in favour of ECEL; and

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000 (twenty million pounds) in aggregate;

“acceptable security” means either—

(a) a parent company guarantee from a parent company in favour of ECEL to cover the undertaker's liability to ECEL to a total liability cap of £50,000,000 (fifty million pounds) or such lower amount as may be approved by ECEL (granted by an entity and in a form reasonably satisfactory to ECEL and where required by ECEL, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of ECEL to cover the undertaker's liability to ECEL for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) or such lower amount as may be approved by ECEL (in a form reasonably satisfactory to ECEL);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of ECEL to enable ECEL to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, or other apparatus as defined in article 2 of this Order, belonging to or maintained by ECEL together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of ECEL and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning in article 2 (interpretation) of this Order and for the purposes of this Part of this Schedule includes the use, maintenance and decommissioning of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2 (interpretation) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“ECEL” means East Claydon Energy Limited or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by ECEL (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if

exceeded, is to require the undertaker to submit for ECEL's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of ECEL: construct, use, repair, alter, inspect, renew or remove (including decommission) the apparatus;

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

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise.

On street apparatus

3.—Except for paragraphs 4 (apparatus of ECEL in stopped up streets), 9 (retained apparatus: protection), 11 (expenses) and 12 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of ECEL, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and ECEL are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of ECEL in stopped up streets

4.—Notwithstanding the temporary prohibition or restriction of any street or public right of way under the powers of article 12 (temporary prohibition or restriction on use of streets and public rights of way), ECEL is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary prohibition or restriction was in that street or public right of way.

Protective works to buildings

5.—The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of ECEL.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of or entry to any land or apparatus or (b) appropriate, acquire, extinguish, suspend, override or interfere with any easement, other interest or right or apparatus of ECEL otherwise than by agreement, such agreement not to be unreasonably withheld.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between ECEL and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of ECEL or affect the provisions of any enactment or agreement regulating the relations between ECEL and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as ECEL reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between ECEL and the undertaker acting reasonably and which must be no less favourable on the whole to ECEL unless otherwise agreed by ECEL, and the undertaker will use reasonable endeavours to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Save where otherwise agreed in writing between ECEL and the undertaker, the undertaker and ECEL agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by ECEL or other enactments relied upon by ECEL as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.

(4) As a condition of an agreement between the parties in sub-paragraph (1) which relates to taking temporary access rights during construction over ECEL's land, ECEL may ensure that it retains flexibility to alter any construction routes (within the Order Limits) or to limit access for certain time periods, and may require the undertaker to pay any reasonable security and maintenance costs involved in the grant of any such rights.

(5) Any agreement or consent granted by ECEL under paragraph 9 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus may not be removed under this Part of this Schedule and any right of ECEL to maintain that apparatus in that land may not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of ECEL in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to ECEL advance 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 in that case (or if in consequence of the exercise of any of the powers conferred by this Order ECEL reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to ECEL to its satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance, operation and decommissioning of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, ECEL may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for ECEL to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between ECEL and the undertaker.

(5) ECEL must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to ECEL of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for ECEL facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and ECEL and must be no less favourable on the whole to ECEL than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by ECEL.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to ECEL 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 matter may be referred to arbitration in accordance with paragraph 16 (arbitration) of this Part of this Schedule and the arbitrator must make such

provision for the payment of compensation by the undertaker to ECEL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to ECEL a plan of the works to be executed and request from ECEL details of the underground extent of their assets which ECEL must provide to the undertaker as soon as reasonably practicable and within 36 days of the submission of such request.

(2) In relation to specified works the plan to be submitted to ECEL under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) a ground monitoring scheme, where required.

(3) The undertaker may not commence any works to which sub-paragraph (2) applies until ECEL has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) may not be unreasonably withheld and must be provided within 42 days of the date of submission of the plan under sub-paragraph (1).

(5) In relation to any work to which sub-paragraph (2) applies, ECEL may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and ECEL and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by ECEL for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and ECEL will be entitled to watch and inspect the execution of those works.

(7) Where ECEL requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to ECEL's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and ECEL must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If ECEL in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement within 42 days of the date of submission of a plan pursuant to this paragraph, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to ECEL notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works or works authorised by this Part of this Schedule, the undertaker must comply with ECEL's health, safety, environment and quality requirements for contractors, as may be provided by ECEL, and any document that replaces or supersedes them.

Temporary works

10.—(1) Where the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch (or, if ECEL so requires by notice in writing, after a reasonable period specified in such notice) remove any such temporary works.

(2) If the undertaker fails to remove any temporary works within a reasonable period after receipt of notice from ECEL requiring such removal, ECEL may remove such temporary works and recover from the undertaker the reasonable costs of so doing.

Expenses

11.—(1) Save where otherwise agreed in writing between ECEL and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to ECEL within 30 days of receipt of an itemised invoice or claim from ECEL all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by ECEL in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by ECEL in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by ECEL as a consequence of ECEL;

(b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(c) exercising any compulsory purchase powers in the Order transferred to or benefitting ECEL;

(d) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(e) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(f) the approval of plans;

(g) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(h) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 16 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to ECEL by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to ECEL in respect of works by virtue of sub-paragraph (1) will, 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 ECEL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Any sums paid by the undertaker to ECEL under sub-paragraph (1) relating to anticipated costs and expenses will be returned on demand (in whole or in part as applicable) by ECEL to the undertaker if not incurred.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by them) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of ECEL, or there is any interruption in any service provided, or in the supply of any goods, by ECEL, or ECEL becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from ECEL the cost reasonably and properly incurred by ECEL in making good such damage or restoring the supply; and

(b) indemnify ECEL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from ECEL, by reason or in consequence of any such damage or interruption or ECEL becoming liable to any third party other than arising from any default or negligence of ECEL.

(2) The fact that any act or thing may have been done by ECEL on behalf of the undertaker or in accordance with a plan approved by ECEL or in accordance with any requirement of ECEL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless ECEL fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and ECEL.

(3) Nothing in sub-paragraph (1) is to impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of ECEL, its officers, servants, contractors or agents; or

(b) any authorised development or any other works authorised by this Part of this Schedule carried out by ECEL as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 37 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 12; or

(c) any consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) ECEL must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(6) ECEL must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within ECEL’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of ECEL’s control and if reasonably requested to do so by the undertaker ECEL must provide an explanation of how the claim has been minimised, where relevant.

(5) ECEL must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by ECEL or in respect of which ECEL has an easement or wayleave for its apparatus or any other interest or to carry out any works within 20 metres of ECEL’s apparatus until the following conditions are satisfied provided that the following conditions do not apply in relation to any specified works that are undertaken by ECEL—

(a) unless and until ECEL is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with ECEL (acting reasonably) provided evidence that it will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and ECEL has confirmed the same to the undertaker in writing; and

(b) unless and until ECEL is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with ECEL (acting reasonably) provided evidence to ECEL that it will maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and ECEL has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule will prevent ECEL from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

13.—Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between ECEL and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and ECEL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14.—(1) Both parties must act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part of this Schedule.

(2) The undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development.

(3) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or ECEL requires the removal of apparatus under paragraph 7(2) or ECEL makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of ECEL's undertaking and ECEL must use its best endeavours to co-operate with the undertaker for that purpose.

(4) For the avoidance of doubt whenever ECEL's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it may not be unreasonably withheld or delayed.

Access

15.— The undertaker must not obstruct, prevent or interfere with ECEL's access to any apparatus of ECEL.

Arbitration

16.—Any difference or dispute arising between the undertaker and ECEL under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and ECEL, be determined by arbitration in accordance with article 43 (arbitration).

Notices

17.—Notwithstanding article 45 (service of notices), any plans submitted to ECEL by the undertaker pursuant to paragraph 9 must be submitted to ECEL addressed to the company secretary and sent to such address as ECEL may from time to time appoint for that purpose and notify to the undertaker in writing.