

Application by Lime Down Solar Park Limited for an Order granting Development Consent for a solar park

Network Rail Written Representations

Project Reference: EN010168

1. Introduction

- 1.1 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. Network Rail operate the railway infrastructure pursuant to a network licence (the Network Licence) granted under section 8 of the Railways Act 1993. The Network Licence contains a set of conditions under which Network Rail must operate. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (ORR).
- 1.2 Network Rail objects to any compulsory acquisition of rights over, under and across operational railway land and its assets or extinguishment of the rights held by Network Rail over operational railway land or any of its assets. Network Rail also objects to the seeking of powers to carry out works in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking.
- 1.3 Network Rail considers there is no compelling case in the public interest for the compulsory acquisition of rights over its land and the Applicant should negotiate matters by private agreement to secure the necessary powers.

Protective Provisions and relevant agreements

- 1.4 Network Rail has provided the Applicant with draft protective provisions, but no comments have been received. Network Rail's standard protective provisions have been widely incorporated in other Development Consent Order and provide the necessary protections for Network Rail's statutory undertaking ensuring the Applicant does not exercise any rights under the DCO until the necessary agreements and consents are in place.
- 1.5 The current protective provisions do not adequately safeguard Network Rail's rights or operational land. A comparison of the provisions is appended to this response. Though the main differences are:
 - Omits paragraph 4 which requires Network Rail's consent prior to exercising the rights under the Order.
 - Omits paragraph 5 which requires the undertaker not to do anything which would or results in the railway property being incapable of being used or maintained or affect the safe running of trains. This provision is imperative to the safe running of the railway.
 - Obligation to seek NR consent when using or acquiring a new right or imposing a restrictive covenant is deleted.

The above amendments along with other changes have been made without an explanation. The deleted provisions are included in the Network Rail's standard protective provisions as they are imperative to safe operation of the railway.

- 1.6 If the DCO is granted, it would permit the Applicant to acquire rights over operational railway or Network Rail's land and extinguish any rights Network Rail has over land which the

Applicant seeks to acquire permanently. Under the book of reference Network Rail has an interest in over 50 plots.

1.7 Network Rail's main concerns are set out below and were also set out in Network Rail's s42 Consultation response:

1.7.1 Cable Route Corridor & Site Access Via NR infrastructure

1.7.1.1 Network Rail is content to grant an easement (subject to agreed Heads of Terms and any other consents or approvals that may be required) to the Applicant to lay cables under Network Rail's property or for any rights of access that required during the construction phase.

1.7.1.2 Network Rail would welcome further engagement from the Applicant to progress the property agreements so that the rights can be acquired via a private agreement instead of the use of compulsorily acquisition powers under the proposed DCO.

1.7.2 Freight

1.7.2.1 Network Rail has raised this issue previously with the Applicant as it has concerns with need to extend the down freight loop at Hullavington as any future works may impact Network Rail's ability to extend its freights operation (should it need to).

1.7.2.2 Network Rail is currently reviewing the impact on freight and will liaise with the Applicant in due course.

1.7.3 Fencing and Security of the railway

1.7.3.1 Network Rail require the Applicant to ensure that railway boundaries remain secure during the construction and operation of the development to prevent unauthorised access to railway land.

1.7.4 Fire Safety

1.7.4.1 Given the presence of Battery Energy Storage Systems (BESS) within the proposed development, it is essential that robust fire safety measures are in place to prevent potential hazards to railway operations.

1.7.5 Drainage

1.7.5.1 Network Rail has concerns in respect of the drainage infrastructure for the 132KV substation adjacent to the railway. Network Rail will need further details to assess the impact of any surface water run off onto the railway.

1.7.6 Loss of access rights

1.7.6.1 Network Rail have a right to maintain Alderton Tunnel ("the Tunnel"). Though, this right of access wouldn't be exercised unless a problem regarding the structure of the Tunnel was identified during a Tunnel inspection, Network Rail need to maintain this right.

1.7.6.2 There are also hidden ventilation shafts in the tunnel, these shafts were sunk to facilitate the boring of the tunnel at the time of construction. The shafts may have been filled and compacted and therefore liable to subsidence or settlement over the passage of time. Network Rail would have a responsibility if a surface issue arose due to the reduction of support for the land or the shafts due to a defect in the tunnel structure (otherwise landowner responsible).

1.7.6.3 It is therefore imperative, that Network Rail's rights of access are not extinguished.

1.8 In order to facilitate the works, Network Rail will require the following agreements to be in place:

- a) Network Rail's standard protective provisions for inclusion in the DCO, to ensure the relevant protections are in place and agreements are entered into;
- b) Property agreement(s): any easements, licences, and/or transfers for acquisition of freehold land and/or rights (subject to Network Rail's clearance process)

The form of agreements are yet to be negotiated between the parties and will be required to regulate the grant of the required rights from Network Rail to the Applicant.

- c) Asset protection agreements:

These will be in the form of a basic asset protection agreement (BAPA), asset protection agreement, structures agreement or other engineering documents required for the benefit and protection of Network Rail's assets.

- d) Framework agreement: which describes and attaches the documents referred to above including any clearance conditions.

Network Rail considers a Framework Agreement to be the most effective way of; agreeing the inclusion of Protective Provisions required by Network Rail, asset protection agreement, providing for the grant of rights through an option for an easement, providing Network Rail with the comfort of retaining its existing rights, providing for the recovery of Network Rail costs and governing the relationship between the parties.

1.9 Network Rail is trying to engage with the Applicant to enter into private agreements to govern the carrying out of the proposed works.

1.10 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out, would have a detrimental impact on the safe, efficient, and economic operation of the railway and in accordance with its Network Licence. Until such agreements are in place, Network Rail is unable to withdraw its objection to the DCO.

- 1.11 In relation to the acquisition of rights only, section 127 (5) and (6) of the Planning Act 2008 apply. As you are aware compulsory acquisition of rights over statutory undertaker's land can only be acquired if the Secretary of State is satisfied there will not be any serious detriment to the undertaker's carrying on of its undertaking. Network Rail strongly maintains that the works proposed will impede Network Rail's ability to ensure the continued safe, efficient and economical operation of the operational railway, if the works are carried out with the necessary protections in place. As such Network Rail requires robust Protective Provisions and protections in additional agreements as discussed above.
- 1.12 Similarly, under section 138 of the Planning Act, compulsory acquisition powers over Network Rail's rights or apparatus can only be granted where the Secretary of State is satisfied that the removal or relocation will not impair Network Rail from carrying out its statutory functions. The current protective provisions do not provide for sufficient safeguards to be put in place before such rights are extinguished.
- 1.13 Given the national significance of the railway network, Network Rail require their standard provisions to ensure compliance with its licence conditions. Without the relevant provisions, Network Rail does not consider that the draft DCO as currently drafted satisfies the requirements of sections 127 and 138 of the Planning Act 2008, and consequently, compulsorily powers should not be exercised without further safeguards being incorporated.
- 1.14 Network Rail hopes to have all the necessary agreements in place prior to the end of the Examination.
- 1.15 Network Rail has also undertaken a two-stage clearance process; business clearances and technical clearances have been granted for this scheme, subject to conditions, which will need to be complied with by the Applicant.

2. Conclusions

- 2.1 Network Rail does not object to the project in principle. However, Network Rail is under a statutory duty to protect the operational railway and associated railway infrastructure. Network Rail wishes to continue to seek an agreement on the protections and agreements in a form that is well precedented and acceptable to Network Rail before the close of the examination.
- 2.2 In the event, that insufficient progress is made regarding the protective provisions and private agreements, Network Rail would like to reserve its position to request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.

1 May 2026

Network Rail Infrastructure Limited
Standard Protective Provisions for inclusion in Statutory Orders

SCHEDULE [] Article []
PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

70. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 84 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

71. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;-

“construction” includes execution, placing, alteration and reconstruction and “construct” and “and”

“constructed” have corresponding meanings;-

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;-

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;-

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;-

“railway property” means any railway belonging to Network Rail and—

(a) (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and-

(b) (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;-

“regulatory consents” means any consent or approval required under—

(a) (a) the Railways Act 1993;

(b) (b) the network licence; and/or

(c) (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of power to maintain the authorised

development) in respect of such works.

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[\(a\) 1993 c. 43.](#)

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72.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.—

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) ~~(a)~~—co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and—
- (b) ~~(b)~~—use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

- ~~1.—(1) The undertaker must not exercise the powers conferred by—~~
- ~~1.— article [x] (development consent granted by the Order);~~
- ~~2.— article [x] (maintenance of authorised development);~~
- ~~3.— article [x] (discharge of water);~~
- ~~4.— article [x] (authority to survey and investigate the land);~~
- ~~5.— article [x] (compulsory acquisition of land);~~
- ~~6.— article [x] (compulsory acquisition of rights);~~
- ~~7.— article [x] (acquisition of subsoil only);~~
- ~~8.— article [x] (power to override easements and other rights);~~
- ~~9.— article [x] (temporary use of land for carrying out the authorised development);~~
- ~~10.— article [x] (temporary use of land for maintaining the authorised development);~~
- ~~11.— article [x] (statutory undertakers);~~
- ~~12.— article [x] (private rights of way);~~
- ~~13.— article [x] (felling or lopping of trees or shrubs);~~
- ~~14.— article [x] (trees subject to tree preservation orders);~~
- ~~15.— the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~
- ~~16.— the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~
- ~~17.— the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 16;~~
- ~~18.— any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;~~
- ~~19.— [other provisions where the exercise of the powers under that provision would impact on railway property – to be reviewed upon receipt of draft DCO]~~

~~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.—~~

73. ~~(5) The undertaker must not under the powers of this Order do anything which would~~

~~result in railway property being incapable of being Not 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 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.~~

74. ~~(1)~~ (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.-

(2) ~~(2)~~ The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. -If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) ~~(3)~~ If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) ~~(4)~~ When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the ~~engineer's~~ engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.-

75. ~~(1)~~ (1) Any specified work and any protective works to be constructed by virtue of paragraph ~~574(4)~~ must, when commenced, be constructed—

- (a) ~~(a)~~ without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~574~~ 574;
- (b) ~~(b)~~ under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;-

~~(c)~~

- (c) in such manner as to cause as little damage as is possible to railway property; and-
- (d) ~~(d)~~ so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.-

(2) ~~(2)~~ If any damage to railway property or any such interference or obstruction 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 loss which it may sustain by reason of any such damage, interference or obstruction.-

(3) ~~(3)~~ Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.-

76. The undertaker ~~must~~ must—

- (a) ~~(a)~~—at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and-
- (b) ~~(b)~~—supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.-

77. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.-

78. (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 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~~ 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.-

(2) ~~(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 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 574(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.-

(3) ~~(3)~~ The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 4079(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) ~~(4)~~ If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.-

79. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) ~~(a)~~ in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 574(3) or in constructing any protective works under the provisions

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paragraph 574(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;-

- (b) ~~(b)~~ in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;-
- (c) ~~(c)~~ in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;-
- (d) ~~(d)~~ in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and-
- (e) ~~(e)~~ in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.-

80. ~~(1)~~ In this ~~paragraph-paragraph~~-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.-

(2) ~~(2)~~ This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 574(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) ~~(3)~~ Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) ~~(4)~~ In order to facilitate the undertaker’s compliance with sub-paragraph (3) ~~—~~

- (a) ~~(a)~~ the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 574(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) ~~(b)~~ Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to ~~sub~~-paragraph (a); and
- (c) ~~(c)~~ Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to ~~sub~~-paragraph (a).

(5) ~~(5)~~ In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 574(1) has effect subject to the sub-paragraph.

(6) ~~(6)~~ Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph ~~(3)~~ 574(1), the-

testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

- (7) ~~(7)~~ In the event of EMI having ~~occurred~~ occurred—
- (a) ~~(a)~~ the undertaker must afford reasonable facilities to Network Rail for access to the-
undertaker's apparatus in the investigation of such EMI;
 - (b) ~~(b)~~ Network Rail must afford reasonable facilities to the undertaker for access to Network-
Rail's apparatus in the investigation of such EMI;-
 - (c) ~~(c)~~ Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
 - (d) ~~(d)~~ the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.—
- (8) ~~(8)~~ Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-~~paragraphs~~ paragraph (5) or (6) ~~—~~
- (a) ~~(a)~~ Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (b) ~~(b)~~ any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 675.
- (9) ~~(9)~~ To the extent that it would not otherwise do so, the indemnity in paragraph 4584(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph ~~(6)~~ 74 applies.
- (10) ~~(10)~~ For the purpose of paragraph 4079(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

~~81. (11) In relation to If at any dispute arising under this paragraph the reference in article [x] (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.-~~

82. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network ~~Rail's~~ Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.-

83. 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 by reason of the existence of a specified work must, provided that 56 ~~days'~~ 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.-

84.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article ~~43~~ (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) ~~(a)~~ by reason of the construction, maintenance or operation of a specified work or the failure thereof; or-
- (b) ~~(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) ~~(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) ~~(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) ~~(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: 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~~ engineer's supervision shall 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.-

(2) ~~(2)~~ Network Rail ~~must~~—must—

- (a) ~~(a)~~ give the undertaker reasonable written notice of any such claims or demands;
- (b) ~~(b)~~ not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) ~~(c)~~ take such steps as are within its control and are ~~reasonable~~ in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) ~~(3)~~ The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.-

(4) ~~(4)~~ Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.-

(5) ~~(5)~~ The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to ~~subparagraph~~ sub-paragraph (4).-

(6) ~~(6)~~ In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network ~~Rail's~~ Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in ~~subparagraph~~ sub-paragraph (1); and-

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

85. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph ~~4584~~) and with such information-

as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).-

86. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.-

87. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) ~~(a)~~ any railway property shown on the ~~works and~~ land ~~plans~~ plan and described in the book of reference;-
- (b) ~~(b)~~ any lands, works or other property held in connection with any such railway property; and-
- (c) ~~(c)~~ any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.-

88. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.-

89. ~~20~~—The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of ~~State's~~ State's consent, under article ~~37~~ (consent to transfer of the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) ~~(a)~~ the nature of the application to be made;-
- (b) ~~(b)~~ the extent of the geographical area to which the application relates; and-
- (c) ~~(c)~~ the name and address of the person acting for the Secretary of State to whom the application is to be made.-

90. ~~21~~—The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article ~~42~~ (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.-

91. ~~22~~—~~[In relation to any Any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11) the provisions of article 44 (Arbitration) shall not apply and] any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be arbitration in accordance with article 44 (arbitration) and the Rules at Schedule 15 (arbitration rules).~~

PART 7

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

92.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the parties or undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, ~~failing agreement~~ placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” are to be appointed on the application of either party (after giving notice in writing to the construed accordingly;

“drainage work” means any main river and includes any land which provides flood storage capacity for any main river and any bank, wall, embankment or other structure, or any

appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means an occurrence which presents a risk of—

- (a) ~~to the President of the Institution of Civil Engineers.~~ serious flooding which presents an immediate risk to health, life, property or environment;

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