



Lime Down

Solar Park

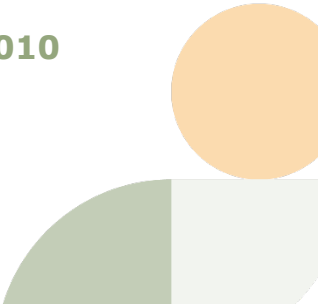
Response to Deadline 6 National Gas Transmission PLC Submission

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1 Response to Deadline 6 National Gas Transmission submission

1.1 Background

- 1.1.1 National Gas Transmission PLC (“**NGT**”) provided a submission at Deadline 6 [**REP6-077**] setting out its position on the status of negotiations with the Applicant regarding protective provisions (“**PPs**”) for the benefit of NGT to be included at Part 4 of Schedule 15 to the **Draft Development Consent Order [REP6-005]**.
- 1.1.2 The reason the Applicant and NGT are negotiating PPs is that the Scheme’s Order Limits intersect an NGT Feeder Main. The Scheme’s layout has already been iteratively designed to limit physical interactions with NGT’s asset as far as practicable and this has been informed by engagement during the pre-application phase. The Applicant is seeking the necessary rights to lay on-site cables (up to 33 kV) and interconnecting cables (up to 132 kV) within relevant plots including 01-044, 01-046, 01-047, 01-048, 01-052, 02-002, 02-010, 03-025, 03-050, as well as the ability to cross over the NGT assets in one designated location in plot 01-054 to accommodate HGV deliveries to the compound during the construction phase.
- 1.1.3 The **Land Rights and Negotiations Tracker [REP6-007]** (“**LRNT**”) has recorded a summary of the discussions between NGT and the Applicant. Good progress has been made on those discussions, however a number of substantive matters remain outstanding. To assist the Examining Authority, the Applicant has provided this more detailed response setting out its position in response to the matters raised in NGT’s submission [REP6-077].

1.2 Acceptable Insurance

- 1.2.1 As set out in the LRNT at Deadline 5, a meeting was held between representatives of the Applicant and NGT on 16 July. Because £50 million of insurance cover over the entirety of the operational phase of the Scheme would be significant and expensive, the Applicant requested further information from NGT to justify its position on insurance for the entirety of the operational phase. NGT confirmed that it would identify what further information it could provide in support of its position and to date that information has not been forthcoming.
- 1.2.2 The Applicant agrees that “acceptable insurance” under the PPs is appropriate to be in place for the construction phase, and during any operational phase maintenance activities captured by the definition of “specified works”. This is on the basis that activities during construction and maintenance that involve ground disturbance are those that present a risk of damage to NGT’s assets. On the basis that insurance is to cover these activities, the Applicant has confirmed acceptance of £50 million to NGT. The Applicant also considers such

a commitment should allow for a lower amount to be agreed between NGT and the Applicant if at the time a lower amount is confirmed to be sufficient.

- 1.2.3 During the general operation of the Scheme there would be no ground disturbance activities occurring and the Applicant has not been provided with any information that supports a position that general operational activities present a risk to NGT's assets. NGT cites risks such as electromagnetic interference during operation adversely affecting Cathodic Protection Systems, and degradation of corrosion protection over time increasing the risk to pipeline integrity (see paragraph 3.3 of [REP6-077]). However, NGT has produced no technical evidence or assessment to demonstrate that these risks are of a nature requiring £50 million cover for the full operational phase.
- 1.2.4 At paragraph 3.4 of [REP6-077] NGT confirms that it does not undertake a bespoke insurance assessment for each project that interacts with its assets. While the Applicant has requested information to understand how £50 million of insurance is required over the whole of the operational phase of the Scheme, the Applicant is yet to receive any technical information that supports NGT's position even on a general basis.
- 1.2.5 The Applicant's position has been accepted by other operators of high-pressure gas pipelines in respect of previously made solar DCOs including **The Cottam Solar Project Order 2024, The West Burton Solar Project Order 2025, and The Tillbridge Solar Order 2025.**
- 1.2.6 In respect of NGT's position that only the Applicant (as undertaker) and not its contractors should procure and maintain the insurance policy, the Applicant notes that, for large-scale energy and infrastructure projects, it is standard practice for the EPC contractor to take out the insurance as a contractual requirement. As the Applicant would be required to evidence that appropriate insurance is in place before commencing any specified works under the PPs the mechanism by which cover is put in place does not undermine the protection afforded to NGT.

1.3 Time period for approval of works plans

- 1.3.1 NGT has requested that approval in relation to works plans under the PPs not be required to be provided within a specified timeframe and simply "not be unreasonably withheld and delayed". Such an open-ended period for approval is provided is inconsistent with the mechanisms under the DCO that are intended to provide the Applicant with certainty of delivery for the Scheme. For example, time periods and the deemed approval mechanisms under Article 47 and Schedule 16 for the discharge of Requirements of the Draft DCO. The Applicant is operating to strict timeframes for a connection date and considers a 42 day period is generous for NGT to provide a response, and is consistent with comparable timeframes that many other statutory undertakers will be operating under for their respective protective provisions.

1.4 Facilities and rights for alternative apparatus

- 1.4.1 The PPs include obligations that the Applicant (as undertaker) must adhere to in exercising powers to acquire any interest or take temporary possession of land in which any NGT apparatus is located. This includes obligations to construct new apparatus or relocate apparatus to an alternative location. Where such relocation or construction of new apparatus is not in land held or secured by the Applicant, or where the Applicant cannot afford the rights and facilities in the land where the alternative apparatus is to be constructed, the PPs require NGT to take reasonable steps to assist the Applicant in obtaining the necessary rights and facilities, where the Applicant provides notice of this request. NGT is requesting that this duty to take reasonable steps is exercised subject to its “sole discretion”.
- 1.4.2 As the successful relocation of NGT’s assets may be critical to the delivery of the Scheme, the Applicant considers a duty for NGT to take reasonable steps to assist on request to be appropriate, as there may be a circumstance where NGT is best placed to provide reasonable assistance that facilitates the relocation of the asset but otherwise elects not to for no reason other than exercising its “sole discretion” to refuse that assistance.
- 1.4.3 Such assistance would be subject to the applicable cost recovery mechanisms under the PPs, and it would still be open to NGT to refuse assistance where it does not consider the request to be reasonable.

1.5 Arbitration

- 1.5.1 NGT has requested that certain matters falling within the protective regime governing works in proximity to retained apparatus be excluded from the scope of Article 44 (Arbitration) on the basis that it must retain ultimate authority over decisions affecting its apparatus.
- 1.5.2 Such an exclusion is inconsistent with the approach taken across comparable made solar DCOs and has previously been considered and rejected by the Secretary of State (see paragraphs 6.6 and 6.7 of the Secretary of State's Decision Letter dated 7 August 2020) in respect of the VPI Immingham Open Cycle Gas Turbine. The Applicant's proposed amendment to paragraph 15 of the PPs is deliberately narrow, removing only paragraph 9 from the list of excluded matters and leaving paragraphs 7(2) and 7(4) outside the scope of arbitration, such that the arbitration mechanism is confined to disputes concerning whether plan approval is being unreasonably withheld or delayed. The Applicant considers that this is suited to independent determination and is essential to ensure the Scheme can be delivered to programme.

1.6 Drafting consistency

- 1.6.1 The Applicant acknowledges NGT’s desire to maintain consistency across PPs drafting for DCOs that interact with its apparatus. The Applicant also seeks

such consistency across the DCOs of projects being promoted by its related entities for the same reasons, except where there are project-specific reasons that justify a deviation in approach.

- 1.6.2 That being the case, it is critical that the PPs remain fit for purpose and workable, and strike a proportionate balance between facilitating delivery of the Scheme while providing appropriate protections for the assets of undertakers. The Applicant does not agree that a desire for consistency with an undertaker's "standard form" PPs can of itself justify the rejection of reasonable and proportionate drafting amendments, particularly where equivalent amendments have been accepted by other operators of high-pressure gas infrastructure on comparable made solar DCOs.
- 1.6.3 As NGT is anticipated to require protective provisions on other projects being promoted by related entities to the Applicant, it is in both parties' interests to agree a consistent approach where practicable across projects. This is consistent with the Applicant's approach taken with other statutory undertakers.

1.7 Conclusion

- 1.7.1 In the absence of further information, the Applicant maintains that its preferred position remains reasonable. However, the Applicant remains open to further constructive discussions with NGT on PPs should further information be provided to support its position.