

NORWICH TO TILBURY DCO APPLICATION

CONRAD ENERGY DEADLINE 8 SUBMISSION

This document sets out Conrad Energy's deadline 8 submission in respect of National Grid Electricity Transmission plc's ('the Applicant') application for development consent for the proposed Norwich to Tilbury Project ('the Project').

This submission:

- responds to the Applicant's deadline 7 submission: Application Under S127 of the Planning Act 2008 (Conrad Energy)–Statutory Undertakers' Land [REP7-517] ("the Applicant's deadline 7 submission"); and
- includes Conrad Energy's preferred protective provisions (see appendix).

Whilst Conrad Energy recognises the need for the Project and does not object to it in principle, Conrad Energy has a number of outstanding concerns about the interface between the Project and its own apparatus, including an existing gas site and proposed solar development, and the proposed compulsory acquisition and temporary possession powers sought over land in respect of which Conrad Energy has an interest. The exercise of the powers sought may adversely affect not only the development, operation and generating capacity of Conrad Energy's development, but also the ongoing investment position.

Conrad Energy has signed a SoCG with the Applicant [REP7-411] but would note the number of outstanding matters under discussion. A number of points included in the SoCG are contingent on a legal agreement being completed between the parties. Conrad Energy is yet to receive a draft set of heads of terms from the Applicant. Until an agreement is in place, Conrad Energy maintains its objection to both the compulsory acquisition and temporary possession powers sought by the Applicant in respect of land Conrad Energy has an interest in.

Response to the Applicant's deadline 7 submission

Conrad Energy makes the following points in response to the Applicant's deadline 7 submission:

- The Applicant has omitted some of the plots Conrad Energy has an interest in from the list at table 1.2. Conrad (Billericay) Limited has an interest in plot G-3/49 (NGET acquiring class 4 rights) and Conrad Energy (Developments) Limited has an interest in plots H-1/6 and H-1/7 (NGET acquiring class 3 rights).
- In the Applicant's reasoning as to why it considers that there would be no serious detriment to Conrad Energy's undertaking, the Applicant refers (see paragraphs 1.9.5, 1.9.6 and 1.9.9 of the document) to the proposed legal agreement between the parties but as this is not a completed agreement (it is not even if draft at this stage) it does not secure any protections for Conrad Energy. Conrad Energy is yet to receive draft heads of terms for the proposed agreement from the Applicant.
- Paragraph 1.9.11 of the document refers to a design change request to "limit any detriment caused to Conrad Energy" but it is stated that the change request is "a detailed design matter which will be subject to review during the DCO decision period". Not only does this statement recognise that there will be serious detriment caused to Conrad Energy, but this is not a matter which is secured by the DCO and cannot be relied on at this stage.
- In response to paragraph 1.9.7 and 1.9.8, Conrad Energy does not consider that the existing protective provisions in the draft DCO (at part 1 of Schedule 16) adequately protect its interests.

Conrad Energy's preferred protective provisions

If an agreement is not completed between the parties by the time the Secretary of State is making a decision on the application, Conrad Energy requests that the form of proactive provisions appended to this submission is included in any made DCO to ensure the necessary protections for Conrad Energy are secured.

Part [X]

FOR THE PROTECTION OF CONRAD ENERGY

Application

1. The provisions of this Part apply for the protection of Conrad Energy unless otherwise agreed in writing between the undertaker and Conrad Energy.

Interpretation

2. In this Part:

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than:

- (a) “A-” if the rating is assigned by Standard & Poor’s Ratings Group; and
- (b) “A3” if the rating is assigned by Moody’s Investors Services Inc;

“acceptable insurance” means a policy of public liability/third party liability insurance effected and maintained by the Undertaker with insurance cover of not less than £10,000,000 (Ten million pounds) per event for the construction period of the infrastructure for the Project with an internationally recognised insurer of repute operating in the London and worldwide insurance market, such policy shall include (but without limitation) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £5,000,000 (Five million pounds) per event or £10,000,000 (Ten million pounds) in aggregate;

“apparatus” means the cables, solar panels, structures, gas infrastructure and other associated infrastructure in construction pursuant to the Conrad Energy existing permission or belonging to or maintained by Conrad Energy together with any replacement apparatus, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"commence" in this Part of this Schedule shall include any site clearance, demolition, ecological mitigation, early planting of landscaping works, below ground surveys, monitoring, groundwork operations including pre-construction monitoring and remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the erection of welfare facilities, creation of site accesses and the temporary display of site notices or advertisements, the receipt and erection of construction plant and equipment, engineering investigations and surveys; archaeological investigations and monitoring, utilities protection works (including fencing and protection slabs) or set-up works for construction compounds and temporary laydown areas;"

“Conrad Energy” means Conrad (Billericay) Limited (and any successor in title, transferee and lessee, as the case may be) and Conrad Energy (Developments) Limited (and any successor in title, transferee and lessee, as the case may be);

"Conrad Energy existing permission" means the approved planning applications submitted to Brentwood Borough Council under the reference 24/01263/FUL and Basildon Borough Council under the reference 24/01262/FULL or as these may be varied;

"Conrad Energy existing permission land" means the land shown edged red on the location plan approved under 24/01263/FUL and 24/01262/FULL with reference CEL-30037-LOP-001 or as this may be varied;

“overlap area” means any land within the Order Land that is also within the Conrad Energy existing permission land;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and other documents that are reasonably necessary properly and sufficiently to describe and assess the specified works to be executed;

“specified works” means so much of any works or operations authorised by the Order (or authorised by any planning permission for the same or substantially the same works as the authorised development) as is—

- (a) in, on, under, over or within 15 metres of any apparatus; or
- (b) may in any way adversely affect any apparatus.

3. Where conditions are included in any consent or approval granted by Conrad Energy pursuant to this Part, the undertaker must comply with such conditions when implementing or relying on that consent, unless the conditions are varied in writing by Conrad Energy.

Compulsory acquisition of land and rights

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not acquire, extinguish or suspend any interest in land or any apparatus or override any easement or other interest of Conrad Energy otherwise than by agreement, such agreement not to be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

Protection of Conrad Energy apparatus

5.— Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not, under the powers of this Order, adjust, remove, alter, divert or interfere with any apparatus owned by Conrad Energy otherwise than by agreement.

Specified Works

6.—(1) Not less than 40 business days before the commencement of any specified works the undertaker must submit to Conrad Energy a plan of the works to be executed.

(2) The plan to be submitted to Conrad Energy under sub-paragraph (1) must include a method statement which describes—

- (a) the exact position of the works;
- (b) a programme of the works, including any proposed start dates and the anticipated duration of the works;
- (c) the level at which the specified works are proposed to be constructed or renewed;
- (d) the manner of their construction or renewal;
- (e) detailed drawings of the specified work;
- (f) details of any protective works; and
- (g) in relation to the undertaker's temporary haul road, any intended maintenance regime.

(3) Any specified works must be constructed in accordance with the plans approved in writing by Conrad Energy.

(4) Any approval of Conrad Energy sought under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or for securing access to any apparatus and may include reasonable amendments required by Conrad Energy but must not be unreasonably withheld or delayed and if refused must be given with reasons for refusal.

(5) In relation to a work to which sub-paragraphs (1) and (2)(a) to (2)(g) apply, Conrad Energy may require such modifications to be made to the plans as are reasonably necessary for the purpose of securing the apparatus against interference or risk of damage or for the provision of protective works

or for the purpose of providing or securing proper and convenient means of access to any of the apparatus.

(6) Where Conrad Energy require any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Conrad Energy's reasonable satisfaction.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 40 business days before commencing the execution of any specified works a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plans.

(8) The undertaker must give to Conrad Energy not less than 20 business days' written notice of its intention to commence the construction of the specified works and, not more than 10 business days after completion of their construction, must give Conrad Energy written notice of the completion.

(9) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to Conrad Energy notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with this paragraph in so far as is reasonably practicable in the circumstances.

(10) The undertaker must subject to compliance with all applicable health and safety requirements at all reasonable times during construction of the specified works allow Conrad Energy and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

Access

7. If in consequence of the exercise of the powers conferred by this Order access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Conrad Energy to maintain and operate the apparatus no less effectively than was possible before the obstruction.

Cooperation

8.—(1) The undertaker must, before carrying out any specified works request up-to-date written confirmation from Conrad Energy of the location of any apparatus.

(2) The undertaker and Conrad Energy must each act in good faith and use reasonable endeavours to co operate with, and provide assistance to, each other as may be required to avoid the risk of conflict arising and to give effect to the provisions of this Part, including:

- (a) meeting regularly from the making of this Order to discuss coordination;
- (b) providing a point of contact for continuing liaison and coordination throughout the construction and operation of the authorised development and the Conrad Energy existing permission;
- (c) keeping the other party informed (respectively) of the programme of works for the authorised development and the Conrad Energy existing permission; and
- (d) provide the other party with written notice at least 60 business days prior to the commencement of activities within the overlap area.

Costs and Indemnity

9.—(1) Save where otherwise agreed in writing between Conrad Energy and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Conrad Energy within 22 business days of the receipt of an itemised invoice or claim for the same all charges, costs and expenses reasonably anticipated to be incurred within the following three months and/or which have been reasonably and properly incurred by Conrad Energy in connection with Conrad Energy's compliance with this Part of this Schedule including but not limited to in relation to the review and approval of plans, inspection of any specified works or the alteration or protection of any apparatus.

(2) Subject to sub-paragraphs (2) to (7), if by reason or in direct consequence of the construction, use, operation, maintenance, or failure of any specified works or in direct consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such activities, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Conrad Energy, or Conrad Energy becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay, on receipt of an itemised invoice or claim from Conrad Energy, the cost reasonably and properly incurred by Conrad Energy in making good such damage or restoring the service or supply; and
- (b) indemnify Conrad Energy for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Conrad Energy, by reason or in consequence of any such damage or interruption or Conrad Energy becoming liable to any third party as aforesaid other than arising from any default of Conrad Energy.

(3) Nothing in sub-paragraph (1) and (2) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Conrad Energy, its officers, servants, contractors or agents; or
- (b) any indirect or 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) Conrad Energy must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(5) Conrad Energy 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.

(6) Conrad Energy must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if requested to do so by the undertaker, Conrad Energy shall provide an explanation of how the claim has been minimised.

(7) The undertaker shall only be liable under this paragraph for claims reasonably incurred by Conrad Energy.

Insurance

10.—(1) The undertaker shall not commence any works or activities within the overlap area unless and until Conrad Energy has confirmed in writing that it is satisfied, acting reasonably, that the undertaker has first provided evidence—

- (a) of acceptable insurance; and
- (b) of that it shall maintain such acceptable insurance for the entire construction period of the works or activities within the overlap area from the proposed date of commencement of construction of that part of the authorised development.

(2) Conrad Energy's confirmation under sub-paragraph (1) must not be unreasonably withheld or delayed.

(3) Where the undertaker's contractor has provided the acceptable insurance required under sub paragraph (1), the undertaker shall remain responsible for ensuring that the acceptable insurance is in place and maintained as required under this paragraph.

Arbitration

11. Any dispute arising between the undertaker and Conrad Energy under this Part must be determined by arbitration under article 62 (arbitration).

Amendments to Conrad Energy Existing Permission

12. —(1) Insofar as the construction of the authorised project gives rise to the need to amend the Conrad Energy existing permission, the undertaker will provide such assistance as is reasonably necessary to support Conrad Energy in pursuing any such amendment.

(2) Any costs incurred by Conrad Energy in connection with sub-paragraph (1) will be borne by the undertaker.

Notices

13. Notwithstanding article 61 (service of notices), each notice and all other information required to be sent to Conrad Energy under the terms of this Part must be sent to Conrad Energy at its registered office and marked for the attention of Conrad Energy Development Manager.