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THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE H2 TEESSIDE PROJECT

POST-EXAMINATION WRITTEN SUBMISSION

ON BEHALF OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

REF: TWHI/2026502.572



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1 INTRODUCTION

- 1.1 National Grid Electricity Transmission Plc ("**NGET**") made a Relevant Representation in this matter on 1 July 2024 [**RR-024**], a Written Representation on 3 October 2024 [**REP2-068**], and further written submissions on 20 December 2024 [**REP5-064**], 22 January 2025 [**REP6A-033**], 6 February 2025 [**REP7-049**] and 24 February 2025 [**REP8-058**] (together the "**Existing Representations**").
- 1.2 NGET also attended Compulsory Acquisition Hearing 2 ("**CAH2**") which was held virtually on 13 January 2025.
- 1.3 This Written Submission supplements the Existing Representations and responds to certain new matters of a material nature contained in the Applicant's "*Response to NGET's Deadline 8 Submissions*" [**REP9-023**] as submitted on 28 February 2025, the final day of the Examination.
- 1.4 Whilst NGET has not yet been invited to respond to matters raised in [**REP9-023**], it is important that the Secretary of State is aware of NGET's concerns with the Applicant's submissions at Deadline 9 (particularly in relation to the Applicant's proposed amended drafting to the Protective Provisions (as set out in Paragraph 1.6.7 of [**REP9-022**])) and, as a matter of procedural fairness, that NGET has an opportunity to respond in writing to those submissions.
- 1.5 NGET would be pleased to provide the Secretary of State with further clarification on any of the matters contained within this Written Submission if that would be of assistance.

2 NGET'S RESPONSE TO [**REP9-022**]

Introductory Remarks

- 2.1 NGET is mindful that the substantive matters at issue between the Applicant and NGET are already well-established, including in the Existing Representations, and therefore this Written Submission does not seek to respond exhaustively to all matters raised by the Applicant in [**REP9-023**].
- 2.2 Nonetheless, it is important to recognise that [**REP9-023**] contains a number of factual inaccuracies and other omissions, several of which are fundamental to the Applicant's rebuttal of the Addendum Report as submitted by NGET in [**REP8-058**]. By way of example:
- (a) at Paragraph 1.4.3 of [**REP9-023**], the Applicant states that "*...NGET is in control of network outages...*" This is incorrect. Outages are coordinated and overseen by the National Energy System Operator (NESO), a wholly separate legal entity to NGET. It therefore remains the case, as stated in [**REP8-058**], that NGET may be unable to secure the significant number of outages needed in order to give effect to the Applicant's proposed "compromise solution"; and
- (b) at Paragraph 1.4.7.4 of [**REP9-023**], the Applicant refers, in vague and ambiguous terms, to the potential to investigate alternative construction laydown areas adjacent to Saltholme Substation. However, no other suitable

locations are identified. The omission of substantive detail on this and other important elements of the "compromise solution" does little to alleviate NGET's existing significant concerns as to the deliverability of the required extension of Saltholme Substation as part of the Applicant's "compromise solution".

- 2.3 Similarly, and in response to NGET's long-standing concerns regarding the potential risks to safety posed as a result of the operation of the proposed development in proximity to NGET's existing operational assets situated within the Order limits, the Applicant has, in Paragraph 1.6.2 of [REP9-023], put forward what are in effect a series of unsubstantiated confirmations. Whilst the provision of further information is helpful, the absence of objective evidence underpinning the Applicant's conclusions is concerning. Indeed, there is no certainty that each of the matters to which the Applicant has responded in Paragraph 1.6.2 will be considered and addressed through application of the Pipeline Safety Regulations 1996. The concerns which NGET articulated in Part B of its Addendum Report submitted at Deadline 8 [REP8-058] therefore remain of continued relevance and importance.
- 2.4 The Secretary of State may therefore wish to consider including an additional Requirement within the draft Order to ensure that each of those matters are appropriately addressed through that parallel regime prior to the commencement of the authorised development.
- 2.5 However, and even if those matters are capable of being dealt with through application of the Pipeline Safety Regulations 1996, NGET would still expect to be *provided* with the information listed in sub-paragraphs (i) to (n) of Paragraph 9(2) (Retained apparatus: protection) of the Protective Provisions included at Appendix 3 of [REP8-058]. The drafting which NGET had proposed at Deadline 8 remains aligned with the central premise of Paragraph 9, namely to ensure that appropriate and proportionate protection can be put in place to safeguard any of NGET's retained apparatus.

Protective Provisions: "Saltholme Substation Expansion"

- 2.6 The Applicant has proposed, at Paragraph 1.6.7 of [REP9-023], additional bespoke drafting under the heading "Saltholme Substation Expansion" which it suggests should be incorporated in the Protective Provisions included for the benefit of NGET in Schedule 19 to the draft Order (the "**Protective Provisions**").
- 2.7 For the reasons explained in [REP8-058], NGET's position remains that the Applicant's proposed "compromise solution" does not represent a viable option through which the proposed development can be brought forward by the Applicant in a manner which avoids causing serious detriment to NGET's statutory undertaking.
- 2.8 It follows, therefore, that NGET disagrees entirely with the rationale underpinning the Applicant's proposed Protective Provisions drafting under the heading "Saltholme Substation Expansion".
- 2.9 However, and strictly without prejudice to NGET's position on this matter, and in the event that the Secretary of State was minded to give effect to the Applicant's proposed amendments to the Protective Provisions, NGET would make the following observations:
- (a) There is considerable uncertainty as to the nature and extent of information which would be comprised within the 'plan' which the Applicant would be required to submit pursuant to its proposed Paragraph 9(1). Indeed, the Applicant's proposed drafting makes no reference to the extensive access works proposed pursuant to Work No. 10A.1 in respect of Plot 3/23. NGET is

therefore concerned that the Applicant's drafting would effectively compel it to grant an 'approval' based on an insufficient level of detail and without any ability to request the provision of further information. The Applicant's conduct prior to, and during the course of, the Examination provides NGET with little comfort as to the robustness, quality and accuracy of information which would be made available to NGET under Paragraph 9.

- (b) There is a similar concern as to the inherent ambiguity and contradiction of terms within the drafting included in Paragraph 9(5). It is assumed, but not expressly stated, that NGET would be permitted to determine whether a modification to the Applicant's 'plan' was 'reasonably necessary'. However, the drafting proposed in Paragraph 9(5)(b) would impose a significant limitation on any discretion afforded to NGET in that context. Indeed, it is questionable whether the Applicant's drafting would, in reality, even allow for any such modifications to be sought from, and incorporated by, the Applicant. This would be entirely at odds with the essential premise of the Protective Provisions.
- (c) NGET is also concerned as to the prospect of being mandated to grant rights of access to the Applicant over land which it owns outside of the Order limits (Paragraph 9(4)). With reference to NGET's response to ExQ2 Q2.6.5 [**REP5-064**], NGET's position remains that the safeguarded areas adjacent to Saltholme Substation are absolute in nature, and that an absolute prohibition on the disposal or release of that land on the terms sought by the Applicant must be maintained in order to avoid serious detriment to the carrying on of NGET's statutory undertaking. In any event, it appears that the Applicant's intention is to seek to use Paragraph 9(4) as a means to circumvent an acquisition of land process which should properly have been before the Examining Authority and the Secretary of State. This is considered wholly unsatisfactory.
- (d) The Applicant's proposed drafting indicates that any disputes arising under Paragraph 9 would be referable to arbitration pursuant to Paragraph 14. NGET cannot accept an arrangement of this nature. As explained in NGET's submissions at Deadline 8 [**REP8-058**], NGET's considerable expertise as the statutory undertaker with sole responsibility for the national electricity transmission network in England and Wales means that it is uniquely placed to evaluate any 'plans' submitted to it by the Applicant. Therefore, and as is the case in respect of certain other reserved matters under the Protective Provisions (as listed under the paragraph entitled "Arbitration"), it would be inappropriate for a third party arbitrator to be permitted to reach a decision which would ultimately impact upon the proper functioning of the electricity transmission network and in which he or she may well lack the necessary technical competency.

Protective Provisions: Other Matters

- 2.10 **Paragraph 2 (Definition of 'apparatus')**: the Applicant's submissions in respect of NGET's proposed amendment to the definition of 'apparatus' in Paragraph 2 of the Protective Provisions (Appendix 3 of [**REP8-058**]) are inherently flawed. It is noted that the Protective Provisions already contemplate prospective application in the context of any operational apparatus which is constructed for the benefit of NGET pursuant to the draft Order. It follows, therefore, that such prospective application should also extend to any operational apparatus constructed outwith the draft Order, especially where the construction of such apparatus is foreseeable. The amendment to Paragraph 2 therefore remains necessary for the reasons explained in NGET's submissions at Deadline 8 [**REP8-058**].

2.11 **Paragraph 11 (Acceptable Insurance and Acceptable Security):**

- (a) The Applicant's submissions in respect of the amendments sought by NGET at Paragraphs 11(7) and 11(8) of the Protective Provisions (Appendix 3 of [**REP8-058**]) are considered wholly unsatisfactory. The financial standing of the Applicant is of very limited consequence in the context of what remains a very well-established requirement to ensure that any potential risks to NGET's statutory undertaking are adequately insured and capable of full remediation if those risks were to materialise. It is also noted that the draft Order seeks wide-ranging powers which would allow the Applicant to transfer the benefit of the Order to unknown third parties. In that context, the practical importance of Paragraphs 11(7) and 11(8) is therefore heightened.
- (b) In response to the Applicant's submission regarding the purported absence of relevant precedent for the inclusion of Paragraphs 11(7) and 11(8), NGET would refer to identical provisions included within (amongst others) Paragraph 52 of Part 5 of Schedule 19 to The Sizewell C (Nuclear Generating Station) Order 2022. It is suggested that the applicant in the context of that particular project was of a similar 'kind' and financial standing to the Applicant.

Bryan Cave Leighton Paisner LLP

For and on behalf of National Grid Electricity Transmission Plc

2 June 2025