12 OCTOBER 2026

DEADLINE 1

WRITTEN REPRESENTATION

on behalf of

SOUTHERN ELECTRIC POWER DISTRIBUTION PLC

in relation to

OXFORDSHIRE RAILFREIGHT LIMITED'S APPLICATION FOR DEVELOPMENT CONSENT FOR THE OXFORDSHIRE STRATEGIC RAIL FREIGHT INTERCHANGE

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
cms.law

1. INTRODUCTION

1.1 This Written Representation is submitted at Deadline 1 on behalf of Southern Electric Power Distribution plc ("**SSE**") (Interested Party number: TR050008) in respect of the application for a Development Consent Order ("**DCO**") by Oxfordshire Railfreight Limited ("**the Applicant**") for the proposed Oxfordshire Strategic Rail Freight Interchange ("**the Project**").

1.2 It responds to the Applicant's Comments on Relevant Representations (PDA-007) ("**the Applicant's Comments**") insofar as they relate to SSE's Relevant Representation (RR-132), and updates the Examining Authority ("**ExA**") on discussions between SSE and the Applicant.

1.3 SSE's Relevant Representation set out SSE's status as a statutory undertaker and electricity distribution licence holder under the Electricity Act 1989 ("**the 1989 Act**"), the interaction of the Project with SSE's apparatus and land interests, and the protective provisions ("**PPs**") required to protect those interests. SSE maintains that position and does not repeat it here.

1.4 Since the submission of SSE's Relevant Representation, the parties have exchanged further drafts of the PPs and the issues between them have narrowed considerably. SSE has agreed, in principle, to the majority of the Applicant's proposed amendments (see section 2), subject to agreement of the PPs as a whole. The principal matters remaining in dispute (and addressed in section 3 below) are:

1.4.1 the minimum levels of insurance and security which the undertaker must have in place before commencing works affecting SSE's apparatus, which the Applicant proposes should instead be agreed at a later date;

1.4.2 the procedure in respect of approval of plans, where SSE requires that works affecting its apparatus do not commence until SSE has given its written approval (subject to existing safeguards against unreasonable delay), whereas the Applicant proposes deemed approval mechanisms under which SSE's approval would be treated as given if SSE does not respond within set periods; and

1.4.3 the definition of "commence", and in particular whether preliminary works such as ground investigations, remediation and site set-up should trigger the protections in SSE's PPs.

2. PROGRESS BETWEEN THE PARTIES

2.1 The Applicant has identified a need to divert some of SSE's apparatus at Camp Road. In relation to the proposed diversion of SSE's overhead line apparatus at Camp Road, SSE has identified its requirements and the matters it needs to see progressed in order to consider this diversion. SSE expects to see the Applicant to progress these matters.

2.2 Accordingly, the arrangements necessary to deliver the proposed diversion, including the relevant consents and permanent land rights, remain unresolved. Until those matters are satisfactorily resolved, and appropriate protection is secured for SSE's remaining apparatus and interests, SSE is not satisfied that the tests in section 127 of the Planning Act 2008 are met.

3. MATTERS OUTSTANDING

Insurance and security provisions

3.1 Paragraph 12(5) of SSE's PPs prevents the undertaker from commencing construction on SSE's land, or carrying out works within 15 metres of SSE's apparatus, until SSE (acting reasonably) has confirmed that "acceptable insurance" and "acceptable security" are in place. Those terms are defined in paragraph 2 by reference to minimum levels: third party liability insurance of £50,000,000 per occurrence with an insurer operating in the London and worldwide markets; pollution liability cover of £10,000,000 per event or £20,000,000 in aggregate; and a parent company guarantee, bond or letter of credit of £50,000,000.

3.2 The Applicant proposes to replace each figure with a level "to be agreed between the undertaker and SSE (acting reasonably), having regard to the nature, value and risk of the specified works", contending that £50,000,000 is a blanket sum which is not project specific.

3.3 SSE does not agree. The minimum levels are standard protections which SSE requires for works affecting its apparatus. Adapting PPs to "accurately reflect the proposed development" requires consideration not only of the Applicant's works, but of their potential impact on SSE's existing apparatus and network. The relevant risk is the consequence of damage to, or interruption of, live electricity distribution apparatus, including loss of supply to customers and resulting third party claims. That risk is not linked to the value of the Applicant's works, and the minimum levels in SSE's PPs reflect this. This is particularly important where there is a potential diversion to SSE's apparatus proposed.

3.4 SSE's electricity distribution network is also essential national infrastructure, and SSE is responsible for its safe, reliable and continuous operation. Damage to or interruption of SSE's apparatus could have serious consequences for public safety and security of electricity supply to consumers extending well beyond the Project.

3.5 SSE does not consider that deferring these protections to a later agreement would be appropriate. If the DCO were made in the form proposed by the Applicant, there would be no certainty on its face that SSE's undertaking is adequately protected, and the issue could be postponed to the point when works are due to start, when disagreement is most likely to cause dispute and delay. That would also run counter to the Applicant's stated objective of avoiding delay (see paragraphs 3.9 and 3.10 below). SSE considers that these protections should instead be settled during the Examination, so that the ExA and the Secretary of State can be satisfied that the DCO contains an appropriate and certain framework for the protection of SSE's undertaking.

3.6 The Applicant has provided no evidence that SSE's levels are disproportionate and has proposed no alternative figures or assessment of the impact on the electricity distribution network. SSE has therefore retained the minimum levels in paragraph 2 of its preferred PPs, together with the requirement (which the Applicant proposes to delete) for the insurer to operate in the London and worldwide insurance markets.

Deemed approval mechanisms

3.7 Under paragraphs 9 and 10 of SSE's preferred PPs, the undertaker must submit plans for specified works in advance and must not commence those works until SSE has given written approval. This enables SSE, as a licensed electricity distributor under the 1989 Act, to satisfy

itself that works affecting its live apparatus can be carried out safely and without compromising its network. SSE's approval is already subject to clear safeguards: unless otherwise stated in the PPs, it must not be unreasonably withheld or delayed (paragraph 14(2)); any modifications or conditions must be notified within 56 days (paragraphs 9(6) and 10(5)); and any difference may be referred to expedited expert determination (paragraph 16).

3.8 Notwithstanding those safeguards, the Applicant proposes that SSE's approval be deemed given if SSE does not respond within a set period: 56 days under paragraph 9(13), or 28 days followed by a further 28 days after written notice under paragraph 14(2)(a) and (b). In either case, works could proceed without SSE having completed its technical review, with consequent risks to public safety, to those carrying out the works and to continuity of supply to SSE's customers.

3.9 In the Applicant's Comments, the Applicant justifies this on the basis that (i) timely engagement by statutory undertakers is essential to the construction programme of a nationally significant infrastructure project; and (ii) having agreed not to compulsorily acquire SSE's apparatus without consent, it requires assurance that the approval process will not give rise to undue delay.

3.10 SSE recognises both concerns but does not consider that either justifies deemed approval. The risk of delay is already addressed by the safeguards described at paragraph 3.7 above. The Applicant's agreement on compulsory acquisition concerns SSE's land rights; it does not remove the separate need for technical review of works affecting live apparatus.

3.11 The Applicant's approach is inconsistent with recent DCOs which includes protection for SSE. For example, in the PPs for the protection of SSE in the Rampion 2 Offshore Wind Farm Order 2025 require SSE's written approval before works commence, with no deemed approval.

3.12 Current national policy recognises that the security and reliability of UK energy supply depend on robust electricity networks, and SSE has a statutory duty under section 9 of the 1989 Act to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. The national significance of the Project does not diminish the importance of protecting the existing network on which homes and businesses depend. The Applicant's legitimate concern to avoid delay to its construction programme should therefore be addressed through the safeguards SSE has already accepted, rather than by treating SSE's approval as given where it has not completed its technical review.

Definition of "commence"

3.13 Key protections in SSE's PPs are triggered by commencement. In particular, the undertaker must submit plans for specified works to SSE in advance and must not commence those works until SSE has given written approval (paragraphs 9 and 10), and must not commence construction until acceptable insurance and security are in place (paragraph 12(5)). Paragraph 2 of SSE's PPs therefore extends the article 2 definition of "commence" to include specified preliminary works, including archaeological and ground investigations, remediation, the creation of working areas and temporary enclosures, and the receipt and erection of construction plant and equipment.

3.14 The Applicant proposes to delete that extension, so that the narrower article 2 definition of "commence" applies. SSE does not accept that approach. Preliminary works can themselves pose material risks to SSE's apparatus, particularly where undertaken within 15 metres of it. Intrusive ground investigations, excavation, vehicle movements and heavy plant near live

underground cables or overhead line apparatus may cause damage or disturbance. Excluding those activities from "commence" could allow them to proceed before SSE has approved the relevant plans and before the required insurance and security are in place. The purpose of those protections would be undermined if they applied only once substantive construction had begun.

3.15 SSE has therefore retained its definition of "commence" in paragraph 2 of its PPs. The Applicant has indicated that it will amend the definition of "commence" in its Deadline 1 draft DCO, and SSE reserves its position pending review of that drafting.

4. CONCLUSION

4.1 SSE has agreed in principle to the majority of the Applicant's proposed amendments. The outstanding matters are, however, fundamental. In each case the Applicant's drafting would defer or remove protection which SSE requires on the face of the DCO to protect its live apparatus and comply with its statutory obligations. The national significance of the Project does not diminish the importance of protecting SSE's existing network.

4.2 SSE will continue to engage constructively with the Applicant and will update the ExA at future deadlines. In the absence of agreement, SSE requests that the ExA recommends the inclusion of SSE's preferred PPs at Appendix 1 in the DCO. SSE maintains its position under section 127 of the Planning Act 2008 pending inclusion of those PPs and resolution of the Camp Road side agreement, and reserves the right to make further representations, including in response to the Applicant's Deadline 1 draft DCO.

CMS Cameron McKenna Nabarro Olswang LLP

12 October 2026

APPENDIX 1

PART 7

FOR THE PROTECTION OF SOUTHERN ELECTRIC POWER DISTRIBUTION PLC AS ELECTRICITY UNDERTAKER

Application

1. For the protection of SSE the following provisions will, unless otherwise agreed in writing between the undertaker and SSE, have effect.

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; or (ii) "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker to a level 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 for the construction and use period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation):

(a) SSE as a Co-Insured;

(b) a cross liabilities clause;

(c) a waiver of subrogation in favour of SSE; and

(d) contractors' pollution liability for third party property damage and third party bodily injury arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of SSE to cover the undertaker's liability to SSE to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SSE and where required by SSE, 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 SSE to cover the undertaker's liability to SSE for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SSE);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of SSE to enable SSE to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, substations, cables or other apparatus belonging to or maintained by SSE for the purposes of SSE's undertaking together with any alternative apparatus, replacement apparatus and/or such other apparatus constructed pursuant to the Order that becomes operational apparatus of SSE for the purposes of SSE's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of

this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, creation of working areas for remedial works, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, and the temporary display of site notices or advertisements;

"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 and/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;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by SSE (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, shall require the undertaker to submit for SSE'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" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SSE including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove 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;

"parent company" means a parent company of the undertaker acceptable to SSE and which shall have been approved by SSE acting reasonably;

"rights" shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"SSE" means Southern Electric Power Distribution plc (company number 04094290 whose registered office is at No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom RG1 3JH) or its successors in title or successor bodies and/or any successor as an electricity distribution licence holder pursuant to the Electricity Act 1989;

"SSE's undertaking" means the rights, duties and obligations of SSE as an electricity distribution licence holder within the meaning of the Electricity Act 1989;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works 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; and/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;

"undertaker" means the undertaker as defined in article 2 of this Order.

On Street Apparatus

3. (1) Except for paragraphs 4 (apparatus in stopped up streets), 7 (Removal of Apparatus) in so far as sub-paragraph 3(2) applies, 8 (Facilities and Rights for Alternative Apparatus) in so far as sub-paragraph 3(2) below applies, 9 (retained apparatus: protection), 10 (retained apparatus: protection – overhead lines), 11 (expenses) and 12 (indemnity) 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 SSE, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SSE are regulated by the provisions of Part 3 of the 1991 Act subject always to Part 3 of this Order.

(2) Paragraphs 7 and 8 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

Apparatus of SSE in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to SSE elsewhere in the Order, where any street is stopped up under article 11 (permanent stopping up of streets), if SSE has any apparatus in the street or accessed via that street SSE will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will, insofar as it is able to using all reasonable endeavours, grant to SSE, or will procure the granting to SSE of, legal easements reasonably satisfactory to SSE in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of SSE to require the removal of that apparatus under paragraph 7.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary closure of streets), SSE will be at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway subject to serving 7 days' notice on the undertaker (save in cases of emergency).

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 24 (protective works), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SSE and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SSE or any interruption in the distribution of electricity by SSE, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably and properly incurred by SSE in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to SSE for any loss sustained by it; and

(b) indemnify SSE against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SSE, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SSE or its contractors or workmen; and SSE will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SSE, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

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 appropriate or acquire any land interest or

appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SSE otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SSE and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SSE and/or affects the provisions of any enactment or agreement regulating the relations between SSE and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SSE reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SSE and the undertaker acting reasonably and which must be no less favourable on the whole to SSE unless otherwise agreed by SSE, and it will be the responsibility of the undertaker to procure and/or secure 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 works.

(3) The undertaker and SSE agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/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 SSE and/or other enactments relied upon by SSE as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by SSE under paragraph 9, 10 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(5) As a condition of an agreement between the parties in sub-paragraph 6(1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of SSE in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SSE from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SSE right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must:

(a) retain any notice of SSE's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of SSE's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SSE's easement, right or other interest in relation to such acquired land; and

(c) provide up to date official entry copies to SSE within 20 working days of receipt of such up to date official entry copies.

Removal of apparatus

7.—(1) If, in consequence of the agreement reached in accordance with paragraph 6 or powers granted under this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SSE to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SSE and 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 SSE advance written notice of that requirement, together with a plan and section 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 SSE reasonably needs

to move or remove any of its apparatus) the undertaker must afford to SSE to its reasonable satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus).

(3) If 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, SSE must, 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 in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for SSE to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 SSE and the undertaker or in default of agreement settled by expert determination in accordance with paragraph 16 of this Part of this Schedule.

(5) SSE must, after the alternative apparatus to be provided or constructed has been agreed or settled by expert determination in accordance with paragraph 16 of this Part of this Schedule, and subject to the prior grant to, or procurement by, SSE of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SSE to its reasonable satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or 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 SSE facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SSE and must be no less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SSE.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SSE under paragraph 8(1) above 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 SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SSE's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to expert determination in accordance with paragraph 16 (expert determination) of this Part of this Schedule.

Retained apparatus: protection of SSE

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SSE a plan and, if reasonably required by SSE, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SSE 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, positioning of plant etc.;

(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; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SSE has given written approval of the plan so submitted.

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and,

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, SSE may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and SSE and in accordance with all conditions imposed under sub-paragraph (4)(a), and SSE will be entitled to watch and inspect the execution of those works.

(7) Any modifications made by SSE under sub-paragraph (5) must be notified to the undertaker within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(8) Where SSE 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 SSE's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If SSE, 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, paragraphs 7(2) to 7(5) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) 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 authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) 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 SSE notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (12) at all times.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SSE retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

Retained apparatus: protection of SSE as electricity undertaker – overhead lines

10.—(1) Not less than 28 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 7(2) (removal of apparatus) the undertaker must submit to SSE a plan and seek from SSE details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

(a) the exact position of the specified work;

(b) the level at which the specified work is proposed to be constructed or renewed;

(c) the manner of the construction or renewal of the specified work 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; and

(f) details of any ground monitoring scheme if required.

(3) In relation to any works which will or may be situated on, over, under or within 15 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must include a method statement which must in addition to the matters set out in sub-paragraph (2)—

(a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstrate that pylon foundations will not be affected prior to, during and post construction;

(c) describe details of load bearing capacities of trenches;

(d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) provide a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;

(f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assess earth rise potential if reasonably required by SSE's engineers; and

(h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works requiring the submission of a plan under sub-paragraph (1) until SSE has given written approval of the plan so submitted.

(5) Any approval of SSE required in relation to a plan submitted under sub-paragraph (1)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) Any conditions made by SSE under sub-paragraph (5) must be notified to the undertaker within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(7) In relation to a work requiring the submission of a plan under sub-paragraph (1), SSE may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works requiring the submission of a plan under sub-paragraph (1) must be executed only in accordance with the plan, as amended from time to time by agreement between the undertaker and SSE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (9) or (10) by SSE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SSE is to be entitled to watch and inspect the execution of those works.

(9) Where SSE require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to SSE's reasonable satisfaction prior to the commencement of works requiring the submission of a plan under sub-paragraph (1) and SSE must give 28 days' notice of such works from the date of submission of the plan (except in an emergency).

(10) If SSE in accordance with sub-paragraph (6) or (9) 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, paragraphs 7(2) to 7(5) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any 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.

(12) The undertaker is not 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 SSE notice as soon as is reasonably practicable a plan of those works and must—

(a) comply with conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development, the undertaker must implement an appropriate ground mitigation scheme save that SSE retains the right to carry out any further necessary protective works for the safeguarding of its apparatus (including any electricity tower and its foundations) and can recover any such costs in line with paragraph 11.

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SSE within 14 days all charges, costs and expenses reasonably anticipated or incurred by SSE in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule—

(a) any costs reasonably incurred by or compensation properly paid by SSE in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including all costs (including professional fees) reasonably incurred by SSE as a consequence of SSE—

(i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; and

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SSE;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

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

(d) the approval of plans;

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

(f) 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 provided these are directly related and proportionate to such works.

(g) any watching brief pursuant to paragraph 9(6) or paragraph 10(8).

(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 expert determination in accordance with paragraph 16 (expert determination) 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 SSE by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 him) 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 works) or property of SSE, or there is any interruption in any service provided, or in the supply of any goods, by SSE, or SSE becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay, within 14 days of receipt of an itemised invoice or claim, the cost reasonably and properly incurred by SSE in making good such damage or restoring the supply; and

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

(2) The fact that any act or thing may have been done by SSE on behalf of the undertaker or in accordance with a plan approved by SSE or in accordance with any requirement of SSE or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SSE 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.

(3) Nothing in sub-paragraph (1) shall 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 SSE, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SSE as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

(4) SSE must give the undertaker reasonable notice of any such third party claim or demand and no settlement 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.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by SSE or in respect of which SSE has an easement

or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of SSE's apparatus until the following conditions are satisfied—

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

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

(6) In the event that the undertaker fails to comply with sub-paragraph (5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent SSE from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(7) An amount which, apart from this sub-paragraph would be payable to SSE in respect of works by virtue of paragraph 11(1) must, 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 SSE 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.

(8) Where SSE demands payment of reasonably anticipated charges, costs and expenses pursuant to paragraph 11(1), SSE must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to SSE within 14 days in accordance with paragraph 11(1). To the extent that this sum paid in advance has not been expended by SSE within six months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by SSE and SSE shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the undertaker and SSE).

(9) SSE will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any expenses, losses, demands, proceedings, damages, claims, penalties or costs which may be claimed pursuant to this paragraph 12.

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 SSE and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SSE 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

1.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SSE requires the removal of apparatus under paragraph 7(2) or SSE makes requirements for the protection or alteration of apparatus under paragraph 0 or paragraph 0, the undertaker shall use all reasonable 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 SSE's undertaking and SSE shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Unless otherwise stated in this Part, whenever SSE'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 must not be unreasonably withheld or delayed and—

(a) unless otherwise stated in this Part, if by the end of the period of 28 days beginning with the date on which consent, authorisation, agreement or approval have been sought SSE has not intimated its disapproval and the grounds of such disapproval the undertaker may serve upon SSE written notice

requiring SSE to intimate approval or disapproval within a further period of 28 days beginning with the date upon which SSE receives written notice from the undertaker; and

(b) if by the expiry of the further 28 days SSE has not intimated approval or disapproval, SSE is deemed to have approved such consent, authorisation, agreement or approval.

Access

2. If in consequence of the agreement reached in accordance with sub-paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SSE to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

3.—(1) Article 60 (arbitration) of the Order does not apply to this Part of this Schedule, save where sub-paragraph (7) applies.

(2) Any difference under this Part of this Schedule must, in the first instance, be referred to a representative of SSE and a representative of the undertaker, each of whom hold a senior management position. Those representatives will meet as soon as possible and will endeavour in good faith to resolve any dispute or difference amicably.

(3) In the event that the senior representatives appointed pursuant to sub-paragraph (2) cannot resolve the dispute, it may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(4) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(5) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(6) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (6)(b); and

(d) give reasons for the decision.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 60 (arbitration).

(8) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Notices

4.The plans submitted to SSE by the undertaker pursuant to paragraphs 9(1) and 10(1) must be sent to SSE at [ ] or such other address as SSE may from time to time appoint instead for that purpose and notify to the undertaker.