Investment Decision Pack

NGET A7.05 Easements

December 2019

As a part of the NGET Business Plan Submission

nationalgrid

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Justification Paper Load Related – Easements			
Primary Investment Driver	Provision of a legally secure electricity transmission network – easements secure the right to retain our assets without threat of termination and protect our right to future maintenance access.		
Reference	NGET_A7.05 Easements		
Location in main submission narrative	Chapter 7 – *Enable the ongoing transition to the energy system of the future* Section 5.1 iii) – *Invest to facilitate closure of conventional generation and secure easements to maintain access and minimise costs*		
Cost	£93.3m		
Delivery Year(s)	2021 - 2026		
Reporting Table	B Series tables and totex cost-matrix tables		
Outputs for RIIO T2	Delivery of programme of easements.		
Spend Apportionment	**T1**	**T2**	**T3**
	£117m	£93.3m	£93.3m

**All costs are in 18/19 prices, unless otherwise stated.*

Contents

1. Executive Summary

Some 61% of the electricity transmission network is held on terminable wayleaves posing both a litigation and network access risk. This can be avoided by securing the assets voluntarily through the negotiation and acquisition of easements (permanent rights) with landowners (“grantors”). Acquisition of easements minimises litigation, cost and unhelpful precedent. They also provide for full access, avoiding ransom scenarios when accessing our assets for maintenance or refurbishment, thus securing the reliability of the network for the benefit of consumers.

We are proposing to invest £93.3m for the T2 period to meet future easement acquisitions in response to landowners’ claims for compensation, to target lines to be refurbished for easements and, where possible, to negotiate voluntary easements as and when land ownership changes or rights are formally terminated. These activities are largely a continuation of a programme started prior to the T1 period. Whilst the numbers and timing of easement claims are impacted by the property market cycle, amongst other factors, there is a clear trend over time. It is evident from our data going back to 2008 that the larger value easement claims are increasing, believed to be driven by urban expansion.

The planned spend is based on the underlying cost of transactions for the T1 period after adjusting for the trends experienced in T1.

Wayleaves vs. Easements

When the majority of electricity transmission infrastructure was built in the 1950s and 1960s, the nationalised industry entered formal agreements with grantors for access and the right to have the equipment on the land. These took the form of wayleaves, which are a personal right in relation to the land and which ends when that land is sold i.e. these rights are terminable. An annual payment is made to the grantors for these rights.

Whilst these rights served their purpose, some 60 years later, the industry is now privatised and the grantors and their advisors are more commercially aware. As a wayleave does not bind successive owners, when the land is sold new land rights must be secured. In addition, a wayleave can be terminated by the current owner by serving a notice.

An easement is an enduring interest in land (either in perpetuity or for an agreed term) rather than a permission which can be withdrawn. It is registrable at the Land Registry when granted out of registered land, which makes it binding on all successive owners and occupiers of the land automatically without the need for any renegotiation or reconfirmation. An easement is an overriding interest when granted out of unregistered land, so would take effect against all successive owners automatically, without the need for any renegotiation or reconfirmation.

An easement is granted for a one-off payment rather than a recurring annual fee. Grantors can opt to convert wayleaves to easements receiving a CAPEX sum (“compensation”). The conversion is generally triggered by the grantor submitting a claim for compensation. Compensation payments reflect the adverse impact on property value due to the presence of the assets. This may be for individual houses, rural estates, commercial property, or for development sites. The cost of converting a wayleave to an easement varies considerably. The payment is to compensate for the loss the grantor has suffered as a result of our rights. This can range from a few thousand pounds for agricultural land to millions of pounds for housing development sites.

The strategy which National Grid has adopted is, where possible, to negotiate voluntary easements as and when land ownership changes or rights are formally terminated. Also, to negotiate claims for compensation submitted by grantors and their agents. If we are unsuccessful with our negotiation, the legal recourse is to apply to the Secretary of State to retain the rights, a statutory process which is an onerous, expensive procedure and, as with all litigation, also has a degree of risk.

The risk to consumers of having assets on a wayleave is that these can be terminated at any time, which render the entire overhead line inoperable unless an agreement can be reached or a successful application to the Secretary of State made. When there is a planned outage for maintenance work, contractors may have to be stood down and essential maintenance not completed, creating an enduring system risk until the rights are secured. In this scenario, we can be held to ransom as we do not have the opportunity to apply to the Secretary of State in time. It is for this reason that we systematically audit wayleave records before any planned maintenance.

2. T1 experience

T1 forecast

Expenditure on easements in T1 to date are shown in Table 1, below.

Table 1 – T1 actual and forecast easement expenditure

£m	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	TOTAL
T1 easement costs and forecast	18.1	16.8	21.7	-4.5	21.2	12.5	15.5	15.5	116.8

Costs in T1 were originally forecast at £105.3m and is now forecast to out-turn at £116.8m. This increase is due to an upward trend in claims, the extent of which was unanticipated.

In 2016/17, spend was less than forecast, largely due to the release of accruals made prior to T1 in respect of easement claims for prior years which amounted to £18.1m. This is not an event that would normally occur and therefore represents an outlier from a longer-term trend of increases in easement spend.

Upward trend in volume and cost of wayleave termination claims

Over the T1 period to 17/18 some 669 claims have been received totalling £66.53m (mean claim value of £99,447). This compares with the previous 5 years from April 2008 of 5534 claims totalling £56.464m (mean claim value of £10,203). This data suggests an upwards trend in both the number of high value development claims (defined as >£500,000) and their total value, whilst the numbers of lower value claims (<£20,000), typified by individual urban houses, are falling. This corroborates the property market trends seen in the development land market. Given the pressures on house building land, this is projected to continue over the T2 period. We see this continuing to impact the high voltage network as the urban areas grow outwards and new communities are promoted.

Property values have a significant effect on claim values. With the well-publicised lack of housing supply, we expect to continue to receive a greater number of high value claim in T2. Mean property market values trend upwards over time, even over 5-year periods. However, because of the cyclical nature of the property market, and its susceptibility to wider financial market trends, this cannot be guaranteed. Somewhat counter-intuitively the 2008 financial crisis triggered an increase in claims (grantors pursuing opportunities to release value other than by property sales, and claims agents pursuing fee income from other sources). Brexit adds additional uncertainty. As a result of this economic position and our previous experience, we expect our future projections for volume and value of easement claims to have a similar landscape and outlook to that which we have experienced in T1 period.

Our approach in T1 has been to negotiate voluntary easements wherever possible as and when land ownership changes or rights are formally terminated. Also, to negotiate claims for compensation submitted by grantors and their agents.

3. Proposal for T2

Options analysis for the T2 period

The following options have been identified as our proposed approaches for T2:

i) Defend wayleave termination claims when lodged

In this option, we would choose not to progress claims received. This would be controversial and would precipitate notices to remove the assets by grantors. This would then involve either litigation to retain the assets in situ or we could be required to relocate the assets.

ii) Negotiate voluntary settlements for wayleave terminations when claims are made

In this option, we would mitigate the costs of litigation and/or relocation of assets, however this approach would not proactively address the risk of escalation of construction costs during refurbishment works where grantors do not allow timely access to undertake the works.

iii) Proactively negotiate settlements on change of land ownership or expiration of wayleave agreements

This option would see us continue to mitigate the costs of litigation and/or relocation of assets as in option ii) but would also address the risk of increased construction costs where we are unable to get timely access to our assets. We would target overhead line routes in advance of refurbishment works to offer capital payments for easements to minimise future ransom.

The following table summarise the costs that may be incurred aligned to each of the three options outlines above:

Table 2 –Typical hierarchy of claims and associated costs/risks

	£	Defend claims when lodged	Negotiated settlement when claims lodged	Negotiate easements on change of ownership
Compensation for granting of easements	Assessed on a case by case basis	✓ Distressed client leads to increased easement cost	✓ Distressed client leads to increased easement cost	✓ Stronger negotiating position to reduce easement cost
Initial Hearing	£[redacted]m	✓	Avoided	Avoided
Upper Tribunal	£[redacted]m	✓	Avoided	Avoided
Potential Delays to construction	£[redacted]m	✓	Avoided	Avoided
Cost of diverting existing assets	Assess on a case by case basis. £[redacted]m per km of new assets	✓	Avoided	Avoided

The volume of claims is expected to remain constant irrespective of whether we adopt an approach of negotiating claims when lodged or negotiate easements on change of ownership.

Our proposed approach for the T2 period is to proactively negotiate settlements on change of land ownership or expiration of wayleave agreements (Option iii). By pursuing this option, we will meet future easement acquisitions in response to landowners claims for compensation and, where possible, negotiate voluntary easements as and when land ownership changes or rights are formally terminated. Within the T2 period we are proposing in excess of 1,500 circuit km of overhead line refurbishment to either meet additional load requirements or to ensure our network remains safe and reliable. Where routes have been identified as needing refurbishment in early T2, we will target grantor on wayleaves for conversion to easements to ensure we can mitigate access risks outlined in Table 2.

This implements a key lesson learnt from the T1 period. By targeting landownership on assets that require intervention in the short term we are able to reduce the potential for increasing costs of construction through delays in accessing the network. The benefit to consumers is ultimately ensuring a secure and reliable network, where we are not held to ransom or required to relocate assets.

<u>Future cost pressures</u>

The proactive approach mitigates the risk on capital construction works.

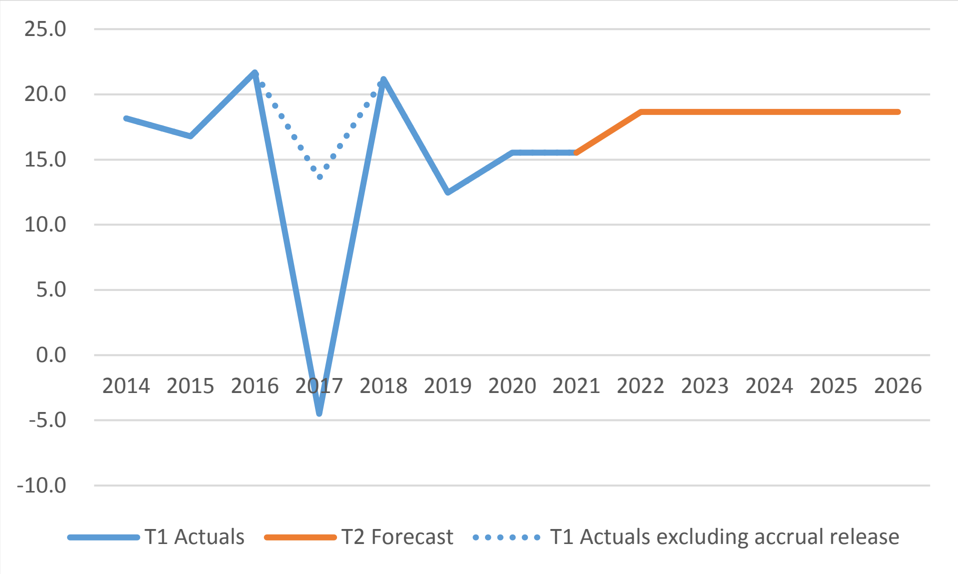
Compensation levels for easements are tied to property values. However, it is evident from our data that average easement claim values are increasing, driven by urban expansion and the housing market. As articulated previously the wider economic situation is still quite volatile with the uncertainties continuing around Brexit.

T1 was predicted at £105.3m (18/19 prices) and is now forecasted to outturn at £116.8m (18/19 prices) equating to a 10% upward cost pressure. There is no reason to assume these cost pressures will abate given our understanding of the property market and, in particular, more frequent higher value developments loss claims (>£500,000) that arise when economic conditions are uncertain. We therefore expect annual average costs in T2 to increase by £1.7m over those experienced in T1, as seen in Figure 2.

T2 Forecast

By extrapolating our past investment costs in T1 we would expect our forecast expenditure for the T2 period to be **£93.3m**, resulting in an annual average forecast of £18.7m. The annual spend profile is shown below in Figure 1.

Figure 1 –Annual spend across T1 and T2 by year



The T2 forecast has been derived by applying actual historic and the observed trends in easement settlements described above. Average annual costs for T2 are compared to those in T1 in Figure 2. The T1 actual average cost includes an accrual release of £18.1m. In arriving at our expected T2 annual average we have removed the downward impact of this and have also incorporated similar impacts of the upward pressures we have seen during T1 of £1.7m per annum, resulting in an annual T2 average of £18.7m.

Figure 2 – Average annual spend for T2 vs T1