

THE NATIONAL GRID ELECTRICITY TRANSMISSION PLC (SCOTLAND TO
ENGLAND GREEN LINK 1) COMPULSORY PURCHASE ORDER 2023

CLOSING SUBMISSIONS ON BEHALF OF NATIONAL GRID ELECTRICITY
TRANSMISSION PLC

Introduction

1. The electricity transmission network requires significant investment to reflect the changing shape of energy generation in the UK as the country heads towards Net Zero. Significant renewable energy generation in Scotland needs to be connected to demand centres in England. The boundary between southern Scotland and northern England is constrained by the capacity of the transmission network.
2. The Scotland to England Green Link 1 will deliver a major reinforcement to the electricity network by increasing the transmission capacity between Scotland and northern England. It will do so by providing a direct connection between East Lothian and County Durham. The Project comprises a converter station and substation in Dunbar and Branxton respectively, approximately 176km of subsea cables from Torness to Seaham, a 10 km HVDC cable from Seaham to a converter station at Hawthorn Pit, and a new substation at Hawthorn Pit at the point of connection to the existing electricity transmission network.
3. National Grid Electricity Transmission plc (“NGET”) owns the electricity transmission network in England. In a joint venture with its Scottish counterpart (Scottish Power Transmission), it will procure the construction of the Project. To achieve this, it requires the necessary land and rights to construct the English onshore elements of the Project. As a transmission licence holder, NGET is empowered by the Electricity Act 1989 to make compulsory orders for purposes relating to its undertaking. Accordingly, it has made the present CPO to secure the additional land and rights it needs to deliver the English onshore elements of the Project.
4. These submissions are structured as follows:

- a. The need for the Project;
- b. The English Onshore Scheme and the land and rights necessary to deliver it;
- c. The planning position;
- d. Negotiations and remaining objections;
- e. The form of the CPO;
- f. Absence of impediments;
- g. Conclusions including the compelling case for confirmation of the Order.

The need for the Project

5. The importance of the Project to the future of the transmission network is not in dispute. The electricity system operator has identified the Project as an “essential” option for the network (CD F.12, p 25). The Holistic Network Design: Pathway to 2030 (CD F.13) makes clear that the Project forms an essential part of the delivery of the step change in offshore wind electricity generation required to achieve Net Zero. Ofgem, as the regulator, has identified the Project within its Accelerated Strategic Transmission Investment (ASTI) framework which accelerates the approval and funding approach to the delivery of projects which are essential for the pathway to Net Zero. The policy objective of reinforcement of grid to deliver Net Zero is recognised in existing and emerging policy. The fundamental aim – of ensuring that we decarbonise the grid in a timely and economical manner – is both indisputable and of overwhelming national importance. There is no doubt here that there is a compelling case in the public interest for the Project to proceed.
6. The support for these propositions is summarised in the uncontested evidence of Graham Law (Section 4) and Hugh Smith (Section 4). In summary, Scotland has a significant and growing renewable energy resource which means it typically is able to export energy to the remainder of Great Britain. As the renewable energy transition continues, the renewable generating capacity of Scotland will continue to grow. Meanwhile, Great Britain’s major demand centres lie in central and southern England. Connecting new, renewable, energy sources to demand centres is a critical priority in ensuring the transition to Net Zero.
7. The cross-border capabilities of the electricity network between Scotland and England are constrained. That means that in times of good generating conditions in Scotland, the

capacity of the transmission network may prove a constraint to delivering renewably sourced electricity to where it is needed. NGENSO addresses the “boundary capacity” issues by reducing power flows, which is achieved by constraining generation and paying the electricity generators to reduce output. These “constraint costs” are ultimately borne by the consumer. Further, the demand in England may have to be met by relying more heavily on fossil fuel generation.

8. The existing B6 boundary between Scotland and England has a capacity of 6.3GW. The Project will add a further 2GW of capacity across that boundary: a transformative and nationally important contribution to developing the transmission network to meet Net Zero.
9. The pressing need for the project is reflected in the support for the project detailed at 4.7-4.14 of Mr Law’s proof. This has included the support for the project in the Ofgem FNC Decision (CD D.8) which confirms that the project will receive the requisite funding once CPO is confirmed (thus meeting the requirement to demonstrate a reasonable prospect of funding) and which recognises that there is a clear consumer benefit in the Project progressing and that delaying delivery of the Project could cause a significant detriment to consumers in terms of additional constraint costs.
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10. It is also reflected in national policy, as summarised by Mr Smith. The recently published version of NPS EN-1¹ identifies a “critical national priority” for low carbon infrastructure including transmission projects such as the Project. It goes on to state:

“3.3.65 There is an **urgent need for new electricity network infrastructure** to be brought forward at pace to meet our energy objectives.

3.3.66 The security and reliability of the UK’s current and future energy supply is very highly dependent on having an electricity network which will enable new renewable electricity generation, storage, and interconnection infrastructure that our country needs to meet the rapid increase in electricity demand required to transition to net zero while maintaining energy security. The delivery of this important infrastructure also needs to balance cost to consumers, accelerated timelines for delivery and the minimisation of community and environmental impacts.

3.3.67 The need to connect to new sources of electricity generation and new sources of demand is not the only driver for new electricity network infrastructure. As the

¹ [EN-1 Overarching National Policy Statement for Energy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90222/en-1-overarching-national-policy-statement-for-energy.pdf)

electricity system grows in scale, dispersion, variety, and complexity, work will be needed to protect against the risk of large-scale supply interruptions in the absence of sufficiently robust electricity networks. While existing transmission and distribution networks must adapt and evolve to cope with this reality, development of new lines of 132kV (and over 2km) and above will also be necessary to preserve and guarantee the robust and reliable operation of the whole electricity system.

3.3.68 The volume of onshore reinforcement works needed to meet decarbonisation targets is substantial. National Grid ESO forecasts that over the next decade the onshore and offshore transmission network, some of which is located offshore **will require a doubling of north-south power transfer capacity due to increased wind generation in Scotland**; substantial reinforcement in the Midlands to accommodate increased power flows from Scotland and the North of England; substantial reinforcement in London and the South of England to allow for Europe-bound export of excess wind generation from Scotland and the North of England, as well as the importation of energy from Europe to increase resilience during any periods which may be affected by intermittent energy generation mix and as part of the country's transition to increased energy security; and substantial reinforcement in East Anglia to handle increased power flows from offshore wind generation (this may also require additional offshore connections coming to land in England)."

11. This is a short, and very recent, encapsulation as to why the Project is of such national importance, and as to why there is a compelling case for the confirmation of this CPO.

The English Onshore Scheme

12. The CPO will secure the land and rights required to deliver the English Onshore Scheme: that part of the project which lies between the Seaham beach and the point of connection at Hawthorn Pit.
13. The details of the English Onshore Scheme are described in the evidence of Mr Law, Mr Omer and Mr Smith. In summary, the components comprise a landfall location where a transition joint bay will connect marine HVDC cables to the onshore HVDC cables; approximately 10km of two underground HVDC cables between landfall and the converter station; a converter station; a new substation; HVAC cables connecting the converter station and the new substation; a new permanent access; temporary compounds; and removal of existing and installation of new overhead lines in the vicinity of the Hawthorn Pit substation.
14. As Mr Smith explained in his evidence, the works aside from the converter station and new substation benefit from permitted development rights. The converter station and

new substation benefits from the express grant of planning permission by Durham County Council (DCC).

15. The CPO will give NGET the land and rights to deliver these elements of the English Onshore Scheme. In addition to acquiring some land outright, the Order will establish new rights in land to allow the Project to be constructed and operated. NGET's approach has been to seek to minimise the amount of land which acquired freehold by acquiring, where possible, rights in land. Across much of the scheme area, where the cable is to be laid beneath ground, following construction the actual interference with land will be relatively limited.
16. Mr Chandler's evidence summarises the various parcels of land and rights which are required. The need for the land and rights is not generally in dispute: it is not generally suggested that the Project can proceed without these interests. There is an ongoing concern about *how* the rights will be exercised, which is addressed below. At Hawthorn Pit, there is a substantial area of freehold acquisition for the new substation and converter station, which benefit from an express grant of planning permission. The owner of the converter station land does not object to the Order and the owner of the substation land does not object to the Order in respect of the substation. The converter station is connected to a new substation via HVAC cables, and various works to the existing electricity network are required.
17. The only remaining issues in respect of the spatial extent of the CPO relate to DCC's objection to the acquisition of Plots 6-17 and 7-27. In respect of Plot 6-17, Mr Omer explained to the inquiry how the proposed battery storage facility could be accommodated during the construction of the Project, which in the worst case would involve a short period of outage for the battery facility. In respect of 7-27, after the CPO was made, DCC identified a requirement to bring forward development on Plot 7-27 as part of the expansion of Jade Business Park, and identified another parcel of land which could be used as a construction compound. NGET is willing to proceed with the alternative compound site, but as yet an agreement has not been concluded with DCC. Without a site for the compound, it is not possible to construct the converter station and thus the Project. On that basis, NGET and DCC are negotiating on option for a lease of

the alternative site. If the alternative site is made available, as part of that agreement NGET would agree not to exercise the CPO powers under Plot 7-27.

18. At the Inquiry, the Inspector asked whether in those circumstances it could still be said that there was no alternative to the acquisition of the land in Plot 7-27. NGET maintains that the CPO should be confirmed in respect of Plot 7-27 because unless land is secured which can be used as construction compound, the converter station cannot be constructed. If other land is made available by DCC, then NGET will use that land instead and will not rely on its CPO powers. However, unless and until it concludes an agreement for that alternative compound site, it remains necessary to include land for the compound within the CPO. NGET will update the Secretary of State on any progress made in concluding an agreement with DCC.

19. By this approach, the acquiring authority will minimise the interference with the various landowners along the route.

The planning position

20. The converter station and new substation has the benefit of planning permission granted by DCC earlier this year. The County Council also gave a negative EIA screening opinion, allowing NGET to rely on permitted development rights to lay the cable. The permitted development rights are not subject to any prior approval. In section 6 of his proof, Mr Smith set out a summary of the consents required for the English Onshore Scheme. This includes reliance on PD rights for the use of compounds and temporary accesses, reliance on an existing consent to remove pylons, and a consent under s 37 Electricity Act 1989 to amend the existing overhead lines. In respect of the wider Project, the marine elements of the Project are consented through marine licensing. The Scottish Onshore Scheme benefits from planning in principle granted by East Lothian Council. It follows that where express planning approval is required, it has already been obtained both for the works to be delivered through the CPO and for the wider Project. Consent under s 37 Electricity Act 1989 for the overhead line works is outstanding but there is no reason why it should not be granted.

Negotiations and remaining objectors

21. The majority of the objections concern the 10km HVDC cable route. Along the route, it is necessary to use land for construction purposes (including the establishment of

compounds) but once the scheme is operational, the land can be restored. The presence of an electricity cable beneath the land will impose some limitation on the future use of that land, but only insofar as is necessary to ensure that the asset can continue to operate.

22. NGET has sought to acquire the land and rights in question by agreement and considerable progress has been made in engaging with landowners. However, the urgency of this project is clear, and it is essential that the acquisition of land and rights to deliver it is not delayed. NGET will continue to engage with landowners in the hope that it will not need to rely on Order powers, but it must have those powers as a backstop. The Secretary of State must be satisfied that there is a compelling case in the public interest for the Order to be made, but she can clearly be satisfied of that here. NGET has sought to acquire the relevant land and rights to construct the English Onshore Scheme by agreement, but agreements remain outstanding. The Order seeks no more than is necessary to construct and operate the Project, by defining the rights required rather than pursuing freehold acquisition across the majority of the Order land. The need for, and urgency of, the Project cannot sensibly be disputed.

23. Mr Chandler's evidence details the extensive negotiations held with objectors which show that "meaningful attempts at negotiation have been pursued or at least genuinely attempted" as required by paragraph 17 of the CPO Guidance. As the CPO Guidance recognises, it is proper to pursue such negotiations in parallel to preparing and making the CPO. Whilst some of the objectors criticised in general terms the efforts to negotiate, when pressed at the inquiry to identify any disagreement with the record of extensive negotiations appended to Mr Chandler's evidence, they could not do so. Indeed, Ms Horn asked for time to consider that evidence in more detail and to update the Inquiry should she identify points of dispute, but none were forthcoming. In the circumstances, the Inspector is bound to conclude that the NGET has sought to negotiate for the acquisition of land and rights through a course of reasonable negotiations.

24. Aside from issues of compensation, which are not a matter for this Inquiry², the key outstanding issues with landowners relate to what can broadly be termed the mitigation of the impacts of the Project on landholdings.

25. First, there is a point of principle in respect of the proposed cable burial depth. NGET has explained that the standard depth of burial is 0.9m to the protective layer above the cable. This is consistent with industry guidance (CDF.17) which is welcomed by objectors in all aspects except for cable depth. Local circumstances may justify deviation from this and indeed there are some locations, such as at road crossings, where the cable will be a shallower trench. The NFU, and a number of the landowner objectors, contend that 0.9m is insufficient. The approach to laying the cable was set out in detail in Mr Karim's evidence, and supplemented by the Interim Drainage Report from the Land Drainage Consultancy Ltd. In summary, NGET's case is:

- a. Good practice guidance, in the form of NGET's Construction Best Practice (CD F.6) and the wider industry guidance (CD F.17) indicates that a burial depth of 0.9m is likely to be sufficient on agricultural land;
- b. Site specific assessment is carried out in detailed design closer to the construction phase of the project. However, in light of landowner concerns the Interim Drainage Report (which represents a site-specific assessment) assessed the majority of the Order Land and found that neither the soil characteristics, nor the way in which the land is used at present, would justify a general need for greater depth of burial;
- c. Deeper burial than is necessary is not favoured because:
 - i. It will require more soil to be excavated and thus handled;
 - ii. It will add to both the cost and time of construction activities;

² In response to the Inspector's request, NGET filed a note on compensation matters to assist the inquiry. However, objections relating to matters which can be dealt with by the Upper Tribunal (Lands Chamber) in the assessment of compensation can be disregarded (see s 13(4) Acquisition of Land Act 1981 which provides that if the confirming authority (DES-NZ) is satisfied that an objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed it may disregard the objection.

- iii. It could require an increased separation distance between cables, increasing the area of land affected.
 - d. Neither the NFU, nor any objector, has identified any specific reason why a greater burial depth is required in respect of any plot of the Order Land, beyond general assertion. There is no evidence of any soil or drainage conditions, or specific agricultural practice, on the cable route which would justify a departure from good practice.
26. The Secretary of State should not proceed on the basis of the unevidenced assertion that a greater burial depth is required. Best practice, and site specific evidence, points towards NGET's approach being appropriate.
27. Second, objectors both before and at the Inquiry have pointed towards concerns about the management of soils and impacts on land drainage. Helpfully, both the NFU and those objectors who attended the Inquiry indicated that they were content with NGET's approach to these matters as set out in the Heads of Terms proposed for voluntary agreements (see Mr Chandler's Appendix B). The measures in those Heads of Terms include pre- and post-construction soil and condition surveys, and the provision of a suitably qualified drainage contractor to act as a drainage expert. The terms also provide for the appointment of an Agricultural Liaison Officer.
28. NGET will comply with these measures in respect of the land over which it exercises CPO powers, even if voluntary agreements are not secured. The question of whether certain measures should be secured by other means is addressed below.
29. Given the substantive agreement to what NGET proposes in terms of the management of construction activities on the affected land, there is in truth no dispute of substance on this point. This is reflected in the GSC Grays' comments on the form of unilateral undertaking as part of the consultation.

The form of the CPO

30. In light of the matters set out above, a substantial amount of the time at the Inquiry and during the adjournment was taken to address the way in which "mitigation" measures might be addressed through the CPO process.

31. NGET has set out its position on these matters in its submissions dated 8 November 2023. In short, NGET's position is that a CPO would not normally be framed to include conditions on the exercise of those powers. Such an approach may present legal difficulties if the rights became contingent upon compliance with a subsequent condition e.g. in respect of restoration of the land to a particular standard. The rights vested in NGET to construct and operate the scheme would then be open to challenge on the basis that restoration was found by the landowner to be unsatisfactory. Similarly, the rights to lay cables under other CPOs have not been the subject of conditions in respect of burial depth or related matters. The absence of any planning requirement in these respects (through the GPDO, or through any conditions on the converter station and new substation scheme) indicates that there is no overarching planning case for securing them.
32. NGET has sought so far as possible to accommodate the Inspector and parties' concerns on a without prejudice basis through two alternative means.
33. First, it has proposed without prejudice amendments to the CPO. It does not consider that these should extend to a "make good" condition for the reasons explained at paragraph 10.13. Critically, it does not consider that such a condition would sit comfortably with the existence of an unfettered right to construct and operate the Project, in accordance with the public interest set out above. In consulting on the without prejudice modifications, no landowner sought a further "make good" condition, and indeed the one consultation response received (from Ms Neill) approved the without prejudice modification subject to the addition of the words "relevant to the type of land concerned" in respect of good industry guidance.
34. Second, it has in the alternative proposed an unilateral undertaking to secure the main elements of mitigation through an alternative means. Subject to a single point to be resolved with DCC (namely, the absence of a negative restriction on the use of the Owned Land at the substation³) this is an enforceable planning obligation which will ensure that in the unlikely event that NGET did not exercise the rights in the way set out, and did not conclude a private agreement with the relevant landowner, there would

³ NGET proposes to follow the broad approach in the s 106 agreement for the converter station.

be a back stop of enforcement by DCC. This planning obligation, as noted in the consultation response of GSC Grays, secures unilaterally the matters which have been offered to the landowners through the Heads of Terms and which landowners could have secured by accepting those Heads of Terms. No landowners raised concerns with the substantive wording.

35. NGET's view, having in mind the consultation responses, is that if it is considered necessary to address these matters, the Secretary of State should prefer the unilateral undertaking approach rather than to introduce unnecessary complexity onto the face of the CPO through including the without prejudice modifications. If the Secretary of State determines that the modification of the CPO is required, then she should also determine that the unilateral undertaking is not required and afford no weight to it so that it does not have effect (see clause 4.2).
36. However, on a proper analysis, neither of these steps is necessary to confirm the CPO. The landowners will be compensated for the acquisition of the rights as framed in the CPO. If those rights may cause harm to their interests, that will be reflected in the compensation paid. It is thus in the interests of NGET to minimise those impacts. It must of course comply with its wider duties both as a licence holder and more generally in respect of construction health and safety. If the Secretary of State disagrees, then either (but not both) the without prejudice proposed CPO amendments or the unilateral undertaking could be relied upon.
37. In short, none of these matters – which are the remaining substance of the objections – prevents the confirmation of the Order and these matters are outweighed by the compelling case in the public interest for the Project.

Absence of impediments

38. For the reasons explained by Mr Chandler, supported by the evidence of Mr Law (funding) and Mr Smith (planning), there are no impediments to the delivery of the Project.

39. The CPO Guidance (paragraph 14) states that evidence as to the sources and timing of the funding should be provided, to show that the funding is available now or early in the process. This requirement has been met: the Project has received all necessary funding approvals to date. In short, subject to the confirmation of this CPO, the Project is ready to proceed. The CPO Guidance (paragraph 15) also requires the acquiring authority to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. The relevant planning consents are in place. The outstanding s 19 certificate process is progressing with DLUHC, and there is no suggestion that there is any reason why that certificate will not be granted. Accordingly, there is no impediment to the delivery of the Project.

Conclusions; the compelling case

40. The Secretary of State must be satisfied that there is a compelling case in the public interest to override the interests of landowners. This includes considering whether any interference with human rights, including the right to peaceful enjoyment of property, is fully justified and proportionate.

41. NGET maintains that there is a clear and indeed overwhelming case for confirmation of the CPO. The Project is urgently needed. It is a critically important piece of energy infrastructure on the path to Net Zero. It should proceed without delay. Nobody doubts that the land and rights are required to deliver the Project. No alternatives are advanced, save in respect of the converter station construction compound where progress is being made to secure other land. There are no planning impediments to the Project. The Project will be funded and is ready to be delivered.

42. The impacts on individual landowners have been limited by carefully drafting a CPO which will take rights in land, rather than acquire land freehold. NGET has expressly committed to delivering the project in accordance with appropriate construction standards to mitigate the impacts on landowners. If deemed necessary, further assurance in that regard has been offered. NGET has sought, and continues to seek, to reach agreements with landowners.

43. This is clearly a Project which should proceed without delay. The case for confirmation is clear, and the Inspector is invited to recommend accordingly.

Richard Turney

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20 December 2023