

**APPLICATION FOR CONFIRMATION OF THE
NATIONAL GRID (VIKING LINK INTERCONNECTOR)
COMPULSORY PURCHASE ORDER 2019**

**OPENING STATEMENT ON BEHALF OF
THE ACQUIRING AUTHORITY**

The context for the Order

1. The UK is facing unprecedented challenges to its energy market. In just two years' time, by 2021, around a quarter of its existing generating capacity will have been lost as old or unacceptably polluting plant closes. It has targets to obtain 15% of its energy from renewable sources by 2020, and to reduce carbon emissions by 80% of 1990 levels by 2050 – which latter target requires the power sector to be largely decarbonised by the 2030s;¹ indeed, Government is now moving towards a commitment to a UK goal of net-zero greenhouse gas emissions by 2050. This means that the profile of generation is also changing, with more reliable 'baseload' power sources such as coal and gas fired plants being replaced with intermittent renewable sources such as wind.
2. At the same time, demand for energy continues to rise, driven by a growing population and ever-increasing demand for heating and electricity services. National Grid's Future Energy Scenarios ('FES'), the forecasts used across the energy industry to inform the

¹ DECC, *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity* (July 2011), quoted at Wells p.9 [3.21].

development of the UK's gas and electricity systems, predict that by 2050, an increase in capacity will be required of between 85% and 165% over existing.²

3. It is in this context, and with the aim of maintaining an energy supply that is sustainable, secure and reliable, that Government has expressly recognised an immediate need for new sources of energy generation.³
4. Government also recognises, however, that developing new sources of energy generation alone is not a complete solution. Those sources must be supported by appropriate transmission and distribution infrastructure, capable of handling increases in demand and supporting the more complex system of supply that will result from diversified and predominantly renewable-based energy sources.⁴ Furthermore, electricity interconnectors, such as the National Grid Viking Link ('NGVL') project, are acknowledged as having a vital role to play in achieving this.⁵
5. The function of an electricity interconnector is to allow the transfer of electricity across borders, balancing the fluctuating supply and demand for electricity between the different countries, and providing access to alternative sources of supply at times of high demand or, indeed, supply failure. In doing so, however, they achieve a trinity of positive benefits for the connected nations: (a) ensuring a more secure grid, (b) assisting with the integration of clean generation, and (c) keeping prices low for consumers.⁶ These considerable benefits have recently been reiterated by bodies as diverse as the Institution of Civil Engineers, the National Infrastructure Commission, and the UK Parliamentary Office of Science and Technology, who also noted the potential for interconnection to offset the need to build new generating capacity.
6. It is against this background that the Government's March 2016 *National Infrastructure Delivery Plan 2016-2021* confirmed the Government's ambition to achieve at least 9GW

² FES July 2018, quoted at Wells p.6 [3.9].

³ See e.g. NPS EN-1, [2.2.20] and [3.7.7].

⁴ See e.g. NPS EN-1 [3.7.2]; EN-5 [1.1.1].

⁵ See e.g. NPS EN-1 [3.3.1].

⁶ DBEIS, *Clean Growth Strategy* (October 2017), quoted at Wells p.14 [3.48].

of additional interconnection capacity, as compared to the 5GW of current installed interconnector capacity.⁷ More recently, National Grid’s own analysis has indicated that a total capacity of 17.4GW (or an additional 12.4GW of interconnection capacity) would provide “*optimal benefit*”.⁸

7. It will thus be appreciated that, in offering 1.4GW of installed capacity, the proposed Viking Link interconnector will make a vitally important contribution to meeting that need, helping the UK to secure the benefits described, including the potential to offset the need for new generating capacity that would arise without interconnection. It is also important to understand that other proposed interconnectors are not alternatives; they will be needed as well.

8. The pressing need for the Viking Link project and the national benefits that it brings are extensively set out in the evidence of Ms Wells and summarised in that of Mr McIntosh. Those benefits were also all expressly recognised through the grant of planning permission in each of the four local planning authority areas through which the project runs. Indeed, the planning Inspector on the East Lindsey District Council appeal concluded:

“...I find that the proposed development would help to meet an essential national need for additional electricity supply capacity. Alternative routes have been thoroughly and rigorously examined, and none of the alternatives have been shown to be preferable, on the balance of all relevant environmental, technical and cost considerations”.

9. The significance of the Viking Link project resonates not only at a national level, but at an international level. Having been designated as a ‘Project of Common Interest’ (‘PCI’) for the purpose of the European TEN-E regulations, the project is acknowledged to be of “*overriding public interest*”,⁹ a fact which is unaffected by the UK’s decision to leave the European Union.

⁷ Quoted at Wells p.24 [3.91].

⁸ National Grid, *Network Options Assessment 2017/18*, quoted at Wells p.24 [3.91].

⁹ Wells, p.22 [3.77].

10. Whilst the significant benefits of the project have been recognised in the grant of planning permission, for these benefits to be realised it will be necessary for NGVL to acquire both the land and rights that will enable the cables and related infrastructure to be laid and constructed, and subsequently operated and maintained. NGVL has taken great care to ensure that only the land and rights reasonably required in order to do that have been included within the Order, and it will call Mr Graham Symons, Senior Development Engineer with NGVL, in order to explain the physical requirements associated with the construction, operation and maintenance of that infrastructure that have informed the identification of the land and rights packages that it proposes to acquire, and which provide the justification for their nature and extent.
11. It was recognised in the balancing exercise leading to the grant of planning permission for the proposed development that its location means that there will be some impact upon, and disturbance to, the agricultural land that comprises the majority of the route, and this has been a principal focus of third-party attention throughout the period of pre-Order engagement.
12. In order to mitigate any such impacts, NGVL has however engaged with affected landowners from an early stage; undertaken extensive work in order to understand the nature of the soils and any drainage that may be affected by the route; and developed both general and site-specific proposals for addressing any impacts that might arise¹⁰ (including preparing conceptual drainage designs for 94% of the route¹¹). This mitigation is secured both through the conditions imposed upon the planning permissions¹² and also within the individual Heads of Terms and agreements entered into with landowners.¹³
13. In order to assist the Inspector with understanding the nature of this work, and the protections that it will be implementing, NGVL will call Mr David Royle, a leading expert

¹⁰ See generally Royle at sections 4 and 5.

¹¹ Royle, p.37 [5.116].

¹² Royle, p.21 [5.11].

¹³ Heselton, Appendix 5.

on soils and drainage who has been advising the project since 2016. Mr Royle has vast experience on the effects of cables and pipelines on soils and drainage and how such effects can be mitigated and, indeed, he has been directly involved with discussions with individual landowners in this regard.

14. Having regard to the urgent national need for interconnection capacity, and the remarkably limited effects that the Project will have on third party land and assets, Mr McIntosh will also give evidence to the effect that the public interest therefore decisively demands that the Order be confirmed. He will explain that all necessary planning consents for both the UK and Danish onshore elements of the Scheme are in place, as is the funding to bring the Scheme forward.

The land and interests to be acquired

15. Consistent with the requirement set out in paragraph 2 of MHCLG's *Guidance on Compulsory Purchase Process and the Crichel Down Rules* (Feb 2018) ('the Guidance'), it is always NGVL's preference to acquire the land and rights it requires by agreement, and it has put into effect the Land Rights Strategy developed by National Grid for the purpose of achieving this.¹⁴
16. Over a two-year period of engagement with the relevant landowners prior to the Order being made, commencing in 2017, NGVL has been able to enter into Heads of Terms in respect of the necessary interests in over 98.8% of the HVDC route, and 100% of the HVAC route.¹⁵ Fuller details of the nature of the engagement are set out in Appendix 1 to Mr Heselton's evidence (and in Appendix 4 insofar as specifically relates to those parties who do or did object to the Order).
17. The high proportion of interests where agreement has been reached on Heads of Terms prior to the making of the Order has been reflected in the low number of objections

¹⁴ Heselton, p.16 [5.2].

¹⁵ Heselton, p.23 [6.4.2].

received – just 12, notwithstanding the fact that it is a linear scheme extending to some 67km. It is striking that none of those objections go to the principle of the Order, with the majority being concerned with the detail of agreements that the landowners concerned wish to enter into with NGVL.

18. Each objection was nonetheless responded to in detail in Appendix 9 to Mr Heselton's Proof of Evidence and the single Appendix to Mr McIntosh's Proof of Evidence.
19. It is equally noteworthy that not one of the objectors produced any substantive evidence of the adverse impact that the Project and/or Order would have on their interests at the 4 June 2019 deadline for evidence; including those statutory undertakers who have to show 'serious detriment' to their undertaking if land is not to be included within the Order. As such, the Inspector is making his decision in circumstances where there is no evidence supporting actual harm to any objector's interests and, furthermore, no evidence showing 'detriment' to a statutory undertaker's undertaking, let alone 'serious detriment'.
20. In any event, in the four-month period that has elapsed since the receipt of those 12 objections, eight have since been resolved, resulting in the withdrawal of those parties' objections to the Order. Furthermore, negotiations of the remaining four objections are at an advanced stage and are anticipated to be resolved shortly. A short summary update on the status of the outstanding objections is given below, and NGVL's witnesses (in particular Mr Heselton) will be able to provide further detail if the Inspector requires during the course of the inquiry.
21. NGVL is however hopeful that the Secretary of State will ultimately be making his decision in a context in which there are no outstanding objections to the Order.

Outstanding objections

Network Rail

22. Network Rail ('NR') objected to the Order by letter dated 31 January 2019 on the basis that its operational railway land was adversely affected by it. The letter did not give any details as to what the adverse impact(s) would be or how it/they would arise, or provide any supporting evidence, and no such information was forthcoming in spite of a letter sent by NGVL on 14 February 2019 requesting clarification.
23. Notwithstanding the lack of any explanation by NR as to the nature, cause or extent of any adverse impact upon the operational railway, NGVL has produced evidence from Mr Jon McPhee, an experienced railway engineer, to explain the nature of the existing railway line that is to be crossed by the Project, the work required to be carried out and any potential impact that those works might have, and the mitigation available for dealing with any such possible impacts. Mr McPhee concludes that the construction methodology and asset protection measures proposed to be used by NGVL in relation to the crossing of NR assets means that the Project will not have a detrimental impact on the operation of the railway, whether considered over the short, medium or long term.¹⁶
24. NR did not submit any evidence of its own, relating to any alleged serious detriment or otherwise, and it is not proposing to attend the inquiry.¹⁷
25. In parallel, discussions between the parties have however been ongoing in relation to the conclusion of the suite of documents that NR require, being a 'basic asset protection agreement' ('BAPA'); a deed of undertaking; and the easement required in relation to the land rights being acquired. The BAPA has been agreed and signed, and discussions in relation to the other two documents are now at a very advanced stage. Indeed, there remains only one point of detail outstanding between the parties and that relates to

¹⁶ See further McPhee at Sections 4 and 5.

¹⁷ See its letter dated 4 June 2019.

the need for suitable insurance; NGVL's proposals in this regard are currently with NR for consideration and (it is hoped) acceptance. There are no in-principle or technical points that remain in issue and NR anticipates that the single remaining point of difference will be resolved shortly, enabling NR's objection to be withdrawn.

Canal and River Trust

26. In its 'Skeleton Submissions' provided to NGVL on 6 June 2019,¹⁸ the Canal and River Trust ('CRT') asserted that NGVL was not a statutory undertaker for the purposes of the Acquisition of Land Act 1981 ('the 1981 Act'), ss. 8, 16, 19 and Schedule 3 [3]-[4]. As a consequence, CRT asserted (wrongly) that were the Secretary of State minded to confirm the Order in circumstances where CRT's (or any other statutory undertaker's) objection was not withdrawn, the Order would be subject to Special Parliamentary Procedure ('SPP').
27. As set out in NGVL's letter to CRT of 13 June 2019, the submission is not however correct. Section 112(1) of the Electricity Act 1989 ('the 1989 Act') gives effect to Schedule 16 of the same, which provides at [2(2)] that: *"A licence holder who is entitled to exercise any power conferred by Schedule 3 to this Act shall be deemed to be a statutory undertaker ... for the purposes of ... the Acquisition of Land Act 1981"*.
28. As the holder of an electricity interconnector licence for the purposes of s.6(1)(e) of the 1989 Act, NGVL is entitled to exercise the powers conferred by Schedule 3 of the Act and accordingly is a statutory undertaker for the purposes of the 1981 Act.
29. The effect of this is that:
 - a. by virtue of s.17(3) of the 1981 Act, the requirement in s.17(2) of the same that orders seeking to compulsorily acquire a statutory undertaker's interest in land

¹⁸ In replacement for the original version supplied on 4 June 2019.

that are the subject of outstanding objections by that undertaker are subject to SPP is disapplied; and

- b. by virtue of para 5(1) of Schedule 3 to the 1981 Act, where an order relates to the acquisition of rights over the land of a statutory undertaker and is the subject of any outstanding objection by the statutory undertaker, the Order shall not be confirmed until the appropriate Minister has certified that the right can be purchased without serious detriment to the undertaking.
30. It is understood that CRT now accepts the correctness of the above and will not pursue its submission in respect of SPP any further.
 31. CRT's 'Skeleton Submissions' were drafted by Counsel and are clearly not evidence. Furthermore, nor did CRT produce any other document that could be characterised as evidence by the Inspector's 4 June 2019 deadline. CRT's letter of objection dated 12 February 2019 made some of the same erroneous legal points as in the 'Skeleton Submissions' and made representations on the nature of the legal agreements that the parties are seeking to negotiate. Like NR, they too have not provided any 'in principle' objection to the Project, nor any substantive evidence as to any 'detriment' – let alone 'serious detriment' – that would be suffered by CRT as a result of the Project.
 32. The negotiations in relation to the proposed agreements are, again, at a very advanced stage. In particular, NGVL has recently issued to CRT a letter of comfort confirming that it will comply with CRT's Code of Practice from an engineering perspective, save that the indemnity, insurance and reinstatement provisions of the Code of Practice will instead be governed by the separate legal agreement that is currently being negotiated.
 33. NGVL therefore also anticipates that this objection will be resolved shortly, albeit that it is understood that CRT will be attending the inquiry and can therefore confirm whether that view is shared.

Cadent Gas

34. As with the other statutory undertaker objectors referred to above, negotiations between the parties have progressed considerably. A suitable asset protection agreement has now largely been agreed, with the only outstanding issues relating to insurance and the terms of the Parent Company Guarantee to be provided by National Grid Holdings One plc. These are essentially commercial concerns and not ones that indicate that there would be any detriment (serious or otherwise) to Cadent's undertaking if the Order is confirmed. No substantive evidence of such detriment has been provided.
35. NGVL is confident that the outstanding points between the parties can be resolved in relatively short order and that Cadent's objection will thereafter be capable of being withdrawn.

Triton Knoll Offshore Windfarm

36. Discussions with Triton Knoll Offshore Windfarm are at a very advanced stage and both parties anticipate the necessary agreement being concluded imminently. This shared understanding was confirmed in a letter from Triton Knoll to the Planning Inspectorate dated 21 June 2019.

Withdrawn objectionsNGET / NGG

37. National Grid Electricity Transmission plc ('NGET') and National Grid Gas plc ('NGG') withdrew their objections to the Order by letter dated 19 June 2019.
38. As was explained in NGVL's Statement of Case, by virtue of paragraph 2(1) of Schedule 3 to the 1989 Act, no order may be made which authorises the compulsory purchase of land (or rights in land) belonging to another 1989 Act licence holder, unless and until

consent to the making of the order has been obtained from the Gas and Electricity Markets Authority (GEMA/OfGEM).

39. The only land to which this requirement could apply is land owned by NGET at the NGET Substation (Plots 41-01, 41-02, 41-03, 41-21 and 41-22), which is the subject of Heads of Terms for agreement between NGVL and NGET for the acquisition of rights to enable NGVL to install its cables. NGET have now also entered into an Asset Protection Agreement with NGVL and on the strength of those documents have withdrawn their objection to the Order.
40. NGVL is however still seeking consent to the inclusion of this land in the Order from OfGEM, in order to ensure that in the event that any unknown interest in NGET's land come to light, NGVL will have compulsory purchase powers it can exercise. BEIS are liaising with OfGEM regarding the issuing of the consent. NGET and NGG have never objected to the issue of GEMA consent and there is no reason to believe that this will not be forthcoming.

Others

41. A schedule of the remaining withdrawn objections, and the date of their withdrawals, is supplied with this Opening Statement.

Conclusion on objections

42. There are now just three extant objections to the Order, the allegations of harm in each of which are wholly unsupported by any expert or other substantive evidence. NGVL's own expert evidence has explained why no such harm will arise, let alone any 'serious detriment' such as could justify the exclusion of the statutory undertaker objectors' land from the Order.
43. It is acknowledged that suitable asset protection agreements with each of those objectors is required, and negotiations in respect of the same are close to completion.

NGVL hopes in due course to be able to update the inquiry to confirm that all objections have been resolved, but in the event that they are not concluded by the end of the inquiry, NGVL will maintain that the case for confirmation in respect of those interests has been made out.

Other matters

The Inspector's queries

44. By an email from the Planning Inspectorate received on 20 June 2019, the Inspector raised a small number of queries in respect of which he sought NGVL's assistance. NGVL has sought to respond to those queries by way of a short, written note, which was circulated by email on 24 June, and which we anticipate the Inspector will be able to use as a basis for further questions (if any) arising.

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25 June 2019

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