



Department for
Energy Security
& Net Zero

By email: fionabarker@eversheds-sutherland.com

Fiona Barker
Principal Associate
Planning and Infrastructure Consenting
Eversheds Sutherland (International) LLP

Department for Energy Security & Net Zero

Energy Infrastructure Planning
3-8 Whitehall Place
London,
SW1A 2JP

www.gov.uk/beis

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Dear Ms Barker,

GAS ACT 1986 AND ACQUISITION OF LAND ACT 1981 - THE NATIONAL GAS TRANSMISSION (WESTERN GAS NETWORK PROJECT) COMPULSORY PURCHASE ORDER 2022 (the “Order”) (CONFIRMED AS ‘NATIONAL GAS TRANSMISSION PLC (WESTERN GAS NETWORK) COMPULSORY PURCHASE ORDER 2022’)

Your client: **National Gas Transmission PLC (“NGT”)** (formerly known as ‘National Grid Gas Plc’)

The Compulsory Purchase Order and background:

1. I am directed by the Secretary of State for Energy Security & Net Zero (“the Secretary of State”) to refer to the National Gas Transmission Plc (Western Gas Network Project) Compulsory Purchase Order 2022 (“the Order”), which was submitted for confirmation to the Secretary of State by your client, under section 9 of and Schedule 3 to the Gas Act 1986 and the Acquisition of Land Act 1981 (the “1981 Act”). It is noted that since the Order was submitted your client has changed its name to National Gas Transmission Plc (NGT) and the name of the Order is to be amended to reflect this change.
2. The purpose of the Order is to authorise NGT the compulsory acquisition of land and rights in land due to a request by South Hook Gas Company Ltd (SHGCL) who operate the South Hook liquified natural gas terminal, Milford Haven, in southwest Wales.
3. The statement of case sets out the need for the project. SHGCL intend to increase the amount of gas it can flow into the national gas transmission system (NTS) by a further 15 million cubic metres a day. It has submitted a Planning

and Advanced Reservation of Capacity Agreement (PARCA) to notify NGT of its intention to do so.

4. Analysis of gas flows in the NTS show that the additional capacity could not be accommodated in normal scenarios, due to constraints on the existing infrastructure between Tirley, Gloucestershire and Honeybourne, Worcestershire; at Churchover, Warwickshire; and in South Wales. The NTS therefore needs to be reinforced to accommodate the additional flow requested in the PARCA.
5. NGT holds a Gas Transporter Licence and has a statutory obligation under section 9 of the Gas Act 1986 to develop and maintain an efficient and economical pipeline system for gas. Under section 9(1)(b), NGT must comply with any reasonable request by gas shippers to connect and convey gas to that system, as set out in the PARCA. In doing so, NGT must follow approved capacity methodologies and framework obligations, and release capacity when these processes determine it, in order to meet the PARCA requirement.
6. The Secretary of State is required to seek consent from the Gas and Electricity Markets Authority (“GEMA/Ofgem”) where any land subject to compulsory acquisition (including rights over land) belongs to another licence holder.
7. By virtue of paragraph 1(1) of Schedule 3 to the Gas Act 1986, the Secretary of State, after consultation with the Director, may authorise a gas transporter licence holder to purchase compulsorily any land. Paragraph 1(2) makes it clear that the reference to 'land' includes any right over land and the power of the Secretary of State includes the power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones. The 'Director', by virtue of s3(2) Utilities Act 2000 and Article 2 of the Utilities Act 2000 (Commencement No. 4 and Transitional Provisions) Order 2000 is the Gas and Electricity Markets Authority (GEMA).
8. Ofgem supports GEMA in its day-to-day work and can make a GEMA consent decision on behalf of GEMA.
9. The Secretary of State therefore wrote to Ofgem, via email dated 14 April 2023, pursuant to paragraph 1(1) to Schedule 3 of the Gas Act 1986.
10. Ofgem replied to the Secretary of State on 19 April 2023 and made no objections to the Order. Ofgem stated the following:
 - Ofgem, in discharging its functions under the Gas Act 1989, approved the needs case for the Western Gas Networks Project on 14 December 2021.
 - This network upgrade will facilitate an additional 163GWh/d of entry capacity at Milford Haven Liquefied Natural Gas import terminal from 1 January 2026. The project will improve security of supply for energy consumers in Great Britain. The project has been developed in response

to a specific request for additional entry capacity from one of the operators at Milford Haven.

- To secure the additional entry capacity the operator is required provide a financial commitment that in this case represents a material contribution to estimated project cost. In addition to approving the needs case, Ofgem also stated that it agreed with the preferred option NGT had identified to deliver the additional entry capacity as being the option that delivered the greatest economic benefit for consumers whilst complying with all regulatory requirements. Their view was that the Order aligns with the delivery of this preferred option.
- Since approval of the needs case, Ofgem have continued to engage with NGT in the development of a final funding request expected in May 2024. They will make a final determination on the level of funding in line with their statutory duties in the context of the RII0-2 price control 2021=26 Final Determinations. This will provide NGT with sufficient funding to meet the implementation and land acquisition/compulsory purchase compensation costs associated with the Western Gas Network Project as and when required (including any advance payments).

11. It is noted that the Secretary of State has previously made a screening decision in regard to a request for an environmental determination – submitted by NGT to the Secretary of State in accordance with Regulation 6 of the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999 (as amended) (“the 1999 Regulations”). The request was made on 21 September 2020 and the Secretary of State decision, made on 17 December 2020, concluded that an EIA was not required.
12. The Order relates to plots numbered 1 to 179 on four separate land parcels. Plots 1 to 23 (Order Map 1) relate to a predominantly linear area of land of some 2km length at Churchover. Plots 24 to 174 (Maps 2 to 8) relate to a linear area of land between Wormington and Honeybourne, extending to some 9km. Within these two parcels, the proposal (the Project) would include two new gas pipelines (approximately 2km and 9km respectively), with associated temporary construction compounds, lagoons and accesses. These routes occupy existing arable and grass land and cross several physical features such as watercourses, hedges, ditches, roads and canal feeders. The Order would secure the freehold of an area of land adjacent to Churchover Tee Gas Valve Compound, and a variety of other rights for the remaining land, including access, pipeline, construction compound, lagoon, drainage and security rights.
13. The third parcel comprises Plots 175 and 176 (Map 9) an area of land to the east, south and west of the existing Three Cocks Pig Trap Facility, comprising pasture and arable land. Construction access and compound rights would be secured.
14. Plots 177-179 (Map 10) are east and south of the Cilfrew Pressure Reduction Station and comprise pasture and arable land, where construction access and compound rights were sought to be secured. However, these plots are now subject to a modification request for removal from the Order (see paragraph 22 below).

15. The Secretary of State notes that some of the land in the plots are located within Wales. However, Welsh Ministers have no jurisdiction in confirming the Order, and the Secretary of State for Energy Security and Net Zero is responsible for the decision.

16. The actual works include:

- To construct and operate a new 9km section of gas pipeline between Wormington (Gloucestershire) and Honeybourne (Worcestershire); a new 2km section of gas pipeline in Churchover (Warwickshire);
- to carry out works to facilitate pressure uprating of the existing gas pipeline between Felindre (Swansea) and Three Cocks (Powys) and Cilfrew (Neath Port Talbot); Pressure uprating increases the pressure at which gas can be discharged from compressor stations and facilitates higher flow rates, following systematic checks of pipelines and any necessary modifications to ensure the system remains safe and suitable;
- and, to carry out associated works to existing above ground installations (the “Project”). The Project is required as the Maximum Sustainable Daily Rate (i.e. the amount of gas that can be consistently flowed taking account of reliability, availability and maintenance schedules of key equipment) of one of the two sub-terminals forming Milford Haven Aggregate System Entry Point (a Liquefied Natural Gas entry terminal in South Wales) - ‘South Hook Terminal’ - is being increased and as such, South Hook Gas Company Ltd (“SHGCL”) have applied to NGT for additional capacity on the national gas transmission system (“NTS”).

17. The making of the Order commenced on 20 October 2022. The objection period ran from 9 November 2022 until 7 December 2022. During this period, the Secretary of State received four objections, which included a holding objection from statutory consultee National Grid Electricity Distribution entities (NGED). NGED has subsequently withdrawn their holding objection on 17 October 2023. The Order was formally submitted to the Secretary of State on 13 December 2022.

18. The Secretary of State wrote to the Applicant - NGT - and all interested parties who had outstanding objections on 26 January 2023, under Rule 3(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, to state that the Secretary of State had decided to hold a public inquiry into the Order. For the purposes of Rule 3(3), 26 January 2023 became the ‘relevant date’. It was also confirmed that the public inquiry would be listed for Tuesday 9 May 2023 for a duration of four days. Mr Patrick Hanna was appointed as the Inspector for the public inquiry. Parties were invited to correspond and participate at the inquiry in Welsh. This invitation was not taken up.

19. The Secretary of State also informed the Applicant that a Statement of Case must be submitted to each outstanding objector within six weeks of the relevant date. The Secretary of State noted that the Statement of Case must set out in

full the case that the Applicant intended to put forward at the inquiry, including the reasons for making the Order.

20. The Inspector sent out a pre-inquiry note and an agenda for the inquiry on 7 February 2023, this pre-inquiry note also confirmed that, due to the geographical extent of the land subject to the Order, the inquiry would be held as a virtual event, thus ensuring fair, open and accessible participation by all parties.
21. It is noted that one objection was withdrawn before the public inquiry began. The Inspector noted in his report that the objection from Mr Ian Miles, was still in place when the public inquiry began.
22. NGT requested a modification to the order on 7 February 2023. The effect of the modification would be, firstly, to change the name of the Order to reflect the change of company name from National Grid Gas Plc to National Gas Transmission Plc (NGT) and, secondly, to remove Plots 177, 178 and 179 at Cilfrew, Neath Port Talbot. The modification arises as a result of ongoing refinement of the project design work.

Inspector's report:

23. The Department for Levelling Up, Housing and Communities, issued updated Guidance on compulsory purchase process and the Crichel Down rules in July 2019 for compulsory purchase in England and the Welsh Government have published equivalent guidance, Compulsory Purchase in Wales and the Crichel Down Rules (Wales Version, 2020) (Circular 003/2019) henceforth referred to as 'the relevant guidance'.
24. The Inspector submitted his report to the Secretary of State on 23 June 2023 and framed his conclusions on the principles of this guidance, including: the need for the Order; a compelling case in the public interest; whether the public benefit will outweigh the individual loss; resources and procedural requirements and other consents.
25. The Secretary of State notes the following in the Inspector's report:
 - In paragraph 68 of his report, the Inspector states "Policy support for the Project is provided through existing and draft NPSs for energy infrastructure projects. EN-1 indicates that gas infrastructure must be sufficient to meet peak demand. This policy sets a high bar for NGT to achieve to ensure that the country's energy needs are met. EN-4 recognises that storage and transmission of gas is crucial to meeting energy needs."
 - Notes that the Applicant did consider a number of alternatives to the final Project (as is set out in Section 4 of the Statement of Reasons/Statement of Case) but on assessment the preferred strategic proposal, as refined, requires the least new infrastructure and thus minimises the impact of the Project on communities and the environment; and has the lowest capital cost

with the greatest consumer benefit. It therefore represents the most economic and efficient solution for UK consumers. This is also supported by the comments made by Ofgem.

- With regards to finance, the Inspector notes that funding of the Project would be met through Ofgem’s FIOC mechanism, this is also supported by the response of Ofgem in paragraph 10 of this decision letter. The Inspector also notes that there have been no objections to the Order on grounds of funding.
- It is noted that the tendering process has commenced. If the decision is made in favour of the Applicant, construction is due to start in early 2024 and will complete in December of that year. At the inquiry, NGT confirmed that materials for the Project had already been ordered, which raised concerns from Mr Miles of presumptuousness. However, given the specialist materials required and long lead-in times, this is not an unreasonable risk for NGT to take if the Project delivery timescales are to be met. The Inspector’s report notes that there have been no objections to the Order in respect of deliverability or impediments.
- The Inspector makes their recommendation in paragraph 91 of their report in which they state: I recommend that the National Grid Gas Plc (Western Gas Network Project) Compulsory Purchase Order 2022 be confirmed subject to the following modifications:
 - a. the renaming of the Order to the “National Gas Transmission Plc (Western Gas Network) Compulsory Purchase Order 2022”; and
 - b. the removal of Plots 177, 178 and 179 from the Order.

Consideration of the Compulsory Purchase Order:

26. In consideration of the Order, the Secretary of State has weighed up the relevant impacts of the proposed project and has considered whether the rights over the land requested for the Order interfere with the human rights of those with an interest in the affected land. The Secretary of State has also considered whether, in accordance with the relevant guidance, a compelling case for compulsory purchase in the public interest is made out, and whether any interference with the human rights of those affected is sufficiently justified and proportionate in light of the purposes for which the compulsory purchase order would be made in this instance.

27. In considering whether there is any interference with the human rights of those with an interest in the land affected, the Secretary of State has taken account of the compelling public interest justification for the development. The Secretary of State has fully considered the objections, including those set out in paragraphs 42-57 of the Inspector’s report and notes and agrees with the Inspector’s

comments in his report in relation to them, specifically paragraphs 87, 88 and 89.

28. The Secretary of State has taken the view that the rights over the land sought by the Applicant will interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. However, the Secretary of State is satisfied that the Applicant has sought to keep interference to a minimum in respect of the rights sought over the Order land and considers that any interference is necessary and proportionate. The Secretary of State also considers that any interference strikes a fair balance with the public benefit of delivering an important scheme that will help to guarantee the UK's future energy security.
29. The Secretary of State has therefore concluded that there would not be an unlawful interference with human rights under Article 1 of the First Protocol or in the case of a dwelling, Article 8 of the European Convention on Human Rights and that in confirming the Order there would not be a disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
30. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to the need to:
- eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
 - foster good relations between people who share a relevant protected characteristic and those who do not.
31. The Secretary of State has considered the potential impacts of granting the Order in the context of the public sector equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the relevant protected characteristics.
32. The Secretary of State notes "the general biodiversity objective" to conserve and enhance biodiversity in England, in section 40(A1) of the Natural Environment and Rural Act 2006 and its duties under section 6 of the Environment (Wales) Act 2016 and considers the application consistent with furthering the aforementioned objective and duties, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has also had regard to the requirements of the Habitats Directive, as required by regulation 9(3) of the Conservation of Habitats and Species Regulations 2017, so far as they may potentially be affected by his confirmation of the Order. The Secretary of State is of the view that the

application considers biodiversity, environmental impacts and protected sites to accord with this duty.

Secretary of State's decision on the Compulsory Purchase Order:

33. The Secretary of State has carefully considered the intentions of NGT and the concerns expressed by the objectors as set out in their original objections and stated within the public inquiry.
34. The Secretary of State notes that the National Policy Statements (NPS) and specifically The Overarching National Policy Statement for Energy (EN-1) offers support for gas infrastructure projects, which will add to the reliability of the national energy supply, provide crucial national benefits, which are shared by all users of the system.
35. The British Energy Security Strategy, which was published on 7 April 2022 reinforces the importance of flexible and efficient network infrastructure.
36. The Secretary of State has carefully considered NGT's Statement of Case which sets out a justification for the making of the Order as well as the report submitted by the Planning Inspectorate Inspector and his recommendation. The Secretary of State concludes that there is a compelling, proportionate and justifiable case in the public interest for the acquisition of the Order land.
37. **The Secretary of State has decided to confirm the Order as per the modifications and the name change as recommended by the Inspector in his report.**
38. The confirmed Order is enclosed together with the plans referred to in that Order. The Order and plans are authorised on behalf of the Secretary of State.
39. Your attention is drawn to the notice obligations in section 15 of the 1981 Act, including that relating to publishing a confirmation notice in one or more local newspapers circulated in the locality of the land subject to the compulsory purchase order. The Order will become operative on the date which Notice of Confirmation is first published. It is important you advise the Secretary of State of this date. We should be grateful if you would in due course, send to the Secretary of State a copy of the pages from the local newspaper containing the Notice of Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.
40. Section 15(6) of the 1981 Act provides that a confirmation notice shall be a local land charge and requires it to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains

the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the Acquiring Authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

41. The validity of the Secretary of State's decision may be challenged by making an application to the Planning Court. Such application must be made not later than six weeks from the date on which notice of the confirmation or making of the Order is first published in accordance with section 15 of the 1981 Act.

Yours sincerely,

John McKenna

Head of Network Planning
Energy Infrastructure Planning Delivery Team
Energy Development
Department for Energy Security & Net Zero.