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Dear Mr Dempsey,

**National Grid Electricity Transmission (Harker Energy Enablement Project)
Compulsory Purchase Order 2023 (the Order).**

Your client: National Grid Electricity Transmission.

The Compulsory Purchase Order:

Introduction

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to refer to the National Grid Electricity Transmission (Harker Energy Enablement Project) Compulsory Purchase Order 2023 (the “Order”), for consideration under section 10 of, and paragraph 1 of Schedule 3 to, the Electricity Act 1989 (“the 1989 Act”) and Part 2 of the Acquisition of Land Act 1981 (“the 1981 Act”).
2. The purpose of the Order is to enable National Grid Electricity Transmission (“NGET”) to purchase compulsorily the land and new rights required for replacing the existing Harker Substation, refurbishing the existing 132kV overhead lines between the Harker substation and the Scottish Border by installing an additional circuit along the existing pylons and renewing the existing wires between Harker and the Scottish Border, and associated works to maintain and upgrade the existing electricity transmission system and provide additional network capacity, (the “Project”).
3. NGET holds an electricity transmission licence under section 6(1)(b) of the 1989 Act. Paragraph 1(2) of Schedule 3 to the 1989 Act states that licence holders are authorised to acquire rights in land as well as the title to land, and that this can be done by creating new rights as well as by acquiring existing rights. NGET also owns and maintains the high voltage electricity network in England and Wales and is

required under section 9 of the 1989 Act to develop and maintain an efficient, co-ordinated and economical system of electricity distribution.

4. Two of the proposed routes cross into Scotland and related works will be required to uprate the assets in Scotland. The Scottish section of both routes are the responsibility of Scottish Power Transmission (“SPT”). NGET have not been made aware of any issues by SPT to suggest there will be any impediment to securing the necessary consents and, in any event, NGET have other drivers to complete the Project, this includes the need to redevelop its existing Harker Substation site, primarily network capabilities reinforcement and new customer connections.

Process for making and confirming the Order

5. The process for making and confirming the Order commenced on 28 September 2023. The objection period ran from 4 October 2023 until 1 November 2023. During this period, the Secretary of State received four objections. The Order was formally submitted to the Secretary of State on 10 November 2023.
6. As per Rule 3(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 (as amended), the Secretary of State decided it was appropriate to hold a public local inquiry into the Order. Notification was sent to all interested parties, via email, on 22 November 2023. For the purpose of Rule 3(3), 22 November became the ‘relevant date’.
7. The Secretary of State wrote to the Planning Inspectorate, via email, on 23 November 2023 to request that an Inspector be appointed in preparation to oversee the inquiry. Susan Heywood was appointed as the Inspector.
8. A Pre-Inquiry note was sent to all interested parties on 22 January 2024 and it was confirmed that the full inquiry would begin at 10am on Tuesday 5 March 2024 at the Warwick Mill Business Village, Warwick Bridge, Carlisle, Cumbria, CA4 8RR and was anticipated to last three days.
9. However, before the inquiry could begin, all four outstanding objections were withdrawn on 23 February 2024. The Secretary of State decided that the inquiry was no longer needed and that a decision could be made based on the available evidence already submitted. Interested parties were informed of this decision on 27 February 2024. Description of the Project and Order Land
10. The Project is situated in the north of England. The existing Harker Substation is located approximately 5.5 km north of Carlisle and lies in the administrative area of Carlisle City Council. The settlement of Harker lies to the east of the substation. To the north of the substation, the land is dominated by modified grassland used for grazing livestock, with fields separated by a mix of hedgerows, wet ditches, fences and lines of trees. The area immediately to the east of the substation was recently used as a construction site for the separate Power Flow project and the area to the west of the substation comprises modified grassland fields, bounded by hedgerows and ditches. The majority of the Order Land either comprises of,

or is immediately adjacent to, land on which existing electricity transmission infrastructure is already situated.

11. The existing Harker Substation comprises three main elements:

(a) 132 kV AIS site built in the 1950s (**HARK1**);

(b) 275 kV AIS site (**HARK2**) built in the 1950s and 1960s; and

(c) 400kV GIS site (**HARK 4**) built in the 1990s with additions approximately 10 years ago.

12. The Project comprises the replacement of HARK1, the removal of the majority of HARK 2 and part replacement of HARK 4 through an extension to the existing substation (together the Substation Rebuild) as well as overhead line works being the installation of a second 132 kV overhead lane and uprating of the existing circuits with additional works to an existing tower and the erection of two new towers to enable the new circuit to feed the existing routes.

Purpose of the Project

13. NGET has identified a need to redevelop its existing Harker Substation site due to the cumulative effect of several project drivers, primarily network capabilities reinforcement and new customer connections.

14. The Statement of Case also states in paragraph 5.4 that Scotland and the north of England is characteristically an 'exporting' region where installed generation capacity is more than enough to supply the local demand. Larger demand areas lie in central and south of England and so the energy flows across the southern Scottish and northern English boundaries are predominantly north-to-south, which is the main driver for reinforcements. Scotland has significant quantities of green energy coupled with lower demand and there is a need to increase the cross-border capabilities of the electric transmission network.

15. The Secretary of State also notes that NGET is contracted with the local electricity distribution company, Electricity North West Ltd (ENWL), to provide capacity to connect new distributed embedded generation across Cumbria and that the Project is required to fulfil that connection offer.

16. The Statement of Case in paragraph 5.8 also states that significant planned onshore wind generation in the south-west of Scotland will also feed southwards into the Harker substation, along with upgrading of existing overhead lines with SPT and that this increased generation creates an additional need to uprate and upgrade existing equipment at the Harker Substation site.

Land and rights to be acquired

17. In regard to land and new rights required, the Secretary of State notes the following:

Land

18. NGET states that it is taking a proportionate approach to acquisition and only seeks to acquire the freehold title to the Order Land for rebuilding the substation. The current use of this land is either land used for the existing substation or agricultural land.

19. The Order Land that NGET seeks to acquire comprises a limited number of Plots (specifically Plots 202, 205, 206, 207, 208, 209 and 210). Whilst NGET already owns the freehold of this land, it is included in the Order because it is subject to other rights/interests (principally in respect to mines and minerals). Therefore, NGET state that freehold acquisition is necessary to ensure they have the necessary exclusive possession and control of the land required for safe construction, operation and maintenance of these installations.

Rights

20. Save in respect of the land identified for freehold acquisition, NGET's approach is to only acquire the interests that it requires over the various plots within the Order. Accordingly, for most of the Project, NGET seeks to create new rights over the relevant land rather than to acquire the freehold.

21. The new rights sought by NGET have been separated into 'packages' based on their purpose and applied to specific plots, as appropriate. Whilst all the rights are permanent, some of the rights are only required to be exercised from time to time, such as the creation of construction compounds during the construction, commissioning and decommissioning phases.

22. NGET states that the rights 'packages' have been tailored in this way to ensure that a proportionate approach to compulsory purchase is taken, and that the impact for affected landowners and occupiers is limited so far as reasonably practicable. Accordingly, if a plot is only required in order to facilitate limited works, the relevant rights package is sought in relation to that land.

Consideration of alternatives

23. The Secretary of State notes that NGET carried out a siting study to consider alternatives and that alternative options were discounted based on lack of available space and associated health and safety implications, systems security issues and existing constraints (section 6 of the Statement of Case). The Secretary of State also notes that the siting study was submitted as part of the planning application process and is content with the approach taken.

Special Categories of Land

Crown Land

24. The Order land includes Crown Land. However, the Order excludes the compulsory acquisition of any Crown interest in the Order land, albeit that the interests of any other parties in land owned by the Crown are included within the Order.

Land owned by the National Trust

21. The Order land does not include any land which is owned by the National Trust.

Consents

22. The Secretary of State notes section 7 of the Statement of Case in relation to consents and has no further comments on this except for the section 37 applications made under the provisions of the Electricity Act 1989.

23. Two section 37 applications were submitted to the Secretary of State, 1842u (this is the reference supplied by the energy portal when applications are submitted) on 8 February 2024, which involves a duck under arrangement at tower AL68 which involves the erection of two new smaller towers (V70A and V70B) between AL68 and V70; and 1843u, submitted on 9 February 2024 which involves a small section of temporary overhead line outside the land within NGET's control from V28 to the boundary of the Harker substation land.

24. A decision on 1842u was made by the Secretary of State on 10 May 2024. The decision on 1843u was made on 1 August 2024.

Funding

25. In relation to funding, the Secretary of State notes the Project is split into two funding mechanisms. The refurbishment of existing circuits (Harker-Chapel Cross and Gretna-Harker-Hawick-1) is funded by the regulatory framework and the new circuit (Gretna-Harker-Hawick-2), funding is via the OFGEM Large Onshore Transmission Investments (LOTI).

26. It is noted that, given NGET's strong credit rating, the requisite funding is available to meet the implementation and land acquisition/compulsory purchase compensation costs associated with the Project as and when required (including any advance payments). The Secretary of State has no further comments on this point.

Gas and Electricity Markets Authority consent

27. The Secretary of State is required to seek consent from the Gas and Electricity Markets Authority ("GEMA") where any land subject to compulsory acquisition, including rights over land, belongs to another licence holder. 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 GEMA.

28. The Secretary of State wrote to Ofgem on 7 March 2024, via email, asking for their comments and consent. Ofgem replied, via email, on 29 May 2024, providing their consent and provided no further comments.

Consideration of the Compulsory Purchase Order:

29. Paragraph 5(1) of Schedule 3 to the 1989 Act applies the 1981 Act to a compulsory purchase by a licence holder. DLUHC issued updated Guidance on Compulsory purchase process and the Crichel Down Rules in July 2019 which is applicable to all compulsory purchase orders to which the Acquisition of Land Act 1981 applies. The Secretary of State has framed his conclusions on the principles of this guidance, including: the need for the Order; the public interest; the compelling case; resources and procedural requirements and other consents.
30. 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 Order land that are sought 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.
31. The Secretary of State needs to be satisfied that there are sufficiently compelling reasons for the powers to be sought at this time and the Secretary of State notes that the purpose of the project is to scale up the capability of the network to deliver electricity generated in Scotland to the rest of the UK. The Project will play a role in helping the Government achieve its Net Zero ambitions.
32. The Secretary of State notes that NGET is required under section 9 of the 1989 Act to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. The Secretary of State also accepts NGET's assertion that it needs to redevelop the Harker substation due to the cumulative effect of a number of project drivers, primarily network capabilities reinforcement and new customer connections (set out in section 5 of its Statement of Case),
33. Section 5.70 of the Statement of Case outlines the key benefits of the Project, these being: meeting energy demand and customer connection requirements; transitioning to net zero/low carbon economy; and energy security/reliability of supply. The Secretary of State agrees with these benefits and that they support the need for the Order to be confirmed. Taking this into account, the Secretary of State agrees that a compelling case in the public interest has been made out and the Order should be confirmed.

Human Rights

34. The Secretary of State considers that rights over the land sought by NGET will interfere with the convention rights of those with an interest in the land affected, particularly rights protected by Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. However, the Secretary of State is satisfied that NGET 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.
35. The Secretary of State has therefore concluded that there would not be an unlawful interference with convention 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 convention rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act

36. 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 persons who share a relevant protected characteristic and those who do not.
37. 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.

Biodiversity

38. 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 considers the application consistent with furthering that objective, having 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 applied by the Conservation of Habitats and Species Regulations 2017, under regulation 9(3) of

those Regulations, so far as they may potentially be affected by her 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:

39. Energy security is one of the government's priorities. The Powering Up Britain¹ policy paper launched in March 2023, made clear how important the planning system is to deliver the government's commitments on energy security, net zero and energy prices. The National Policy Statements (NPS), which may be relevant considerations for projects consented under the Town and Country Planning Act 1990, set out the government's policy for delivery of major energy infrastructure and explains the urgent need for significant amounts of large-scale energy infrastructure in meeting the government's objectives.

40. The Secretary of State has carefully considered NGET's Statement of Case which sets out a justification for the making of the Order. The Secretary of State also considers that the provision of an efficient and reliable supply of electricity is necessary to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area and so 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.

41. The Secretary of State has decided to confirm the Order, with minor modifications.

42. NGET wrote to the Secretary of State on 29 January 2024, asking for two modifications, these being:

- Removal of Plot 314 from the Order;
- Typographical correction to the Order in Table 2 of the Order.

43. The Secretary of State agrees with these modifications.

44. 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.

45. 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

¹ <https://www.gov.uk/government/publications/powering-up-britain>

Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.

46. 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 NGET 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.
47. The validity of the Secretary of State's decision may be challenged by making an application for Judicial Review 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 team
Energy Infrastructure Planning Delivery Team
Energy Development Directorate