



Annex A16.09 Quarry and Loss Supporting Information December 2019

As a part of the NGGT Business Plan Submission

1. Introduction

- 1.1. In RIIO-2 we have proposed an uncertainty mechanism for quarry and loss relating to loss of development and sterilised minerals. More information on the proposal for the uncertainty mechanism can be found at a high level in chapter 16 of the main business plan and in more detail in our annex on uncertainty mechanisms (A3.02).
- 1.2. Ofgem's Sector Specific Methodology Decision requested further information from us on the types of costs associated with loss of development and mineralisation along with strategies to manage such claims¹.
- 1.3. In May 2018, the suite of quarry and loss costs in RIIO-1 were subject to a reopener. As part of the reopener submission², we provided information on the claim review processes and examples of costs for these types of costs. This is replicated in section 2 of this paper below.
- 1.4. Since the reopener there have been no further examples of these costs that we are able to include at this stage. If there are any further claims that conclude prior to the December submission this annex will be updated accordingly.

¹ 6.3, SSMD https://www.ofgem.gov.uk/system/files/docs/2019/05/riio-2_sector_specific_methodology_decision_-_gt.pdf

² Public version available at https://www.ofgem.gov.uk/system/files/docs/2018/05/nggt_quarry_and_loss_reopener_submission_08may2018_public_version_2.pdf however, full information (including confidential information) is included in this annex

2. Information on loss of development and sterilised minerals from Quarry and Loss reopener submission

V. Loss of Development

95. This section details the business and governance processes for settling loss of development compensation claims. Table 16 outlines the number of actual and forecast claims to be settled within the RIIO-T1 period.

	Actuals					Forecast			Total RIIO-T1
	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	
Loss of development £m (in 09/10 price base)	0.0	0.1	0.3	0.6	1.4	0.4	0.0	0.0	2.7
No. claims	0	0	0	2	5	1	0	0	8

Table 16: RIIO-T1 Expenditure loss of development

96. Deeds of Grant provide protection for the pipeline through Grantor covenants restricting activities and land use in proximity to the pipeline. To ensure these restrictions do not cause the Grantor to suffer a loss, the deed incorporates a development clause which enables the Grantor, to claim for compensation, subject to satisfying key triggers.

Loss of Development – Claim review process

97. To make a successful claim, a Grantor must either be granted planning consent which they cannot implement due to covenants, or planning consent which was refused solely as a result of the pipeline. The process flow in Appendix 1 provides the steps that must be satisfied in order to establish liability.

98. When a claim is received and a liability is expected, a small provision (£25,000) is created so that experts can be instructed to investigate the level of liability. When there is confidence and evidence to support a liability, the provision is amended accordingly.

99. A key criteria for establishing liability is planning permission which is granted by the local planning authority. The Health & Safety Executive (HSE), is a statutory consultee to the planning process advising on land use in proximity to hazardous installations which includes National Grid's pipelines and above ground installations.

100. Major accidents involving hazardous installations are rare, but when they do happen the effects on people living nearby can be devastating. This became apparent following the Flixborough incident in 1974, more recently at Buncefield in 2005, and across Europe for example at Enschede in the Netherlands in 2000. HSE first offered advice to planning authorities in 1972 and this was introduced across the European Union in 1996. The simple aim is to manage population growth close to hazardous installations to mitigate the consequences of a major accident. HSE has developed guidelines to advise on

development which are known as “Planning Advice for Developments near Hazardous Installations” (PADHI) and have been in place in their current form since 2007.

101. PADHI provides guidelines on the type and scale of development within proximity to hazardous pipelines, and will advise against planning consent to those applications which do not accord with the guidelines. The guidelines take into account the operating pressure and wall thickness of the pipeline. Historically liability for loss of development only related to the pipeline easement area, however the liability for loss of development can extend hundreds of metres from the pipeline if planning permission is denied solely due to the presence of the pipeline (in line with PADHI).

102. The potential loss of development liability has increased significantly as local planning authorities are applying the HSE PADHI guidelines. [REDACTED]

103. [REDACTED]

104. [REDACTED]

105. [REDACTED]

106. [REDACTED]

107. [REDACTED]

108. [REDACTED]

109. [REDACTED]

110. Loss of Development - Case studies

Case Study 5 – Holiday Chalets

Initial Claim: £432,000 plus compound interest from 16/07/1975

Final Settlement Figure: £295,000 plus National Grid costs of £85,000

This case study demonstrates how National Grid challenge a claim, obtain the information through legal and professional experts to defend our position, and offer a commercially acceptable solution. Supporting information in relation to this case study is provided in Appendix 4.

National Grid received a claim for £432,000 (historical valuation date) plus compound interest from 1975 for loss of development of holiday chalets due to the presence of our high pressure gas pipeline.

In 2013 a Grantor submitted planning permission for 74 holiday chalets. The permission was refused by the local planning authority due to the scale of development in close proximity to the gas pipeline (interpreting the PADHI guidelines issued by the HSE). The claimant contacted National Grid requesting compensation, at which point our process for assessing liability and proof of claim was explained. The claimant needed to prove that the planning was only refused due to the pipeline.

The claimant duly submitted an amended planning application for 32 lodges to adhere to PADHI thresholds and the permission was granted in August 2014, demonstrating that if the pipeline had not been there they would have been granted permission for the 74 lodges.

A frequent exchange of correspondence over a three year period followed, [REDACTED]. The claimant finally accepted the valuation date principle, but continued to pursue compound interest from the date the pipeline was constructed (16/07/1975). National Grid did not agree with the historic valuation figure presented by the claimant.

Our robust challenge involved engaging with a Valuer with specialist historical knowledge and experience of the leisure accommodation sector, external litigation lawyer support, and Counsel opinion and as highlighted above, numerous meetings and extensive correspondence, but despite all reasonable efforts a settlement could not be reached. In an attempt to settle the case we offered independent mediation.

A strong case was put forward by the National Grid team during mediation and a final resolution was reached at £250,000 plus professional costs of £45,000. A settlement agreement and a Deed of Variation ensuring no further claims for Loss of Development for the affected pipeline can be made was entered into and registered against the Land Registry title. The total costs incurred by National Grid were £85,000 including the mediation costs, Counsel opinion, Valuer's costs and external Litigators. This was the first loss of development claim where we defended our position on valuation date and interest. Subsequent cases where we have relied upon opinions sought in this case have been much quicker and cheaper to defend.

Case Study 6 – Wind Farm

Initial Claim: £11.8m

Estimated Settlement Figure: less than £1m

This case study exhibits that dispute resolution is the only option to resolve some claims, the time that can take and the cost associated with such action. Note due to the volume of paperwork collated for this claim it is not possible to include in the appendices of this submission.

A new pipeline was required to reinforce the transmission network in Scotland. Rights were acquired voluntarily from all landowners except one, who rejected the scheme. In 2003, to ensure delivery of the strategically important pipeline a Compulsory Purchase Order was sought and we were successful in acquiring the necessary rights in June 2004 to meet our licence obligations from the objector.

The pipeline was duly constructed, but the Grantor had the right to be compensated for losses suffered as a result of the rights granted. Any claim must be received within six years from the grant of the rights.

In August 2009 we received a claim to the sum of £11.8m for loss of development of a wind farm that could not be constructed due to proximity to the high pressure gas pipeline. The original claim could not be substantiated and was challenged by National Grid.

The communication received from the Grantor following the claim in 2009 was intermittent with limited evidence provided to substantiate their claim. Our challenge to the quantum of the claim resulted in a revised claim being received in December 2013 for £3.1m. The Grantor claimed it was prevented from constructing two wind turbines due to the presence of the gas pipeline. An extensive investigation involving a number of specialists including, environmental consultants, radar specialists, turbine manufacturers, planning consultants, valuers, and lawyers all supported the internal legal and surveying team in discrediting the claim. In addition due to the contentious nature of the claim, legal Counsel was instructed to provide advice.

Following this robust review and challenge of the claim National Grid offered a settlement of £230,000. This offer was rejected and the landowner requested the matter be settled at a Lands Tribunal Hearing.

Following the presentation and cross examination of evidence involving all our specialists over a seven day hearing, the Inspectors report was published on 3rd June 2016. The tribunal made an award of £280,000.

Whilst the tribunal award was greater than the £230,000 offered by National Grid the value of £280,000 was significantly less than the value of the original claim. National Grid incurred £375,000 on professional fees to date challenging the claim, and due to the tribunal award exceeding the pre-tribunal offer, legally National Grid is liable for the claimant's costs which are estimated to be £380,000. A final settlement is still to be reached, although it is envisaged the total liability for the claim will be less than £1m.

Loss of Development - Summary of claims

111. At the start RIIO-T1 there was one existing loss of development claim. To date a further eleven claims have been received.
112. Of the twelve loss of development claims, two have been agreed in 2016/17, five have been agreed in 2017/18 incurring costs of £1.4m. One of the twelve claims has been withdrawn.

113. Of the remaining five ongoing claims, based on the stage of negotiations and experience to date, one of these claims is forecast to be settled by the end of RIIO-T1. The forecast settlement value is based on National Grid's assessment of liability through use of external experts and internal knowledge and experience. The other three claims are at early stages of assessment and challenge and are not envisaged that these will be settled within RIIO-T1.

VI. Sterilised Minerals

114. This section details the business and governance processes for settling sterilised minerals compensation claims. Table 17 outlines the number of actual and forecast claims to be settled within the RIIO-T1 period.

£m (in 09/10 price base)	Actuals (RRP)					Forecast			Total RIIO-T1
	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	
Sterilised Minerals	0.1*	0.3	0.3	0.5	1.0	0.1	0.3	0.0	2.5
No. Claims	0	1	1	1	1	1	1	0	6

Table 17: RIIO-T1 Expenditure sterilised minerals ³

115. Whilst pipelines are routed to avoid mineral reserves there are situations where this is unavoidable. Such situations are envisaged and appropriate protection for both National Grid and the Grantor is incorporated within the Deeds. A compensation claim can be made based on the value of the minerals that cannot be extracted. In some circumstances, following mineral extraction, the void left can be filled with inert landfill material. By preventing the mineral extraction, the opportunity to landfill is lost which is also liable for compensation under the terms of the Deed.

Sterilised Minerals – Claim review process

116. When claims are submitted by Grantors for sterilised minerals National Grid follows the process as outlined in Appendix 1.
117. The terms of the Deed incorporates the Mines (Working Facilities and Support) Act 1923. This Act makes provisions for facilitating the working of minerals and for imposing restrictions on the working of minerals through land required for the support /protection of gas pipelines.
118. Under the Deed, the Grantor needs to submit a Notice of Approach informing us of their intention to mine the minerals beneath the pipeline.
119. Following this, National Grid provide a counter notice protecting the pipeline, confirming the protection zone or standoff from the pipeline which clarifies the volume of sterilised mineral and potential loss of inert landfill subject to planning consent.
120. If a claim by the Grantor is then issued to National Grid, we assess the claim to evaluate:
- the loss of profit of the sterilised mineral and/or potential loss of landfill; and
 - options other than compensation (for example diversion or decommissioning of the pipeline).

³ *Costs in 13/14 relate to legal fees incurred

- 121. Settlements of this type of claim are full and final settlements that are documented within a settlement Deed between the Grantor and National Grid for the section of pipeline. They tend to be less controversial than Loss of Development claims, but can take considerable time for all the required evidence to substantiate a settlement to be gathered.
- 122. National Grid carry out quarry surveys every five years (2016 latest survey) to evaluate standoff zones from all pipelines and highlight any potential future risks.

Sterilised Minerals – Case studies

Case Study 7 – [REDACTED]
<p>Initial Cost: £585,000</p> <p>Final Cost: £531,385 inclusive of fees plus National Grid costs of £7,200</p> <p>This case study has been chosen as the minerals surveyor that submitted the claim on behalf of the claimant is highly regarded in the industry for presenting clear and well evidenced claims. Despite this and the claim not being litigious, it took about 30 months to settle due to the robustness of the evidence National Grid seek in order to reach a settlement. Supporting information in relation to this case study is provided in Appendix 4.</p> <p>[REDACTED] is a sand and gravel quarry [REDACTED]. The quarry is operational having obtained the necessary planning permission and permits to operate.</p> <p>National Grid received a Notice of Approach from [REDACTED] in May 2014 informing us of their intention to mine the minerals beneath the pipeline. National Grid provided a counter notice protecting the pipeline, confirming the protection zone or standoff from the pipeline and therefore confirming the volume of sterilised mineral.</p> <p>In February 2015, a claim was received from [REDACTED] for £585,000 plus professional costs, for loss of mineral and inert landfill for which they also had planning consent. National Grid instructed a specialist minerals valuer to advise on the quantum of our liability requesting evidence from the Claimant including an audit of the claimants financial accounts.</p> <p>Awaiting all the requested evidence including financial accounts from the Claimant led to a slight delay, although the claim was eventually agreed in June 2016 in the sum of £531,385 inclusive of fees. National Grid incurred £7,200 of professional costs which included the specialist valuer’s fees in substantiating the settlement and the legal fees related to documenting the settlement. The legal documentation was completed in August 2016.</p>

Case Study 8 – [REDACTED]
<p>Initial Cost: £1,584,897 plus professional costs</p> <p>Final Cost: £1,275,000 plus legal fees plus National Grid costs of £7,500</p> <p>This case study demonstrates that whilst we have a liability, it may not be realised for a number of years, in this case 10 years. Supporting information in relation to this case study is provided in Appendix 4.</p> <p>[REDACTED] is a sand and gravel quarry [REDACTED]. It has been owned and operated by [REDACTED].</p>

under a planning permission for mineral extraction dated June 1995, varied by consent in 2010.

National Grid received a Notice of Approach from ██████████ in May 2006 informing us of their intention to mine the minerals beneath the pipeline. We provided a counter notice protecting the pipeline, confirming the protection zone or standoff from the pipeline. We clarified the volume of sterilised mineral and confirmed the liability.

The pipeline affected a number of extraction phases over a number of years. ██████████ decided not to submit claims piecemeal, but rather present a claim when the mineral operations affected by the pipeline had been completed. In March 2016, a claim was received from ██████████ in the sum of £1,584,897 plus professional costs, for loss of mineral. We instructed a specialist minerals valuer to advise on the quantum of our liability requesting evidence from the claimant including an audit of the claimants financial accounts.

Due to the complexity of providing specific evidence for the loss in each accounting year, the settlement was finally agreed in November 2017 in the sum of £1,275,000 plus legal fees. Our fees for defending the case and for documenting the settlement are expected to be £7,500.

Sterilised Minerals - Summary of claims

123. There were twelve known claims at the start of the RIIO-T1 period and a further six have been received to date. Four claims have been settled and nine have been withdrawn. These withdrawals are as a result of either challenge from National Grid, economic viability (i.e. decline of the Coal Industry) or reassessed liability.

Financial Year	No. of Sterilised Minerals claims settled
2013/14	0
2014/15	1
2015/16	1
2016/17	1
2017/18	1

Table 18: Number of claims settled to date

124. There are currently five ongoing claims which are at varying stages of negotiation. As has been demonstrated with the case studies, these claims can take a number of years for the evidence to be available to substantiate claims or support a settlement. Given the stage of negotiation two of the five ongoing claims are expected to be settled within the RIIO-T1 period.

Financial Year	No. of Sterilised Minerals claims forecast to be settled
2018/19	1
2019/20	1
2020/21	0

Table 19: Number of claims to be settled by end of RIIO-T1

Sterilised Minerals – [REDACTED]

125. There is one additional sterilised mineral claim which is subject to uncertainty and so has been separated out from the other sterilised mineral claims included within this reopener. The planning permission granted to this quarry is currently being contested. Further detail on this particular claim is provided in the following case study.

Case Study 12 – [REDACTED]

Initial Cost: £[REDACTED]m compensation claim

Estimated Cost: £[REDACTED]m for pipeline decommissioning

[REDACTED], owned by [REDACTED],

[REDACTED], which is a magnesium limestone quarry, has been operational since 1948. [REDACTED] was constructed in 1973 through land beneath which a large reserve of magnesium limestone resides. Due to the depth of mineral reserve, the pipeline is sterilising a significant amount of minerals (circa 2,000,000 tonnes).

The quarry operators were granted permission to extend the quarry south into a field with approximately 1km of [REDACTED] running through it. A Notice of Approach was received from the quarry operators and we responded with a counter notice outlining all of the restrictions required for the pipeline. The pipeline Deed of Grant of Easement provides a provision for the land/mineral owner to be compensated for their proven loss, or National Grid is obliged to divert the affected section of [REDACTED] at its own cost.

The current estimated mining loss is approximately £[REDACTED]m if the pipeline remains in situ. This is based on a geotechnical report including detailed ground investigation instructed by National Grid and a market assessment completed by experienced consultants in this area.

National Grid assessed all credible options for mitigating the liability to the quarry operator including negotiated compensation, a number of potential pipeline diversions and the opportunity to decommission the pipeline. Following a detailed needs case review it was concluded that decommissioning was a viable option.

The cost of decommissioning this section of pipeline is forecast to be approximately £[REDACTED]m which is significantly lower than the cost of compensation.

In December 2017 the planning permission for this quarry expansion was challenged by a local land owner via a judicial review. In March 2018 the judicial review supported the challenge and the planning permission for the quarry was revoked. However since March the quarry and the local council are in the process of approaching the supreme court to overturn the judicial review decision.

This leads to a significant amount of uncertainty around this claim as without the planning permission we no longer have a liability, however both the quarry and the local council are continuing to contest the decision and so there is a risk that this liability will come back within the next 12 months. Therefore we have included the forecast cost of decommissioning the pipeline in 2019/20 and have specified an output in relation to this claim as part of this reopener submission.