

Workgroup Consultation Response Proforma**CMP376: Inclusion of Queue Management process within the CUSC**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm** on **23 December 2022**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

If you have any queries on the content of this consultation, please contact paul.j.mullen@nationalgrideso.com or cusc.team@nationalgrideso.com

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I wish my response to be:

(Please mark the relevant box)

☒ Non-Confidential

☐ Confidential

Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

For reference the Applicable CUSC (non-charging) Objectives are:

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;*
- Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and*
- Promoting efficiency in the implementation and administration of the CUSC arrangements.*

*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006..

Please express your views in the right-hand side of the table below, including your rationale.

Standard Workgroup Consultation questions							
1	Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe each solution better facilitates:</p> <table border="1"> <tr> <td>Original</td> <td><input checked="" type="checkbox"/> A</td> <td><input checked="" type="checkbox"/> B</td> <td><input type="checkbox"/> C</td> <td><input type="checkbox"/> D</td> </tr> </table> <p>CMP376 is a clear improvement on the baseline. It enables transmission licensees to ensure that allocated network capacity is fully utilised, and that connection queues are proactively managed, for the benefit of all.</p> <p>In doing so it provides the best opportunity for viable connection schemes to proceed - regardless of when they apply - by obligating those with earliest Completion Dates to develop their projects proactively. This is not always the case under the baseline.</p> <p>The outcome is a fairer, more accountable, and transparent connections process for ESO and Users alike. This in turn will lead to more economic and efficient network investment by Onshore TOs than is possible today.</p> <p>Fully utilised network capacity by contracted generation and demand projects will lead to increased competition in energy markets. This helps drive down costs and end consumer bills.</p> <p>More generally, more effective facilitation of transmission connections via CMP376 should enable low carbon projects to connect quicker, supporting GB's transition to Net Zero.</p> <p>We therefore assess the proposal as being positive for objectives A and B (C and D are neutral).</p> <p>There are some aspects of the proposer's solution which we believe could be improved to even better facilitate the CUSC applicable objectives. We have highlighted these in response to standard question 4.</p>	Original	<input checked="" type="checkbox"/> A	<input checked="" type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D
Original	<input checked="" type="checkbox"/> A	<input checked="" type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D			
2	Do you support the proposed implementation approach?	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>We believe the CMP376 solution should apply to new <i>and</i> existing Users as soon as possible at implementation (if the modification is approved by Ofgem).</p> <p>To do otherwise would lead to potential discrimination by sustaining a two-tier contracting approach with differing policy enforcement. This would also be inefficient for NG ESO, Onshore TOs and portfolio customers to operate under.</p>					

		<p>We note that the proposer has been open (as we have) in external fora that decisive action is required to manage connection queues, and that Queue Management (QM) is a primary tool to this.</p> <p>We believe the proposer's implementation approach relies too heavily on existing Users' motivation to initiate a Mod App to enable QM principles to be applied. We believe this leads to an indefinite implementation timeframe, which is at odds with the proposer's views shared with industry (as mentioned above).</p> <p>In our view, the proposer's approach actually creates a perverse incentive for customers to <i>not</i> come forward to Mod App when they should do. This is due to a perceived risk of QM policy enforcement being applied to their project. This behaviour will inadvertently lead to inefficient and uneconomic network investment by Onshore TOs. We will continue to progress our works unaware of the User's potential change in requirements/situation. This will inevitably lead to higher end consumer costs.</p> <p>We believe implementation for existing Users may be better achieved via our potential alternative on consistent application (see Q4).</p>
3	Do you have any other comments?	<p>Ensuring on-going compliance of earlier milestones</p> <p>In our view, the proposer's solution does not adequately obligate Users to ensure that previously complied with milestones remain compliant.</p> <p>If the status of an earlier milestone changes, we believe the 'milestone default notice' process should be applied to ensure compliance is restored. If this breach in compliance cannot be rectified within the standard two months' notice period (as with an 'active' milestone) we believe the customer should have their agreement terminated, as per the proposed policy.</p> <p>Consultation summary of code interactions on the appeals process</p> <p>We note the following text is included in the consultation document (page four – 'Interactions') which incorrectly sets out a position on ESO/TO action in the event of appeals:</p> <p><i>"The ESO and the Transmission Owners have been in regular contact about Queue Management and the only STC changes currently envisaged are, where the User disputes the ESO's exercising of their right to Terminate, the Transmission Owners suspend all applications for that</i></p>

		<p><i>part of the NETS for a set time period and/or until the Appeal is resolved. This is discussed further in the “Evidence” section of this document”.</i></p> <p>From an NGET standpoint, no position has been agreed on whether applications to areas of the network should be paused, subject to pending QM appeals. This text is therefore potentially misleading.</p> <p>We have summarised a very different position to this in response to solution-specific question 5. Further discussion on this matter is definitely needed, ideally involving those with legal understanding such that we don't set undesired precedents.</p>
4	<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>We wish to raise one or more WACMs dealing with three aspects of the proposer's current solution:</p> <ol style="list-style-type: none"> 1. Implementation: Consistent application to new and existing Users as soon as possible (potentially via a time-limited implementation transition approach). 2. Milestone durations: adjustments for <ol style="list-style-type: none"> (a) M3 Land Rights (b) M7 Project Commitment 3. Time referencing for milestones: We recommend forward-looking referencing for M1-4 in the milestone duration tables (as opposed to backward looking). <p>We have set out the detail/rationale behind our alternative proposals for points 2 and 3 in Q1 and Q2 of the specific questions respectively.</p> <p><u>Consistent application to Users</u></p> <p>As already mentioned, we believe it is vital that QM applies to existing Users as soon as possible after Ofgem's determination. This will more swiftly provide network companies the tools to better manage connection queues - for the benefit of all.</p> <p>However we accept that a 'big bang' approach to modifying agreements for existing Users at go-live could be disruptive, creating an excessive level of effort for contract changes which isn't in anyone's interest.</p> <p>However, we do believe a more considered approach can be applied, which would benefit from continuing on from the</p>

on-going TEC Amnesty [which precedes Ofgem's determination of CMP376].

This approach would involve giving some element of customer choice as to how agreements are amended. It also acknowledges that not all agreements may need to be amended – specifically those for customer schemes due to commission in the foreseeable future.

Whilst our alternative proposal needs to be more fully developed (with the support of the CMP376 workgroup), a high level approach for modifying existing agreements could follow these principles:

1) Agreements with Completion Dates within 1.5 years from CMP376 implementation date:

- Existing connection agreements would *not* be adjusted to apply QM concepts, nor would we expect Users to require a Mod App*. Users should be fully committed to deliver their projects to successful conclusion on these timescales.
- *Mod Apps prior to Completion Date in this category would only be to deal with exceptional circumstances (i.e. issues related to construction etc.). Otherwise customers should be subject to the approach set out below (point 2), depending on timing.

2) Agreements with Completion Dates beyond 1.5 years from CMP376 implementation date:

- Customers would be given a time-limited choice (i.e. a decision window) after implementation to either:
 1. Maintain their existing contracted Completion Date, but have their agreement adjusted for QM milestones in a forward-looking manner in accordance with proposer's solution; or...
 2. Initiate a Mod App to adjust their Completion Date outward, with QM milestones being applied in full in a forward-looking manner. *However*, no guarantees would be provided that the re-offered Completion Date will be in the customer's desired timescales.
- After this initial 'decision window', the network companies would have a fixed duration to amend agreements to apply the customer's requested option.
- Agreements would likely be amended in a priority order (TBC – but probably related to Completion Date).

	<ul style="list-style-type: none"> Some guidance or limitation on Mod Apps for customers with pending contractual amendments might be required. <p>We look forward to developing this potential option further with the proposer and the workgroup.</p>
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Specific Workgroup Consultation questions

1	<p>Do you agree with the Milestone durations proposed? Please provide the rationale for your response.</p>	<p>We believe that certain milestone durations can amended to:</p> <ul style="list-style-type: none"> i) foster more proactive User project management following Offer Acceptance. ii) reduce the existing perverse incentives for Users to speculatively apply. iii) Better align User project commitment with Onshore TO investment timing. <p>We believe the M3 and M7 milestones provide the best opportunity to do this.</p> <p>M3 Land Rights</p> <p>In consistency to other User application processes for electricity market arrangements (e.g. Capacity Market, Contracts for Difference, Electricity Market Reform), as well as reflecting supporting customer feedback we've received, we believe it is appropriate for M3 to be a compliance obligation very shortly after Offer Acceptance.</p> <p>We recognise this represents a stronger obligation than the existing original proposal. However we believe this alternative would significantly increase the viability of connection projects at an earlier stage.</p> <p>This change to M3 would not only remove an existing opportunity for speculative applications, it would also provide TOs reassurance to plan network investment with greater efficiency, likely leading to lower costs for all.</p> <p>Our experience in England & Wales is that transmission developers far too often apply for connections in anticipation – not certainty - of securing the land they need. This leads to adjacent or even overlapping projects competing with one another to secure the necessary land access. In some areas of our network, contracted volumes of generation projects exceed the amount of land physically available to develop them all.</p>
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The consequence for our TO investment is that we potentially inaccurately focus on the requirements of those at the front of the queue, who may not be viable.

From a developer perspective, viable projects further back in the queue are prevented from proceeding.

We therefore believe M3 acting as a 'viability filter' at an early stage would have far-reaching benefits. We also believe this should be a consistent timing requirement for all milestone tiers (i.e. 1 year to 5+ years). This early consideration of land right for future projects helps ensure the efficiency of TO investment (e.g. better enabling bulk procurement of assets), supports more accurate long-term network planning, and ensures more certainty of longer term User requirements.

Noting we believe milestones M1-4 should be referenced from Offer Acceptance date, we have represented our adjustments to M3 reflecting both the original proposal format and this preference:

	1 year from requested Completion Date	2 years from requested Completion Date	3 years from requested Completion Date	4 years from requested Completion Date	5 years and above from requested Completion Date
M3 - Land Rights (Original)	Bilaterally negotiated	21 months	30 months	39 months	48 months
M3 - Land Rights (NGET Alt) [BACKWARD LOOKING]	Bilaterally negotiated	21 months	33 months	45 months	57 months
M3 - Land Rights (NGET Alt) [FORWARD LOOKING]	Bilaterally negotiated	3 months	3 months	3 months	3 months

M7 Project Commitment

We do not believe the current proposal for M7 leads to User readiness which equitably aligns to the significant investment decisions being taken by Onshore TOs. This is a vital component of the QM policy from our perspective.

Given the ongoing challenges we experience with national and international supply chains, the current proposals would lead to network companies and end consumers bearing a disproportionately high risk of stranded investment - should connecting customers not turn up.

	<p>the User; or from the Contracted Completion Date back to the date the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.</p>	<p>We believe this hybrid approach better focuses Users to ensure compliance in the early stages of their project development. We would expect these milestones to represent the biggest challenges to viability, based on current experience. Therefore focusing Users for immediate action from Offer Acceptance seems the most prudent approach.</p> <p>We do not believe this hybrid approach would confuse Users, assuming the milestone table is titled appropriately.</p>
3	<p>There are differences between the arrangements at Transmission and Distribution. Do you agree with the reasons provided why there is different treatment and that these don't create undue discrimination? Please provide the rationale for your response.</p>	<p>There are many well-established precedents for differing arrangements for comparable transmission and distribution processes throughout electricity licences and codes.</p> <p>What is proposed at transmission for QM versus what is already implemented at distribution has sufficient consistency to avoid issues of undue discrimination. For example, the eight milestone categories, a transmission-distribution interface stage at M5; the need for Users to evidence their compliance, and that contract termination is the ultimate enforcement outcome for failure to comply.</p> <p>Workgroup views have already been sought on this point, with concerns repeatedly expressed that the distribution policy was too rigid for use at transmission. This led to a hiatus to enable the proposer, in collaboration with Onshore TOs, to evolve aspects of their proposal to better suit these requirements.</p> <p>This culminated in changes to the forms of evidence to verify compliance and most significantly the durations of milestones (e.g. planning). Where Users raised further concerns on the merit of specific aspects of the ENA QM policy, e.g. cumulative tolerance periods, the proposer also acted to accommodate this feedback.</p> <p>Finally, the Open Networks QM policy guidance is constantly in-review, permitting opportunities to reflect any improvements to policy introduced by experience of DNOs and progress of CMP376 (and beyond).</p>

		We therefore do not believe this is an issue.
4	Do you agree with the evidence requirements proposed? Please provide the rationale for your response.	<p>It is vital that the sources of evidence are clear, but most importantly lead to explicit compliance outcomes. For example, any sources of evidence which are conditional or time-limited should not be appropriate. We believe the proposer's solution should be adjusted to ensure this.</p> <p>We note the inclusion of a Capital Contribution payment as a potential source of evidence for M7. We don't believe the detail of this has been fully discussed with the workgroup, and we believe more specific drafting is necessary here. Our perspective is that this should only be included where a percentage threshold of the equivalent Gross Asset Value has been settled via a CapCon (e.g. at least 50% of total GAV for example). This ensures that this presents a suitable equivalence of assurance as per the other forms of evidence, e.g. FID.</p> <p>We have raised in the past (including during the ENA QM guidance drafting) the consideration of a binding Power Purchase Agreement (PPA) as an additional form of evidence for M7 for generators. As this represents the guarantee of a route to market for exported power, this would seem to us to provide suitable reassurance that projects are commercially viable.</p> <p>Whichever options prevail, the CMP376 solution must ensure Users present their evidence in a proactive manner, and/or provide timely updates ahead of compliance dates. This is particularly important where there may be doubt as to the validity of the source or form of the evidence. Strengthening this obligation in the proposer's solution will significantly reduce the risk of potential appeals/disputes.</p>
5	Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.	<p>Yes – to do otherwise could lead to stranded and/or uneconomic investment by Onshore TOs.</p> <p>Ultimately if a User has their agreement terminated, which is a last resort option under this QM policy, their legal right to expect their contracted position to be protected must fall away. To pause for an indefinite period of time in anticipation of only a <i>potentially</i> successful appeal - which could take years to conclude - would lead to sterilisation of network capacity which is inefficient for prospective Users and end consumers alike.</p>

		<p>If a User appeal is ultimately upheld, we believe ESO and Onshore TOs should apply reasonable remedies, including re-offering the User the closest approximation of the previously terminated offer. This should never go as far as providing guarantees on capacity requirements or Completion Date however.</p> <p>Again, it is important that the CMP376 solution places obligations on Users to notify The Company in advance of relying on the exception process, or where issues may arise related to evidencing compliance. This will allow action to be taken by ESO/Onshore TOs prior to any potential termination plus help prevent unnecessary disputes.</p>
6	<p>Do you have any views on the most appropriate route for Appeals/Disputes raised by a User whose Construction Agreement has been terminated under CMP376? Please provide the rationale for your response.</p>	<p>We believe this process should be swift, ideally time-limited, and should only focus on potentially incorrect applications of the policy. Appeals related to differences of interpretation, for example, demonstrate that the proposed CUSC solution is not fit-for-purpose.</p> <p>In our view, the likely focus of any potential disputes would be related to evidence provision and the exceptions process. As mentioned previously, we believe the process for both these aspects needs to be fully specified in the CUSC to avoid varying interpretations which could lead to disputes.</p> <p>On the exceptions process, we believe Users should be obligated to signal their intention to use this <i>at least</i> two months ahead of a milestone compliance date (i.e. in line with the compliance notice period). This will allow the User, the ESO and Relevant Transmission Licensee to work together to understand the User's circumstances and whether they are acceptable under the QM policy.</p> <p>In the event that a dispute can be pursued under the QM policy, we believe the existing CUSC 'Other Dispute' approach should be followed. Creating entirely new arrangements, including potentially an 'expert' panel, seems excessive in the context of affirming correct application of commercial processes for which the experts are likely to be the ESO, the User themselves, the Relevant Transmission Licensee, or ultimately Ofgem.</p> <p>For early consideration of exceptions/evidence, or to ensure effective processing of appeals, we believe Onshore TO participation is required. Given CUSC cannot directly dictate obligations on the TOs, it would</p>

		appear necessary to ensure STC provisions can facilitate this cooperation – amending any related provisions where necessary if not.
7	Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response.	<p>We are satisfied with the principles of the exceptions criteria, however we believe there needs to be more explicit definition to avoid confusion and potential disputes (as mentioned above).</p> <p>TO/ESO-led delays</p> <p>We believe that the ‘<i>any delay experienced by Transmission Licensee or the ESO</i>’ text could be interpreted in many ways, some which could enable Users to circumvent the QM policy. We recommend a more definitive clarification, for example:</p> <p><i>“An unforeseen delay experienced by either the Relevant Transmission Licensee or the ESO (or both) in the provision of works identified in a User agreement, where such delay will directly impact a User’s ability to comply with their Queue Management milestones”.</i></p> <p>Force Majeure</p> <p>We are wary over the inclusion of ‘Force Majeure’ as an exception criterion as it has the potential for misinterpretation. Whilst this term is fully defined in CUSC and arguably has a very narrow scope for use, discussion of this term in the workgroup appears to have evolved to consider it a catch-all for ‘anything outside the User’s control’ (i.e. not networks-led).</p> <p>We therefore believe the proposer should either add more prescription in their legal text for an exhaustive list of exceptions – rather than relying on Force Majeure - or provide explicit legal guidance as to acceptable examples of how Force Majeure can be interpreted in the context of QM.</p> <p>Planning Appeals</p> <p>We believe more description is required in the CUSC text to set a more effective project management by Users related to planning activities.</p> <p>There is a risk that the current vagueness on planning appeals as an exception could be exploited; for example Users entering into repeated, spurious and/or protracted planning appeals solely to maintain their position in the connection queue.</p>

		We believe the proposer's solution could incorporate some specific instructions for acceptable User behaviour on this point.
8	Do you agree that the associated Construction Agreement will be terminated if Milestone Dates (unless covered by the exceptions) are missed and not rectified within the 60-calendar day period? Please provide the rationale for your response.	<p>Yes; for a QM policy to set effective behavioural signals for developers, there must be a transparent and decisive consequence of any failure to comply.</p> <p>The current CUSC provisions are clearly deficient in this respect, leading to the inefficiency experienced by all industry stakeholders when it comes to managing connections queues today.</p> <p>We acknowledge the workgroup discussion on Mod Apps to move projects to the back of the queue as an alternative to termination. However we do not believe this sets a strong enough incentive for Users to comply.</p> <p>Ultimately, we believe a Mod App approach in this context would lead to demonstrably non-viable projects being able to remain in the connection queue, which doesn't set an appropriate behavioural signal.</p> <p>We are also conscious that Mod Apps in general, but also in this context, could be used to adjust other aspects of the User's agreement (e.g. project technology or works scope) which could have additional adverse consequences on TO investment.</p> <p>We therefore agree with the proposer's solution on this point.</p>
9	Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.	<p>We agree with the stance taken by the proposer in adjusting their solution to apply forward-looking compliance at the next agreed Mod App after implementation. However we believe there needs to be some level of limitation on how pre-CMP376 contracted Completion Dates could be modified.</p> <p>Firstly, we do not believe it is appropriate in the context of the on-going TEC Amnesty to allow potentially non-viable projects to pre-empt Ofgem's determination of CMP376 by 'Mod Apping' ahead of a decision - so as to avoid the QM policy applying to their project.</p> <p>Secondly, for both pre-emptive and post-CMP376 determination Mod Apps, it is unlikely that Completion Dates can be fine-tuned by a year or even a few months without disruption or significant costs.</p>

		<p>For Users close to completion, and where TO works are well underway, outages will have already been agreed months in advance necessary to energise assets needed to connect the User. Moving these outages is likely to be complex, and any changes to works programs will inevitably lead to delays and/or unforeseen costs. These will likely be funded by Onshore TOs and end consumers, rather than the User [albeit Ofgem are considering a CUSC change for 'Delay Charges', which could alleviate this funding risk].</p> <p>We therefore believe a clear set of rules for 'acceptable' Mod Apps pre and post-CMP376 are needed. In our view, Users should have been proactively developing their projects in accordance with existing contracts - without the need for QM policy enforcement to motivate them. The opportunity to Mod App for the first time after CMP376 determination (if approved) should not be seen as either an opportunity to deviate projects off-course, or a route to obtain a stay of execution from eventual policy enforcement.</p> <p>These issues could be dealt with in consideration of our potential alternative proposal on consistent application for new and existing Users.</p>
10	Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?	<p>We have been consistent and externally vocal on our view of the impacts that the current baseline connection arrangements lead to – particularly in respect of excessive uncertainty, inefficiency, and adverse financial risks for all industry stakeholders.</p> <p>The changes brought forward by CMP376 are long overdue.</p> <p>In addition to the extensive views on TO, industry, and end consumer impacts in this response, we have recently published this article which sets out our views further:</p> <p>https://www.nationalgrid.com/electricity-transmission/queue-management-next-step-accelerating-grid-connections</p>