

Code Administrator Meeting Summary

CMP376 Workgroup Meeting 11

Date: 8 February 2023

Contact Details

Chair: Paul Mullen, NationalGrid ESO paul.j.mullen@nationalgrideso.com

Proposer: Rein De Loor¹, NationalGrid ESO Rein.deLoor@nationalgrideso.com

Key areas of discussion

Workgroup Objectives

Purpose of meeting was to review any showstopper comments on the legal text for the CMP376 Original, review any changes (and legal text) for the Workgroup Alternative CUSC Modifications (WACMs) and confirm that the Terms of Reference had all been addressed. If all of the above objectives were achieved, the Workgroup would proceed to the Workgroup Vote on 15 February 2023.

However, further work was still required on some of the WACMs (notably the ones that considered Dynamic Queue Management and legal text wasn't ready for all of the WACMs) and some of the Terms of Reference. Therefore, the Workgroup Vote will be delayed to 7 March 2023 and this will mean the Workgroup Report will now be presented to March 2023 Panel (rather than February 2023 Panel).

CMP376 Original Legal Text

Proposer addressed the showstopper comments on the legal text and agreed to provide a new version reflecting these changes.

Workgroup Alternative CUSC Modifications

Each proposed Alternative was again presented by the respective proposers and each proposer outlined any key changes since the last meeting. Associated legal text was then reviewed (although no legal text was yet available for WACM10 and WACM11).

In summary:

- Minor drafting changes are required for WACM 1 to WACM7 inclusive;
- Further discussion is required on the Dynamic Queue Management options (WACM8 and WACM9) on how this will work in practice including whether or not Completion Date should be used to determine queue position when first to contract is the current way; and
- Legal text for WACM10 and WACM11 still needs to be produced.

¹ The Proposer was absent ill so Laura Henry and Kavita Patel were the Proposer's representatives

The table below summarises the current (as of 17 February 2023) position on these.

Other Solutions	How does it differ from Original
WACM1	<i>Milestone M6 to say “Submit” rather than “Agree”</i>
WACM2	<i>As WACM1 but applies as per WACM7</i>
WACM3	<i>Milestone M3 to have a blanket 3 months after offer effective date (rather than from Completion Date) for all columns on the Milestone Duration table where the Land Rights for the User’s project are required from only one landowner. This will be extended to 6 months where the Land Rights for the User’s project are required from two or more landowners</i>
WACM4	<i>As WACM3 but applies as per WACM7</i>
WACM5	<i>Milestones M7 and M8 to be bilaterally negotiated</i>
WACM6	<i>As WACM5 but applies as per WACM7</i>
WACM7²	<i>Applies to all existing agreements with a contracted Completion Date of 2 years or more, or projects with a Completion Date of less than 2 years which aren’t progressing³, from CMP376 implementation</i>
WACM8	<i>Dynamic queue management for Milestones M5 to M8 - ESO’s immediate right of termination is removed for Milestones M5 to M8 and replaced with the permanent reassignment of queue position</i> <i>Implementation Date – 6 months after Authority Decision</i>
WACM9	<i>As WACM8 but applies as per WACM7</i>
WACM10	<i>Introduces the concept of Proportionate Milestones (where the time between Offer sent and Completion Date is between columns on the Milestone Duration table, the actual milestone duration is calculated proportionately between the 2 column values).</i> <i>Also allows Users to select which column their compliance with the Milestones is set out (but only where the Completion Date provided puts them in a Milestone category not suitable for their project). The project plan, that the User provides at time of application, determines what their actual milestone duration will be.</i>
WACM11	<i>As per WACM1 and WACM8 and add Exception “Where a milestone is missed due to the User awaiting the award of a governmental or regulatory subsidy which provides financial support or incentive to the User’s projects, the User may avoid termination if they can provide evidence that they are actively progressing with such a subsidy”.</i>

² WACM7 was raised by the Proposer of the CMP376 Original. The test for Workgroup Alternatives is “Should the majority of the Workgroup OR the Chair believe that the potential alternative solution may better facilitate the CUSC objectives than the Original proposal then the potential alternative will be fully developed by the Workgroup with legal text to form a Workgroup Alternative CUSC modification (WACM)”. Although it may seem odd that the Proposer of the CMP376 Original has raised an alternative rather than include the revised implementation approach in their Original proposal, this is not prohibited by the Governance rules under Section 8 of the CUSC and the Proposer of the CMP376 Original confirmed they would be keen to present both options to Ofgem.

³ In practice, it is unlikely that a project that is not progressing would not already have submitted a Modification Application to change their Completion Date.

Terms of Reference

The Chair sought views from the Workgroup as to whether or not all the Terms of Reference had been addressed. The majority of the Terms of Reference have been considered. However, further discussion is needed on the Terms of Reference entitled “Interaction with other provisions in the CUSC, Construction Agreements and Connection Agreements that deal with project delays and termination of agreements (e.g. Quarterly Updates)”. Although CMP376 is adding a right for the ESO to terminate, the Workgroup sought clarity on how this additional right interacts with some of the existing provisions.

Cross Code Impacts

The Workgroup were appraised that the following STC changes may be required:

- Set out how and when the ESO will coordinate where ESO is seeking to exercise their right to terminate; and
- If any of the Dynamic Queue Management options are approved, the process for assessing the opportunities for other Users to benefit from the Delayed User moving down the queue.

Next Steps

Action number	Workgroup Raised	Owner	Action	Comment	Due by	Status
1	WG11	Proposer/ESO Legal	CMP376 Original - Legal Text to be updated in accordance with clarification note (8 February 2023 + additional wording to clarify “Bilaterally Negotiated” to be added to Legal Text		24/02/2023	Open
2	WG11	Proposer/ESO Legal	WACM1 and WACM2 - Legal Text to clearly show difference between Original and this WACM1 on the evidence table		24/02/2023	Open
3	WG11	Proposer/ESO Legal	WACM3 and WACM4 - Legal text typos to be updated		24/02/2023	Open
4	WG11	Proposer/ESO Legal	WACM5 and WACM6 - Remove “ bilaterally negotiated” clarification paragraph as that will now sit within Original		24/02/2023	Open
5	WG11	Sarah Graham/ Proposer/ESO Legal	WACM8 and WACM9 - Discuss practicalities of how Users would be moved in the queue (consider other approaches to using completion date), revise legal text accordingly and		24/02/2023	Open

			agree what STC/STCP changes would be needed		
6	WG11	Claire Hynes (WACM form)/ Proposer/ESO Legal (Legal Text)	WACM10 - Update WACM form to reflect that Users own construction programme provided as part of application will determine which column (or where located between columns) of the Milestone Duration table applies to their project	24/02/2023	Open
			Provide Legal Text		
7	WG11	Proposer/ESO Legal	WACM11 - Provide Legal Text	24/02/2023	Open
8	WG11	Chair	Workgroup Report - Issue V2 to Workgroup	24/02/2023	Open
9	WG11	Workgroup	Terms of Reference - Share thoughts on whether or not Terms of Reference have been addressed	24/02/2023	Open
10	WG11	Paul Jones/Proposer/ Laura Henry	Terms of Reference (d) – provide thoughts on how CMP376 may interact with current CUSC provisions	24/02/2023	Open
11	WG11	Workgroup	Comments - Showstopper comments / Major Sticking points on all of the above	06/03/2023 (9am)	Open
12	WG11	Workgroup	Papers – Issue papers for 7 March meeting	24/02/2023	Open
13	WG11	Workgroup	Timeline – Share revised timeline	n/a	Complete

For further information, please contact the Code Administrator.