

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

Respondent details	Please enter your details
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I wish my response to be:

(Please mark the relevant box)

☒ Non-Confidential

☐ Confidential

We've added a confidential supplemental appendix

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..

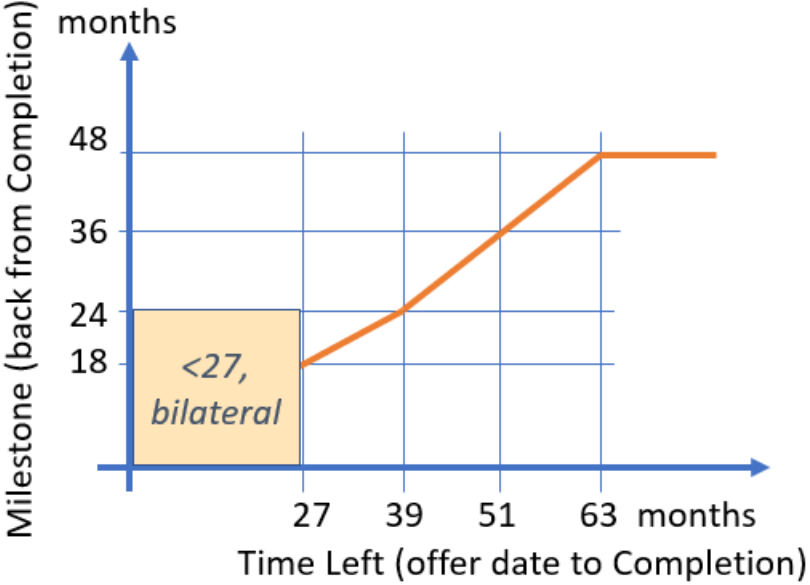
Standard Workgroup Consultation questions	
1	<p>Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?</p>
<p>Mark the Objectives which you believe each solution <u>better</u> facilitates:</p>	
<p>Original <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D</p>	
<p>As written, the Original unduly terminates real, valid projects.</p> <p>Against each objective:</p> <p>A – ✗ Original fails in Licensee's obligation to provide connection to Users who can make use of that connection.</p> <p><i>If proportionate flexibility included for later milestones, with related improvements (see answers to Specific Questions), then better makes connection available to parties who can use it (as opposed to creating barriers by holding capacity for users who cannot use it) , then would better meet A.</i></p> <p>B – ✗ Original fails in facilitating competition by unduly terminating the connection contract of valid potential system Users who could have made use of that connection.</p> <p><i>If proportionate flexibility included for later milestones, with related improvements (see answers to Specific Questions), then better makes connection available to parties who can use it (as opposed to creating barriers by holding capacity for users who cannot use it), then would better meet B.</i></p> <p>C – neutral.</p> <p>D – ✗ Negative: additional administrative burden, additional clauses in CUSC to maintain compliance against, risk of legal challenge. This largely administrative disbenefit would be outweighed by a change to the Original which better meets objectives A and B.</p>	
2	<p>Do you support the proposed implementation approach?</p>
<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>See answers to specific questions.</p> <p>Summarily:</p> <p>(✓ means agreement and ✗ means disagreement):</p> <p>✓ Implement soon.</p> <p>✓ Implement for new applicants and on ModApp of existing.</p> <p>✓ Relatively strict on early milestones M1-M3.</p> <p>✗ Limited, exhaustive exceptions.</p> <p>✗ Relatively strict on late milestones (post-consent) M5-M8.</p> <p>✗ M5 before M2.</p> <p>✗ M5 and M6 longer than necessary for ≤132kV.</p> <p>✗ 'cliff-edge' between time categories creates distortive incentives.</p> <p>Additionally:</p>	

		<ul style="list-style-type: none"> Consider Offshore connection seabed lease process Clarify how works with ESO's two-step proposals
3	Do you have any other comments?	<p>The case for queue management by project progression milestones, as evidenced and already applied by DNOs to distribution connections, is well made.</p> <p>As written however, the Original unduly terminates real, valid projects.</p> <p>We would strongly support an amended Original (or WACM) that satisfies our remaining concerns with the Original, as summarised in answer to Std Q2 and detailed in answer to Spec.Qns) – chiefly on proportionate flexibility and wider exceptions for 'late' milestones.</p> <p>Importantly, we comment milestones are a proxy for demonstrating progression with projects, and should be implemented as such – not as a means to remove credibly deliverable projects.</p>
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The in-principle case for queue management by project progression milestones, as evidenced and already applied by DNOs to distribution connections, is well made.</p> <p>There is much detail of the ESO Original which remains to be concluded before a WACM can be defined (for example, appeals process), which makes defining a WACM at this stage challenging.</p> <p>We would support a WACM that (best) satisfies our remaining concerns with the Original.</p> <p>Ticked "Yes" here in relation to our answer to Specific Qn 2.</p>

Specific Workgroup Consultation questions

1	Do you agree with the Milestone durations proposed? Please provide the rationale for your response.	<p>Please clarify that submitting a planning variation application to improve/update a consented project is not considered for M1 and M2.</p> <p>Please clarify approach to multi-party connection contracts with different Completion dates. For example, a generation complex developed and connected in separate planning projects – one part may be operational when a later part may 'fail' a milestone – we do not believe the other connecting entities in the same connection contract should be terminated.</p> <p><i>Please see confidential supplemental with project examples.</i></p>
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		<p>M5 design – seems to presume supergrid voltage design programmes. 132kV and indeed 33kV connections occur on the transmission system, notably in Scotland, with proportionate impacts on the appropriate design timeline.</p> <p>As per confidential supplemental, we have evidenced that:</p> <ul style="list-style-type: none"> • Connections chiefly at 132kV may complete the design no earlier than 36 months from completion (including for S.37 consent) • Connections chiefly at 33kV may complete the design no earlier than 15 months from completion <p>M5 design and M6 construction programme – Design and construction programme will almost never be completed before consent. Neither can reasonably set the milestone earlier than M2. M5 must not be before M2.</p> <p>M7 and M8 – these must be able to move back with the many and varied valid reasons that large, complex projects do not follow their initial programmes. We are not challenging the initial milestone durations, more that these two milestones must move back with justified project Completion delays. See confidential supplemental for examples.</p>
2	<p>Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date the Offer is sent to 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>Two alternatives proposed, below. Can use both.</p> <p>Aims:</p> <p>(A) Administrative simplicity and transparency of detailing milestone durations at point of offer is clear.</p> <p>(B) However, the durations have considered an actively progressing project. As correctly pointed out this is more accurately from point of <i>acceptance</i> (as done with DNO milestones), as a project without surety of grid connection may reasonably not be progressing at risk.</p> <p>First Alternative below keeps all benefit of (A), & better facilitating (B):</p> <ul style="list-style-type: none"> • <i>Add 3 months to each of the categories</i> <p>i.e. 2nd column becomes: <i>(Offer date is...) [2 years + 3 months] to [3 years + 3 months] from contracted Completion Date.</i></p> <p>This is because 3 months is the standard offer acceptance period, so for the great majority of projects this will most reasonably reflect the start-point for more proactive development.</p>

		<p>Second alternative</p> <p>Users will rightly be concerned about the ‘cliff-edge’ phenomenon of falling from one column into another by a small number of days. Therefore:</p> <ul style="list-style-type: none"> Define a simple linear relationship for each milestone, and round to nearest month. <p>Example for M1 <i>Initiate Consent</i> illustrated below:</p> 
3	<p>There are differences between the arrangements at Transmission and Distribution.</p> <p>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><i>Dates for M5 to M8 must retain a degree of flexibility commensurate with such large and complex projects</i></p> <p>It is not clear why a different approach has been adopted for transmission for the timing of later milestones (M5 to M8). We believe that determining the dates for the later milestones at the outset, plus the “will terminate” rights proposed creates undue discrimination for transmission connected projects, which are by their nature large and more complex, often subject to more bespoke planning conditions with uncertain impact to programme, external and uncertain leasing processes (e.g. offshore wind), external financing and support mechanism implications (e.g. ability to participate in Contract for Difference or Capacity Market, need to re-bid in subsequent years, changes in design of such mechanisms) and wider regulatory changes (e.g. Electricity Generator Levy).</p> <p>There are an incalculable variety of valid reasons why the construction and delivery programme of a large project (large in the general sense of likely to connect at transmission rather than distribution) might be delayed (by more than 60 days beyond the expected) for unforeseen events which are not captured by the Original. There may be process issues with planning, specific environmental or wildlife challenges. CfD</p>

reference prices may be fixed just before a major international conflict triggers global inflation.

For projects of a scale which have applied for connection more than 5 years from Completion Date, we have seen *no evidence that any material percentage would have been permitted to progress without failing the Original proposals for M5-M8!* Illustratively, the connection for Hinkley Point C would have been terminated under the Original.

We have provided further specific and quantified examples in the confidential supplemental.

We believe that consented projects with land rights are exceptionally rarely the kinds of projects which should efficiently have their connection contract terminated. We have not seen evidence to support stricter application of late milestones with transmission projects (as opposed to distribution).

DNOs have well-evidenced that early milestones (M1-M3) can be fixed but that late milestones (M5+) are only sensibly agreed post-consent.

We suggest that only milestones M1 to M3 are defined at time of offer and the later milestones are defined after the project has planning consent.

Short of this, there must be allowance for re-writing M5-M8 where project progression is justifiably delayed. We would be happy to work with the ESO on what constitutes justification.

DNOs require evidence of landowner authority before a connection application is considered complete and competent

This is simple and effective. We ask ESO to consider adding this for transmission, as well as M3, as this is effective in reducing speculative applications (UKPN presented quantitative evidence in c.2019 to DG stakeholders), acknowledging that offshore connection implementation (viz lease rights) must be considered separately.

SCOPE

Proposal to exclude non-radial offshore connections (p19).

This is not well-justified, leading to neighbouring offshore projects in different queue management regimes, or offshore projects that could move from one regime to the other according to HND/CSNP evolution. It would be helpful for the ESO to clarify the intention for *all* BCAs to include Milestone dates, but that non-radial connections pose some additional complexity that will be resolved within a set timeframe from initial implementation of CMP376.

		<p>We stress that the main aim of CMP376 is to mitigate queue-blocking, rather than consider risk of overbuild or stranded asset; therefore ESO must equally seek demonstration of progression from <i>all</i> onshore and offshore connections, must seek with equal determination to terminate non-progressing non-radial connections, such that all connections are most efficiently prioritised.</p>
4	<p>Do you agree with the evidence requirements proposed? Please provide the rationale for your response.</p>	<p>M3 Offshore lease process and resulting lease rights award do not align with the evidence requirements of M3 (nor the dates, in the sense of when lease processes conclude is different to an onshore project).</p> <p>Propose: “User has entered into the relevant lease award process for the proposed connection point. “ESO will terminate at the end of the relevant lease award process (including for relevant appeals process) if no such lease can be evidenced.</p> <p>User <i>has</i> control of when to enter the process, and can evidence this; but has no control of the resulting lease-award dates – these should remain bilaterally determined with reference to the specific lease programme. It can be seen, for example with Scotwind vs Celtic Sea programmes, that one-size-fits-all dates may not be appropriate, and how little control Users have of the <i>end</i> of the process.</p> <p>Propose that the milestone date requiring <i>entry</i> into the relevant lease award process is at least as early as the draft M3 timescales, potentially earlier.</p> <p>M2 and M3 Original – agree to excluding rights for the grid connection. Agree M2 and M3 are to be evidenced solely regarding the generation project site itself.</p> <p>For the avoidance of doubt, this means that consents and land rights for a connection which will be passed to an Offshore Transmission Owner are <u>not</u> required to satisfy M2 nor M3.</p>
5	<p>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.</p>	<p>Sole-use works – agree to suspension, as proposed.</p> <p>Shared works – No suspension. Firstly, suspension would unduly affect other connecting users. Secondly bill-payers are protected by User Commitment for the proportion ‘at risk’ by termination of the appellant.</p>

	Please provide the rationale for your response.	
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>Would like to see more fully developed expected costs and timeframe impact before suggesting 'best'.</p> <p>We anticipate the list of 'exceptions' will be updated following stakeholder feedback. Judging against the exceptions is a key criteria for appeals, therefore this should be revisited when the 'exceptions' list is more fully developed.</p> <ul style="list-style-type: none"> • Understand concerns with Independent Engineer, however a wider list of 'exceptions' may, even in part, be appropriate for Independent Engineer scrutiny. • Understand concerns with 'sent to Ofgem'.
7	<p>Do you agree with the circumstances when Milestone Dates will be changed – the "exceptions"? Please provide the rationale for your response.</p>	<p><i>Dates for M5 to M8 must retain a degree of flexibility commensurate with such large and complex projects</i></p> <p>See whole answer to specific Qn.3., including <i>"DNOs have well-evidenced that early milestones (M1-M3) can be fixed but that late milestones (M5+) are only sensibly agreed post-consent"</i>.</p> <p>Further:</p> <p>Request clarity on moving <i>subsequent</i> milestones due to any exception – see final paragraph of this answer.</p> <p>We see merit in a wider, more proportionate range of 'exceptions', rather than free rights to move M7 and M8 dates with necessarily all ModApps, referencing consultation box on p8, row 2. Referencing the same box on p8, row 1, we <i>disagree</i> that some process complexity is a good reason to <i>not</i> provide a degree of flexibility proportionate with such large and complex projects.</p> <p>We disagree with terminating consented projects with land rights that are proceeding slower than the Milestones set out in the Original Proposal, without considering the circumstances of the delay (see answer to specific Qn.3 and confidential supplemental project examples).</p> <p>We believe that <u>exceptions should also include</u>:</p> <ol style="list-style-type: none"> 1. Third party challenge to granting of a consent. 2. Consenting process change/extension, and/or the consenting body fails to make a decision in the anticipated timeframe.¹ 3. Evidence that reasonably unforeseen complications with discharge of any specific consent condition necessitates a revised construction and completion programme.¹

		<ol style="list-style-type: none"> 4. Failing to be awarded a revenue support mechanism contract following a compliant bid. 5. Revenue support mechanism is delayed, or materially effected in a way which can be demonstrated to impact programme. 6. Route to market is temporarily removed. 7. Supply chain issues or procurement lead times that result in a requirement to revise the construction programme. <p>Items marked ¹ are further evidenced in the confidential supplemental appendix.</p> <p><u>Notes on the list above</u></p> <ol style="list-style-type: none"> 1) can be separate to planning appeal 2) . 3) Example 1, discovery of specific wildlife, cultural or other environmental concern which requires investigation and potentially mitigation with programme impact. 4) Users cannot be limited to 'one chance' at CfD, otherwise detriments CUSC objective relating to facilitating competition in generation of electricity. 5) Example 1, change in Capacity Market prequalification. Example 2, CfD Reference Prices set before major market changes, such as the inflation seen following the invasion of Ukraine. 6) . 7) Such as a contractor or subcontractor becoming insolvent, or otherwise no longer operating as planned. <p><u>Subsequent milestones</u></p> <p>It is stated that for any milestone that is missed due to an exception the ESO will issue a new milestone date for the missed milestone. It does <u>not</u> state that <u>subsequent milestones will also be revised!</u> Please clarify. For example, if M2 consent is justifiably delayed, it follows that M5 and M8 can all be justifiably redrafted, although M3 does not need to be.</p>
8	<p>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</p>	<p>Agree to "will terminate" rather than "right to"; Less ambiguity, to discourage legal challenge. However we support "will terminate" <i>only</i> alongside a proportionately expanded exception list.</p> <p>Request that the ESO, if hasn't already, seeks detailed experience from DNOs of <i>not</i> exercising the right to terminate, and the resulting impact on connection queues.</p> <p>Secondarily, as suggested by others, we would be open to exploring dynamic queue management for Late Milestones (M5-M8) – to promote the most 'shovel-ready' projects, and allow consented-with-land-rights projects opportunity to resolve legitimate project delays in return for lower-priority grid access.</p>

	rationale for your response.	
9	<p>Do you agree with the proposed impacts on Milestones for different types of Modification Applications?</p> <p>Please provide the rationale for your response.</p>	<p><i>Assuming the exceptions list can be appropriately expanded – then agreement. We stress that a high volume of ModApps with date changes is not in of itself a problem, and we expect post-consent ‘exceptions’ to be commonplace, the problem is non-progressing projects resulting in queue-blocking.</i></p> <p><i>(Otherwise no – without expanding the exceptions list, a ModApp must redraft all milestone dates, to avoid risk of unduly terminating a valid project.)</i></p> <p><u>Row 3</u> <i>“User is required to send ModApp after exception..”</i> Please acknowledge that for certain exceptions the ESO can amend by Notice. This materially reduces paperwork, process time and cost to all parties. User must ModApp only if the ESO cannot proceed by Notice.</p> <p><u>Row 4</u> In all cases, agree that pre-376 contracts on ModApp should be offered milestone dates based on <i>new</i> Completion Date.</p> <p>Additionally – noting the fundamental shift in scope to change future Completion Date this imposes – please consider one-off opportunity to change User Commitment from Fixed to Actual methods. User could not have foreseen this proposal at the point of making the User Commitment option decision.</p>
10	<p>Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?</p>	<p>Yes, see confidential supplemental.</p>