

**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](mailto: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](mailto:paul.j.mullen@nationalgrideso.com) or [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com)

Respondent details	Please enter your details
<b>Respondent name:</b>	Claire Hynes
<b>Company name:</b>	RWE Renewables (Swindon) Ltd.
<b>Email address:</b>	claire.hynes@rwe.com
<b>Phone number:</b>	07787273960

**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?	Mark the Objectives which you believe each solution better facilitates:	
		Original	<input checked="" type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input checked="" type="checkbox"/> D
		<p>The following responses are subject to greater flexibility being provided in the latter milestones:</p> <p>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence. <b>Positive</b> The development of connection queue management milestones to manage projects through the connection process prevents stalled projects and ensures a more efficient connection process for all parties. Thus, more efficiently discharging the transmission licence obligation to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.</p> <p>(b) 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. <b>Positive</b></p> <p>This change supports effective competition by providing greater clarity to the User on the Company’s project progression expectations at different stages of the process and introduces a control mechanism to prevent stalled projects that could impact other connectees.</p> <p>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. <b>Neutral</b></p> <p>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements. <b>Positive</b></p> <p>This change promotes a more efficient connection process in the CUSC arrangements by setting out expectations early in the construction agreement on the project progression timescales and provides a control mechanism that the Company has the right to utilise to prevent stalled projects holding up other connections. However, it is likely to increase the administrative burden of the process and legal challenge. We recommend that the ESO conducts a lessons learnt session with the</p>	

		DNOs on the successes and failures of the DNO's legal drafting when administering and enforcing this process and aspects they would implement in hindsight if they have not already done so.
2	Do you support the proposed implementation approach?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>We recognise the case for change for wider connection reform including implementing the connection queue milestones as soon as possible to more efficiently manage new contracts and existing contracts with new modification applications. As a result, we agree that implementation 10 Working Days following Authority consent seems a sensible approach.</p>
3	Do you have any other comments?	<p>Guidance and a note in the final change report should clarify that the connection queue milestones apply from the step two offer in the temporary Two Step Connection process which if approved will come in to force and run until 2024. It would seem sensible for it to be applied from the step two offer as customers have more detailed information on the point of connection, the detailed enabling works and the cancellation charge applies. We are also concerned that there will be an increased number of speculative applications from developers who take up the lighter connection offer at Step 1 and do not withdraw until Step 2 of the process when there is further information available on how viable the connection is, increasing NGESO's workload. Ofgem should put forward a legally binding and enforceable end date for the Two Step Connection Process to ensure efficiency of connection application processing, support investor confidence, and to not delay projects committed to reaching Net Zero.</p> <p>The government's <a href="#"><i>'Improving Performance of the NSIP Planning Process and Supporting Local Authorities'</i></a> policy paper is proposing to shorten the consenting timescales from 4 yrs to 1 yr. If the maximum timeframes are being set by NSIPs then it may be beneficial for NGESO to monitor the development of the NSIP reform work to best reflect timescales and to maintain informed discussions with developers going forward. We recommend that NGESO provide for regular review periods for both the timeframes and the exceptions proposed.</p>
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>We are supportive of further development of the original proposal to produce the optimal solution before any decision on raising an alternative can be taken.</p>

		the exceptions list to be considered as part of the process of determining whether NGESO want to utilise their right to terminate.
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### Specific Workgroup Consultation questions

1	Do you agree with the Milestone durations proposed? Please provide the rationale for your response.	<p>We largely consider milestones 1-3 provide conservative but acceptable timeframes for offshore wind activity. For small scale projects with tighter timescales, there may be a benefit in providing an evidence of progression route.</p> <p>The timeframes of these milestones and the exceptions do not take in to consideration common causes for delay such as:</p> <ul style="list-style-type: none"> <li>• the planning authority not making a decision in the timescales expected,</li> <li>• Processing delays due to consent issues/ resourcing of local authorities and statutory bodies</li> <li>• Delays caused by EIA requirements e.g. additional unexpected baseline surveys</li> <li>• Extensions to decisions or the examination,</li> <li>• Legal challenges to the consent. The user can challenge a refusal of planning permission and has the right to appeal the decision</li> <li>• Delay to the CfD allocation or route to market mechanism</li> <li>• Supply chain issues</li> <li>• Timeline between M7 to Completion is highly conservative without factoring in weather downtime for offshore wind projects</li> </ul> <p>We suggest merging milestones 2 and 3 to tie the evidence for securing consent, and the land rights in to one milestone as the land rights are evidenced as part of the consents process.</p> <p>We would ask NGESO to consider approaches by other European Markets where they allow further time for a project to apply to the following years CfD rounds due to scenario's such as:</p> <ul style="list-style-type: none"> <li>• Where there is to delay to the consent determination and the programme is tight to get to the CfD auction, there is a risk that projects miss the CfD allocation round they had planned for.</li> <li>• In the event the project is not awarded a CfD.</li> </ul> <p>Due to increased project complexity and the potential for supply chain issues, we have less control over the success of milestones 5, 6, 7 and 8. Projects are heavily invested by the time they reach these milestones and as a result suggest an alternative approach could be the introduction of a technical compliance exception route for these milestones which allows</p>
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		<p>NGESO to make a decision based on evidence of progression provided. Where a termination decision is made in the latter milestone stages, the decision should be escalated to senior management.</p> <p>We would welcome any view NGESO could provide on the percentage of projects not meeting the timelines in the latter stages proposed as milestone 5, 6, 7 and 8 and the impacts that NGESO is experiencing to more fully understand why NGESO wishes to mandate it and for this detail to be added to the final report.</p> <p>There is a notable cliff edge for projects being moved between milestone timeframe brackets which provides unequal treatment for projects that fall a few days either side of the bracket. NGESO should seek to address this issue in the final solution, possibly by averaging and smoothing the timeframes out over the length of the project.</p> <p>Where there is long lead times due to network congestion, the milestones being applied based on the time to completion may not be suitable for the scale of the project. For example, a 100MW wind farm given a connection date in 2029. We ask NGESO to introduce a discretionary clause for when a small scale project's connection date is impacted by network congestion to allow the project to agree to provide evidence at milestones more suitable to the scale of the project during the negotiation phase of the contract.</p> <p>We consider that inviting a DNO representative to share lessons learnt on the successes and failures of connection milestone management would be beneficial in creating a workable process.</p>
2	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	<ol style="list-style-type: none"> <li>1. We consider that it is best practice for the milestone durations to be calculated from the Completion date back to the date that both parties contractually agree and sign terms. This would also allow time for projects that may need to negotiate milestones due to specific circumstances e.g. a small scale project's connection date that is impacted by network congestion.</li> <li>2. We do not consider milestones applying from the Completion date back to the offer receipt date as the optimal solution. There is a further three month period for negotiating the contract from receipt of the offer. It is not unknown for this negotiation period to extend to 6 months before the contract is signed which would result in a shorter timeframe for the project to complete the applicable milestones. This negotiation process could also affect the completion date and move it in to a different bracket which may not be suitable for the technology.</li> </ol>

	the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.	3. We do not support the milestone duration from the Completion date to the Offer accepted by the User alone. It is better legal practice and more transparent to calculate the milestones from a contract that both parties have legally agreed and countersigned than to apply it from the date where only one party has agreed to the terms.
3	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.	We would welcome any view NGESO could provide on the percentage of projects not meeting the timelines in the latter stages proposed as milestone 5, 6, 7 and 8 and the impacts that NGESO is experiencing to more fully understand why NGESO wishes to mandate it rather than create a technical compliance exception route with evidence of progression.
4	Do you agree with the evidence requirements proposed? Please provide the rationale for your response.	For milestones 1 and 2, we would like to highlight that in some instances it may be possible and desirable to develop a project under permitted development rights. Such a project would appear not to be able to meet the evidential requirements for milestones 1 and 2 (initiating and securing consent), as there would be no requirement to formally apply or receive consent for such projects. There are wider requirements for land rights for offshore than onshore which includes items such as lease agreements for the cable corridor. These timelines do not fit with the timeframes proposed and we suggest that the milestone applies to the lease awarded at the point of connection.
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.	We consider that the sole use asset works for the specific user should be suspended until the outcome of the appeal/ dispute is known but not the Shared Use Assets. We also suggest that an assessment could be taken of the sole use assets and a decision taken to proceed with the works that have a high Local Area Reuse Factor (LARF) i.e. where the assets can be reused. An appropriate % of LARF would need to be determined by the workgroup if this approach was taken. Frequently multiple parties works are linked to several upgrades which is delineated in the proportion of their cost of infrastructure. Therefore, a milestone exception should be added to the list for projects that are impacted by the suspension of another users works commensurate to the



		<p>tune of the time that the project is delayed. It is worth noting that this generic exception could also cover circumstances other than an appeal such as where the termination of a project impacts other users works but where the shared works do not require redesign.</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>Before choosing a route, it would be beneficial to see the costs of each of the dispute resolution processes. This is particularly pertinent based on the Connection Reform workshop hosted by NGESO in London on the 12 December 2022 where they suggested that the first come first served connection queue process is no longer fit for purpose and will be re-visited under the new Connection Reform. This leads to the question as to whether the driver behind the need for the connection queue management change will be of limited duration, although the connection queue milestones will be enduring. Under this circumstance, is it worth the cost of setting up a temporary new arrangement with a third party provider such as Option 2?</p> <p>The dispute resolution process should include items such as:</p> <ol style="list-style-type: none"> <li>1. the timeframes for the turnaround of the dispute. The dispute timeframe will also provide the maximum deadline for the suspension of any sole use asset works on acceptance of the appeal subject to there not being extra provisions provided on decision.</li> <li>2. the cost of resourcing and any additional expertise once notified by the party that they are appealing. For example, does the arbitrator need to be put on notice from the date that a parties milestone is first missed and has been given 60 days to rectify.</li> <li>3. How will the appeal process be funded. For example, will it be via a price control?</li> <li>4. There should be a maximum length of time in which the party needs to have appealed NGESO decision's.</li> <li>5. A list of the responsibilities required with any cost associated, is there a fixed fee, will the fee be refundable if the appealing party is successful.</li> <li>6. Process question: More information required on what happens when you appeal, will the information be confidential to your project or will there be a register containing the outcome of the appeals.</li> </ol> <p><b>Option 1:</b> On a high level principles perspective, we consider Option 1 to use the existing CUSC disputes process as set out in CUSC Section 7 to escalate to arbitration under the Electricity Supply Association is deemed more appropriate but would prefer to see the costs of each of the dispute resolution processes before making a final decision.</p> <p><b>Option 2:</b> At NGESO's Connection Reform workshop, it was noted that a first come first serve connection process is no</p>

		<p>longer considered the way forward. Therefore, if the connection queue milestones are a transitional process I question whether there is validity in time and money being spent on creating a third party external process. There is a potential for a lack of technical expertise for decision making when the arbitration is hosted by a third party such as the London Court of International Arbitration which could allow parties to colour the outcome of the decisions.</p> <p><b>Option 3:</b> Although Ofgem undertakes a dispute resolution process for various processes in the industry including self-governance proposals that are appealed, we do not consider that Ofgem as a strategic and overarching governance body is best positioned to act as an arbitrator for the granular detail of construction agreement milestones. Resource is already tight within the industry and the requirement for Ofgem to have a team on standby should there be an application to appeal seems unreasonable when it could be resourced through other options with more technical expertise.</p> <p><b>Option 4:</b> To reduce complexity and the increased costs and resourcing of two arbitration services, we have a preference for a single body rather than two separate bodies acting as arbitrators in an appeal process.</p> <p>The draft CONSAG Appendix Q states <i>‘Whether or not the exceptional issues as listed here apply and the period of any extension, is a matter for the sole discretion of The Company’</i> which negates the purpose of having an exceptions list with an appeal process as the User will have no grounds for appeal if ultimately the Company’s view presides in all circumstances.</p>
7	<p>Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”?</p> <p>Please provide the rationale for your response.</p>	<p>Exceptions to be included:</p> <ul style="list-style-type: none"> <li>• the planning authority not making a decision in the timescales expected,</li> <li>• Processing delays due to consent issues/ resourcing of local authorities and statutory bodies</li> <li>• Delays caused by EIA requirements e.g. additional unexpected baseline surveys</li> <li>• Extensions to decisions or the examination,</li> <li>• Legal challenges to the consent. The user can challenge a refusal of planning permission and has the right to appeal the decision</li> <li>• Delay to the CfD allocation or route to market mechanism</li> <li>• Supply chain issues</li> <li>• Timeline between M7 to Completion is highly conservative without factoring in weather downtime for offshore wind projects</li> </ul> <p>The non-definitive exceptions list should not be codified but instead held outside of the agreement so that it can be updated with any new items identified that are outside of the</p>



		<p>control of the projects. The legal text would instead state <i>'Where a User's project is not able or is considered unlikely to meet a User Progression Milestone, as a result of an exceptional issue <del>documented in under the headings here the exceptions list that is published and updated with any other exception that the Company deems valid from time to time,</del>'</i>. This would place a requirement on NGESO to regularly review and publish the exceptions list in a location accessible by all. This also allows for greater flexibility in the process for new, innovative and upcoming technologies whose timescales may not have been sufficiently considered by this work group. A legal view may need to be required on this list not being codified in the context of an appeal process.</p> <p>Projects have less control over milestones 6, 7 and 8 due to supply chain issues and increased project complexity. We ask NGESO to take in to consideration the current environment where multiple European governments have NET Zero targets which has implications for supply chains. For example, developers will be competing for the limited number of installation vessels available in Europe and factory slots for transformers and HVDC equipment are already fully booked from 2026-2028 to meet the 2030 deadline date. This poses an increased risk to the construction timeframes from supply chain issues. We ask NGESO to consider adding <i>'the evidence of supply chain Issues'</i> to the exceptions list to be considered as part of the process of determining whether NGESO want to utilise their right to terminate. We would welcome any view NGESO could provide on the percentage of projects not meeting the timelines in the latter stages proposed as milestone 7 and 8 to fully understand why NGESO wishes to mandate it. The amount of change in the UK market is making it less investible to projects than other markets and this modification should not look to enlarge the issue.</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?</p> <p>Please provide the</p>	<p>We consider that if milestone 1-3 are not rectified in the 60 day notice period then it should state in the legal text that NGESO has the <u>right</u> to terminate the construction agreement when a milestone is not met as the list of exceptions proposed is not exhaustive and this exceptions list should be held outside of the agreement. NGESO should be able to exercise these decision powers based on the evidence provided by the project on why it has not met the milestone. For milestones 5-8, we propose that a technical compliance exceptions process is put in place based on evidence of progression before termination is considered.</p>

	rationale for your response.	
9	Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.	<p>A modification application should recognise a significant shift in a project. We agree that having different milestone process impacts for different types of modification applications is appropriate. However, this change may curb developers enthusiasm for innovation as it may risk the project stepping outside of the milestones and being terminated.</p> <p>We agree that in exceptional circumstances where National Grid delay a project then National Grid should vary the terms rather than require the project to pay for a modification application as a point of best practice.</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>Yes, the original and alternative proposals impact our development projects which raises concerns where these items are outside of our control. We consider that if the connection queue milestone process is applied too rigidly through a connection portal rather than pragmatically with account manager meetings on evidence based decisions when a milestone is missed then projects that are heavily invested may be terminated. We suggest that in addition to the reminders at 60 and 30 days before the milestone is missed and in the 60 day rectification period after the milestone is missed that an account manager is made available for a meeting to discuss the reasons and evaluate the evidence for being unable to meet the milestone. The account manager if upholding a decision to terminate should also walk through the appeals process with the developer should they wish to choose to go that route. This would ensure that smaller developers less familiar with the process are catered for and supported.</p> <p>If this change was introduced retrospectively then there is potential for unknown impacts on developers who have planned their projects in good faith, without the knowledge that specific milestone timeframes with evidentiary requirements will apply. This will impact on key aspects of the project such as the supply chain and requirements of the CfD. As a result, we do not have a preference for retrospective application of this change.</p> <p>However, we do have pointers for the proposer of the retrospective change:</p> <ol style="list-style-type: none"> <li>1. Parties have the right to derogate from new and upcoming changes. The implementation of the change has been proposed to be delayed for 9 months to provide parties with time to assess whether their projects are impacted. We suggest that you highlight and detail the derogation process as part of your solution.</li> </ol>

	<p>2. We do recognise that there is a benefit in the aligning of the connection queue milestone management process across both transmission and distribution systems to provide a conversation route on stalled projects on the transmission system that may be preventing other projects from connecting. We appreciate that the retrospective change would facilitate these conversations at an earlier date. It may be worth developing this point further in the alternate solution.</p> <p>However, projects that are stalled are likely to submit a modification application and be picked up through a more carefully managed and refined process.</p> <p>We also consider that the amount of change in the existing market for Offshore wind is now at a stage where other markets are more investible. It is important that CMP376 does not enlarge this issue.</p>
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