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| Workgroup Report | | | |
| **CMP330: Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length & CMP374: Extending contestability for Transmission Connections**  **Overview:**  **CMP330:** To amend the definition of Connection Assets in Section 14 of the CUSC to allow cable and overhead line lengths over 2km to be contestable where agreed between the Transmission Owner and the User.  **CMP374:** To allow new connectees to construct transmission assets to facilitate their connection to the wider transmission network. | | **Modification process & timetable**    **Proposal Form**  20 May 2021  **Workgroup Consultation**  17 December 2021 - 17 January 2022  **Workgroup Report**  20 April 2023  **Code Administrator Consultation**  03 May 2023 - 02 June 2023  **Draft Final Modification Report**  22 June 2023  **Final Modification Report**  12 July 2023  **Implementation**  TBC  **1**  **2**  **3**  **4**  **5**  **6**  **7** | |
| **Have 5 minutes?** Read our [Executive summary](#_Executive_summary_1)  **Have 20 minutes?** Read the full [Workgroup](#_Why_change?) Report  **Have 30 minutes?** Read the full Workgroup Report and Annexes. | | | |
| **Status summary:** The Workgroup have finalised the proposer’s solution as well as 1 alternative solutions. They are now seeking approval from the Panel that the Workgroup have met their Terms of Reference and can proceed to Code Administrator Consultation. | | | |
| **This modification is expected to have a: High impact** on Onshore Transmission Owners  **Medium impact** on Generators and ESO | | | |
| **Governance route** | This modification has been assessed by a Workgroup and Ofgem will make the decision on whether it should be implemented. | | |
| **Who can I talk to about the change?** | **Proposer:** Andy Pace, Energy Potential  [Andy.pace@energy-potential.com](mailto:Andy.pace@energy-potential.com)  Phone 07881 840 007 | | **Code Administrator** **Chair**: Milly Lewis  Milly.Lewis@nationalgrideso.com  Phone: 07976 940 855 |

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# Executive summary

In December 2019, EnergieKontor raised CUSC Modification proposal CMP330 ‘Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length’ which seeks to amend the definition of Connection Assets in section 14 of the CUSC to allow cable and overhead line lengths over 2km to be contestable where agreed between the Transmission Owner and the User. Following a Workgroup consultation and Workgroup discussions, the original solution was amended.

The Proposer of CMP330, then raised CMP374 which seeks to allow new connectees to construct any length of connection assets, except where those connection assets are for shared use. CMP374 was raised to separate the principle of contestability from charging and provide more flexibility in the solutions than could be considered under CMP330. The CUSC Panel on 28 May 2021 agreed that CMP330 and CMP374 should be amalgamated. This modification proposes to introduce contestability in building sole use connection assets. This will enable more flexibility for users looking to connect to the transmission network and potentially enabling quicker and lower cost connections.

As part of the Workgroup consultation phase, the Workgroup established that rather than be assessed against Charging Objectives in Section 14 of CUSC, contestability would be more appropriately contained in a new Part IV within Section 2 of CUSC (Connections). Accordingly, a Consequential Modification proposal CMPXXX accompanies CMP330/374 and has been assessed under non-charging objectives.

What is the issue?

CMP330: To amend the definition of Connection Assets in section 14 of the CUSC to allow cable and overhead line lengths over 2km to be contestable where agreed between the Transmission Owner and the User.

CMP374: To allow new connectees to construct transmission assets to facilitate their connection to the wider transmission network.

CMPXXX To facilitate the removal of Contestability from CUSC S14 and substitute with more detailed treatment of Contestable Assets and Adoption Agreement in S2 of CUSC.

What is the solution and when will it come into effect?

**Proposer’s solution:** To amend the CUSC Section 14 to allow contestability in the construction of connection assets and remove the link between contestability eligibility and TNUoS charging which creates a limit on contestable connections of 2km.

**Implementation date:** 6 months following an Authority decision.

**Summary of alternative solution(s) and implementation date(s):**

An alternative has been formally raised.

**WACM1:** To extend the implementation date from the original proposal (of six months) by an additional six months following Ofgem’s decision. This would extend the implementation timeline to twelve months following Ofgem’s decision.

**Workgroup conclusions:**

The Workgroup concluded unanimously/by majority that the Original and WACM1 better facilitated the Applicable Objectives than the Baseline.

What is the impact if this change is made?

This modification will enable more flexibility for users looking to connect to the transmission network and potentially enabling quicker and lower cost connections.

Interactions

CMP330/CMP374/CMPXXX if approved by the Authority will have a consequential impact on the STC and STCPs. A subsequent STC modification proposal, [CM079 ‘Consideration of STC/STCP changes in relation to CMP330/CMP374’](https://www.nationalgrideso.com/industry-information/codes/system-operator-transmission-owner-code-stc-old/modifications/cm079) has been raised.

What is the issue?

This modification proposes to introduce contestability in building sole use connection assets. This will enable more flexibility for users looking to connect to the transmission network and potentially enabling quicker and lower cost connections.

The TO continues to design the asset but the developer builds to the TO specification. The User will remain liable for the works until the asset is adopted by the TO, along with any additional unforeseen development costs which might result above and beyond the agreed adoption payment. The proposed solution is not looking to change the charging boundary but clarifying what works can be done contestably (i.e., breaking the link between how assets are paid for and delivered).

## Why change?

This modification proposes to introduce contestability in building sole use connection assets. This will enable more flexibility for users looking to connect to the transmission network and potentially enabling quicker and lower cost connections.

What is the solution?

## Proposer’s solution

The Proposer explained that their solution seeks to amend the CUSC to allow contestability in the construction of connection assets and some non-shared Infrastructure assets, whilst removing the link between contestability eligibility and TNUoS charging which creates a limit on contestable connections of 2km. The Proposer advised that by amending this, it will allow construction of Connection Assets and some non-shared Infrastructure Assets without having to change the 2km rule which relates to charging. The proposed solution is not looking to change the charging boundary but clarifying what works can be done contestably (i.e. breaking the link between how assets are paid for and delivered). The Proposer stated that once the Connection Asset or Infrastructure Asset is built, it will be transferred over for the Onshore TO to adopt and manage and the assets will be charged as per the standard charging methodologies.

The key features of the solution are as follows:

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| --- |
| High Level Principles for any “Adoption Agreement[[1]](#footnote-2)” to be included in the CUSC. |
| Allowance at application stage for Users to request Offers for both the contestable[[2]](#footnote-3) / non-contestable works |
| The User triggering the contestable works will pay to complete the works. On completion, the Onshore TO will pay the User a fixed price to adopt the asset. The User will remain liable for the works until the asset is adopted by the TO, along with any additional unforeseen development costs which might result above and beyond the agreed adoption payment. The User may also benefit if the contestable work is completed at a lower cost than the fixed price.   * The proposed solution is not looking to change the charging boundary, but is clarifying what works can be done contestably (i.e. breaking the link between how assets are paid for and delivered) |

Workgroup considerations

The Workgroup convened 19 times to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Objectives.

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### Consideration of the proposer’s solution

This modification looks to clarify what sole-use works can be done contestably and how they are defined and managed, rather than trying to change the charging boundary or looking at how the assets are paid for once they are built. This will separate the link between the charging methodology and what contestable works are.

The Proposer stated that within their original solution, this would then mean that the Onshore TO would adopt the asset and make payment to whoever has constructed it.  The User will have the same options as with existing contestability rules to pay Connection Charges post-adoption (e.g., on completion capital contributions).

**Scenarios**

In the early Workgroup discussion for CMP330, 12 scenarios were discussed covering the scope of the contestable works (shared works or sole use) across the differing stages of construction from design of the asset to post construction. With the refinement of the defect as CMP374, now amalgamated with CMP330, the conclusion of the Workgroup was to focus on the scenarios 1-4 to reflect sole use only. The Workgroup agreed to disregard the other scenarios to focus the scope of the defect. These can be found in Annex 3).

**Sole Use Infrastructure Assets**

The Proposer confirmed that the CMP374 solution is looking to allow developers to build sole use infrastructure assets. The Workgroup stated that the current rules on what is a sole use asset, connection asset, or a Transmission Connection Asset (TCA) are very clear within the CUSC. CMP374 will extend sole use beyond what has historically been ring fenced as sole use assets, TCAs or single user assets and move the boundary further out into infrastructure assets.

**How to request contestable works - as part of a Mod-App or new application**

The Workgroup were of the view that all options should be considered at application stage. The customer can then post-offer identify which works would fall under this requirement and can then be done contestably. The Workgroup agreed that a timeline was needed for approval, otherwise negotiations could become delayed. A Workgroup member highlighted that there was already a timeline to turn around normal connection offers back to the ESO within the STC and suggested that they could use something similar, with the ability of a referral to Ofgem if there are any disagreements.

The Workgroup discussed options to start considering contestable works at application and offer stage between Users, ESO and Onshore TOs. The Proposer’s solution is to provide one offer outlining both contestable and non-contestable options for the User to review and consider, which would be consistent with industry practice carried out by DNOs. In practice, this could be presented as two separate offers, with the User only able to select one, with the alternative becoming void on acceptance of the linked offer.

A Workgroup member flagged concern that this would not be feasible based on existing connection offer timelines (3 months for the network companies to deliver a customer connection offer) as specified in the transmission licence, CUSC and STC/STCP provisions. The Workgroup member believed these would need to be changed to provide longer duration for offer production, or the network companies would need to increase their staff and resources levels to accommodate this request which could potentially lead to material cost increases in Application Fees for all parties (including those not wishing to undertake contestability).

Other Workgroup members acknowledged this risk but were of the view that not all connections were of the level of complexity where the additional resource would be required at the application assessment stage. Further, that they would not be offset by the reduced workload resulting from the absence of contestable asset construction and associated project management support on offer acceptance. This point notwithstanding, the current process already includes collaboration between User/TO/ESO, and any additional resource requirement could be addressed and managed as part of the post-application process.

Other Workgroup members advocated for a compromise situation, where the User would provide early sight of their intent for to undertake contestable works if they were able. Amendments to the existing connection application form would be a simple way to achieve this. The ESO and Onshore TOs would use reasonable endeavours to factor this consideration during the existing offer process and timeline. This could even include conversations between the TOs and Users during the offer process if possible. At the very least the ESO, Onshore TO and User would agree the scope of contestable works in a timely manner on production of an offer (regardless of whether it already factors contestable build), turning around any offer changes to scope and contestability etc. in good time during post-offer negotiations.

**Supplementary applications**

The Workgroup discussed what would happen if a supplementary application is submitted by another User to connect into works already agreed to be built contestably with the Onshore TO.

The Proposer’s solution is that the first User who has contracted to do contestable build should not be required to abandon these works due to the presence of another User, unless the TO’s intervention criteria are met and the TO exercises their right to intervene. It was discussed that the TOs may not always exercise this right if the contestable works remain economic and efficient in the context of the subsequent applicant.

A Workgroup member stated that existing backgrounds would be taken into consideration when developing an offer for a subsequent applicant. A Workgroup member explained that the Transmission Owner would be aware of all the works that are going on to determine the most efficient thing to do, whether it be to connect another user into those works or intervene and take on the build themselves.

A Workgroup member queried the extent to which the first User (doing the contestable works) would be consulted as part of this process. The Proposer stated that if there is additional capacity that needs to be built which the TO is anticipating may be needed at a future date, then the TO would consider that investment as with any other reinforcement/ network enhancement.

The Workgroup discussed the potential for a subsequent applicant to be able to provide a more economic and efficient contestable build than the first User. If this is the case this should not be prevented, but the Workgroup agreed this is only possible in the early stages of the contestable works development by the User.

The Workgroup agreed that the Onshore TOs should have the right to intervene in contestable build, particularly in the event of any works becoming shared. The Workgroup discussed the principles for TO intervention, and these will be placed into the CUSC as part of this modification. These principles will also need to be included in the STC change under CM079.

The Workgroup discussed the need to develop principles for TO intervention to address the following:

* protection for end consumers
* protection for 2nd comers/other Users
* protection for TO strategic investment (and mitigating risks for TO RIIO performance)
* ensuring the continued safe development and operation of the transmission system
* ensuring collective compliance to relevant obligations in licences/codes/contracts; consideration of any relevant direction by DESNZ (Department for Energy Security & Net Zero) /Ofgem.

In the event of a dispute the Workgroup agreed that Users should follow the Dispute Resolution process in the Section 7.4. of the CUSC.

**Delays and License Issues**

There were discussions regarding what the liability would be on the licensee if there was a delay from the first User resulting in an impact on the second User. The ESO representative stated that they would not be giving offers to the second party that they couldn’t deliver on. The ESO would consider how advanced the first party is and how long it will take to take over the works before making an offer to the second party.

A Workgroup member explained that although the TO provides an offer, the ESO must also issue a Bilateral Connection Agreement to inform the second User, however this is contingent on the User or User’s contractor completing the construction. It was highlighted that this is a third-party risk compared to the TO constructing in house.

**Circuits that become partly shared**

The Proposers view was that when a circuit becomes partly shared, the sole use elements will remain contestable and the Onshore TO will not take over the whole circuit, if the TO decides to intervene. The principle that should be applied is that any initial User should not be detrimentally affected in any way by any subsequent comer or by an intervention, and there should be a route of appeal. Another view within the Workgroup was that the Onshore TO should be taking over the whole circuit and not just the part that has become shared.Workgroup members also questioned whether there was the ability to isolate and segregate different parts of the circuit.

The Workgroup highlighted that any beneficiaries of a Whole System solution would also need to contribute towards the cost, not just the initial User.

**Pre – Qualification Process**

The Workgroup discussed the potential for a pre-qualification process due to the extension of the contestability definition to include non-shared Infrastructure Asset build. This stemmed from concerns raised by the Onshore TO representatives. They flagged to the Workgroup that the transmission licence, price control and code frameworks put significant compliance burdens on the TOs in relation to Infrastructure Asset delivery to protect end consumers. For example, through the RIIO T2 price control, the Onshore TOs are subject to incentive penalties and other performance measures from Ofgem if they fail to deliver assets in accordance with agreed business plans.

A Workgroup member felt this needed to be replicated in some way in conjunction with this modification proposal to avoid risks of inefficient network investment or other project management/asset delivery issues caused by a failure by the User. This could negatively impact Onshore TO performance and lead to increased end consumer costs. The Workgroup discussed that if a license change is required as part of this modification, that it expects Ofgem to bring these changes forward if the modification was to be approved.

Whilst the Workgroup accepted that Infrastructure Assets are not built for the benefit of a single user (regardless of whether they are immediately shared or not), unlike Connection Assets, the Workgroup largely agreed that a combination of the TO intervention right and the terms and conditions of the Adoption Agreement should adequately mitigate any potential risk of negative end consumer or Onshore TO impact.

**Contestable Asset Design**

The TO will continue to design the network and what is built, this activity is unchanged from current baseline. The potential increased difficulty in delivered future network needs was acknowledged by the Workgroup but considered counteracted by current roles/responsibilities for network design being unchanged.

Workgroup members acknowledged that there would be the potential introduction of additional technical risks which historically have been mitigated through licence conditions and other associated regulatory safeguards. However, some Workgroup members highlighted it is expressly the purpose of the intervention criteria and the adoption agreement to put in place sufficient safeguards that the risks are mitigated to the same degree as when the assets are constructed by Transmission Operators. Members were clear to stress that the security and integrity of the system remains paramount, irrespective who constructs the assets, and that this will be protected by the proposed contractual mechanism of CUSC/STC codification and the Adoption Agreement.

**Securities, Liabilities and User Commitment**

The Workgroup discussed whether an amendment to CUSC Section 15 *‘User Commitment Methodology’* was required. A Workgroup member highlighted that securities are linked to the money being spent, so, if the Onshore TO is not spending any money, then there is no requirement to amend Section 15 as this could result in Users to be committed and securing twice. A Workgroup member stated that there is no need for securities or an amendment to the CUSC for contestable works on connection assets so this shouldn’t be any different for infrastructure assets.

The Workgroup concluded that as no amendments are needed to Section 15. The Workgroup confirmed that this would also require corresponding text in the STC/STCP to ensure that updates to the Onshore TOs spend profiles reflect any payments on completion or upfront for asset adoption.

The Workgroup discussed security liabilities for the second User, if the first User terminates and the TO takes over the build of the assets, and whether the second party can terminate without liability if they do not agree with the contract variation in costs, plus whether this would leave the Onshore TO with a stranded asset.  The ESO representative stated that we would continue to follow the same process as today. If the works are being delivered by the TO, the ESO will be liable to the TO under Final Sums and the User would liable to the TO under User Commitment. There is no change to User Commitment or Final Sums as a result of this modification.

The Workgroup questioned whether securities would have been in place prior to the acquisition by the TO of the build. The ESO representative’s view was that the asset shouldn’t be covered by security as it is the User’s asset/risk until it is transferred to the TO, but there will be securities to cover TO’s time linked to the asset, e.g., Project Management, assurance activities etc. This is subject to the spend profiles submitted to the ESO by the Onshore TOs, refreshed biannually. The STC modification CM079 should ensure there is no double counting risk in these spend profiles.

A Workgroup member stated that with larger projects they have used staged payments for contestable constructions at key milestones that are on a 6-monthly security spend rather than the Onshore TO paying a lump sum on adoption right at the end, once asset ownership has been transferred. The ESO representative agreed that this could be a simple one-off payment at the end, or it could be staged payments and this would be detailed in the Adoption Agreement.

**User Self Build (USB) & DNO Adoption Agreements**

The Workgroup reviewed high level terms and conditions for the Transmission Owner User-Self Build (USB) agreement and DNO adoption agreement. The Workgroup discussed whether there was a standard adoption agreement for User Self Build that could be used as a template. A Workgroup member shared an example of a FIDIC *(Fédération Internationale des Ingénieurs Conseils/ the International Federation of Consulting Engineers)* Contract, which is essentially an industry standard for engineering projects, and it is the basis on which their user self-build agreements are built.  The Workgroup member explained that the FIDIC Contract is modified to suit each agreement

The Proposer stated the DNO adoption agreement was their preferred template for an agreement as it is a simpler form of contract. Other workgroup members representing the Onshore TOs raised significant concerns that the DNO form of the agreement simply does not adequately cover the breadth of obligations needed to deliver transmission assets, which could ultimately create risks for them, other Users, and end consumers.

The Proposer’s view was that all the risk would sit with the developer and the Onshore TO’s would not need to adopt the assets unless they met the required standards, and it would also allow the Onshore TO’s to intervene if assets become shared. A Workgroup member highlighted that a lot of the detail in their User Self Build agreement is contained within the T&C of the DNO adoption agreement, rather than the actual contract. Another Workgroup member representing the Onshore TOs flagged that contestably built Infrastructure Assets cannot simply be ‘not adopted’ if they are not built to specification by a User. A limited scope adoption agreement would leave the Onshore TOs unreasonably exposed for rectifying failures to deliver these works by the User, incurring the price control penalties mentioned above.

The Onshore TO representatives in the Workgroup also explained that they have an output performance measure against Infrastructure assets in the price control and ultimately the assets will be paid for by the end consumer. The developer will be undertaking actions that a licensed entity would have otherwise undertaken and the assets that are adopted by the Onshore TO will be publicly owned assets. This is a greater undertaking than building distribution assets because of the voltages involved and the public safety and licence compliance consequences of getting this wrong.  Consequently, Onshore TO’s should put in place agreements (USB or otherwise) which ensure risks are mitigated adequately in the interests of all parties and end consumers, as happens for existing contestable build for Connection Assets. However, this should not act as a barrier to encouraging contestability, so the Workgroup developed a set of principles that would be within CUSC and must be adhered to by TOs when entering into agreements relating to contestable assets. These are explained in more detail below.

**Adoption Agreement Codification**

The Proposer noted that within their original solution there is a list of high-level principles that should be included in the adoption agreement within the CUSC, rather than codifying an adoption agreement. The Proposer stated that the adoption agreement itself could be added as an Exhibit to the CUSC later, however this would need to do be via a separate CUSC modification proposal.

The Adoption Agreement will essentially be a contract between the connecting party and the Onshore TO and how those assets are then handed over to the Onshore TO. As well as  provisions to cover scenarios where sole use become shared works, and what the process would be for the Onshore TO, to potentially take over those works.

The Workgroup sought the ESO’s view on the potential codification of the adoption agreement in its entirety, intervention points and whether they would want to set out pre-qualification criterion for Users in the CUSC.  The initial ESO legal view on codifying the adoption agreement was as follows:

* There is some precedent for codifying proformas currently in CUSC and STC.
* Interface agreements are currently included as a proforma in CUSC. Interface agreements entered into between the Onshore TO and the User are on the basis they should be ‘substantially in the form of’ the proforma in CUSC. (see CUSC EXHIBIT O - PART I B for Interface Agreements)
* Also, the STC has a proforma of the transmission interface agreement to be entered into between the onshore TO and OFTO (and in the case of offshore build) between the Onshore TO and the user.
* If the solution were to codify the Adoption Agreement within the STC (Transmission Owner Construction Offer, TOCO) then clauses would also need to be mirrored in CUSC Construction Agreement.

Through further Workgroup discussion where some Workgroup members disagreed with the initial ESO legal position, feeling that the existing USB agreement (not codified) already dealt with the transfer of ownership of assets, from a specific specification, where the cost of that work is then paid back to the developer. All they needed to do was to increase the range of assets that can be built under that existing USB agreement.  Other views within the Workgroup were that the Onshore TOs underlying principles for the USB agreement were a broader type of agreement which included the scope of assets, project milestones, liability, indemnity and warranties.

The Workgroup therefore concluded that rather than codifying Adoption Agreements in their entirety it was appropriate to codify a set of principles (outlined in 2.24.3 of the draft legal text).

**Recovery of TO/SO Costs, e.g. Project Management Costs**

The Proposers solution states that the additional TO/SO costs associated with the contestable works as agreed within the adoption agreement will be passed through and the User will pay for them.

**Consideration of other options**

**132KV in Scotland**

The Proposer highlighted that within the CMP330 Workgroup Consultation, they raised an alternative solution which was to*‘remove the 2km limit used in the definition of connection assets for 132kV network asset only.* The Proposer explained that this alternative proposal is different to the original proposal that removed the 2km limit on connection assets for all transmission voltage levels.

A concern highlighted by a Workgroup member was that this alternative could be seen as undue discrimination. As it would be creating a distortion by connection voltage, i.e. an inability for certain customers to do something that others could, which could be difficult to justify.

The Workgroup sought a view from Ofgem on this, who followed up with the following questions for the Workgroup to consider:

What is the justification for applying this change to 132kV only? For example: how are 132kV specifically negatively impacted by the existing rule?; how does this compare with the (perceived) detriment experienced by other voltage levels?

The Workgroup discussed this question and concluded that there is already discrimination and inequality of treatment within the different licencing/charging arrangements for transmission and distribution. i.e. the 2km restriction is not applied consistently across GB. This is because the restriction currently applies at all transmission voltages which includes 132kV in Scotland but 132kV is not a transmission voltage in England and Wales. The proposed alternative is addressing the discrimination that already exists between England/Wales and Scotland.

What would be the impacts of such a change? For example: If 132kV and 275/400kV are competitors, would 132kV competitors have a competitive advantage as a result of this change? Similarly, if 132kV in Scotland competes with 132kV in England and Wales, how would this change impact the existing landscape and playing field?

It was highlighted that 132kV is typically installed very compactly within very narrow slot trenches, whilst 400kV is different in terms of construction, consenting, environmental disturbance and impact. Therefore, there is more volume and natural interest towards 132kV because of the simplicity of construction.

The Workgroup also made the following points:

* This alternative is removing/addressing the discrimination that already exists between England/Wales and Scotland.
* Not many parties/if any are building larger voltages, but lots of parties are/would like to build 132kV and currently build at 132kV in England and Wales. If parties could build this themselves, then there would be a reduction in discrimination. Most of the benefit of the Modification would therefore be seen at 132kV.

**Interactions**

[CMP288 ‘Explicit charging arrangements for customer delays and back feeds & CMP289 ‘Consequential change of CMP289’](https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc-old/modifications/cmp288cmp289)

The Workgroup discussed the potential for interactions with CMP288/289 – a modification seeking to explicitly set out the process for Onshore TO’s (via ESO) to levy charges for unforeseen or unavoidable User-led costs for project delays or requirements for back-feed. The Workgroup agreed any interaction was minimal, and the primary issue was ensuring that any additional unforeseen/unavoidable costs incurred by the User doing contestable work was not charged back to them as a ‘double charge’.

[CMP376 ‘Inclusion of Queue Management process within the CUSC’](https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc-old/modifications/cmp376-inclusion)

The Workgroup agreed that the process to negotiate and agree an Adoption Agreement for contestable build should be not unreasonably be applied in consideration of compliance to contract milestones and tolerance periods related to the proposals under CMP376. The interaction to the two modifications would be flagged by Workgroup members spanning both groups.

**STC Modification**

An STC modification (CM079) has been raised to consider the corresponding obligations needed in that code to facilitate this proposal if approved. The timing of both modifications needs to be aligned so that a package of proposed change can be sent to Ofgem at the same time. The Workgroup agreed that the principles will be set out in the CUSC but detailed within the STC and how the definitions will be consistent across both codes.

**SQSS**

The solution makes no change to SQSS directly. The Onshore TO will still design the assets and there is no change to the standards. There are no impacts to the SQSS.

**CATO (Competitive Appointed Transmission Owner)**

National Grid’s Electricity System Operator (ESO) has been asked by Ofgem to develop proposals for the potential introduction of early model competition in onshore transmission. The ESO Early Competition Project Team have worked with partners from in and outside the energy industry to identify how competition could be introduced to cocreate proposals on how models for early competition could be implemented.

The proposed solution for this Modification has been discussed with the ESO Early Competition Project Team. The general feedback from the team is that ESO is supportive of competition in network development to deliver more cost-effective solutions. While it is recognised that this solution is not the same as Early Competition Plans, the team are supportive of consideration of proposals to increase competition in network development. The Early Competition Plan, to date, has focused on code mapping requirements for system need rather than for general connections. In this context, and with visibility of early sight of the proposed summary solution, the ESO Early Competition Project Team do not consider there is a conflict with Early Competition Plans and are happy for the Workgroup to continue to progress the solution.

**Ofgem comments from Ofgem Early Competition Team**

Ofgem consulted on proposals for introducing early competition into the Electricity Transmission sector.. Where any early competition arrangements are finalised, Ofgem will work with the ESO to help ensure that any required changes to codes are appropriately considered. At this point in time, Ofgem do not consider that there is a case for any ongoing work on early competition to have an impact on the timely consideration of these modifications.

**Impacts/Benefits of this modification**

The Workgroup discussed the impacts and benefits of the modification proposal.

A Workgroup member sought to understand from the Proposer and the rest of the Workgroup how the original solution would ensure that any Infrastructure Assets delivered via new contestable works provisions would lead to cost savings and efficiencies for the benefit of end consumers and other users, as well as for the benefit of the User doing the works.

The Workgroup member also wanted to understand how the proposal would ensure that network development would happen economically and efficiently by a User who is only bound by the CUSC and any USB/adoption agreement, as opposed to licence and price control arrangements which manages the performance of the Onshore TO.

The Proposer and some other Workgroup members acknowledged the following:

* Facilitating developers to build a wider range of contestable assets is already common at Distribution level.
* Their view was that this will lead to greater competition, resulting in cost savings and efficiencies, delivering wider benefits to the consumer and industry with reduced costs potentially resulting in lower use of system costs after completion.

A Workgroup member mentioned their view that the role of Transmission Owner is much broader than constructing contestable assets. Some Workgroup members discussed that the heightened focus and greater flexibility of a developer constructing renewable projects and connections allows for a greater clarity of purpose and intent. Single-minded developers are better placed to identify, design and construct solutions that will progress the ESO’s net zero targets and the government’s wider climate change objectives.

A Workgroup member suggested that contestable assets being built by stakeholders other than the TOs could potentially have the benefit of freeing workload on the part of the TOs.

Workgroup members outlined that the proposed modification would also be in line with wider regulatory direction being advocated by Ofgem.

In relation to the risk of stranded assets or inefficient investment members acknowledged the current position where wider reinforcement and investment considerations are included in connection offers and reflected how these identical considerations would be included in offers, which include the build of contestable assets by wider stakeholders. Members agreed that the current position whereby there is continued engagement and collaboration between TO and developer would be particularly useful in discussions concerning the scope of the options regarding developer contestable build.

### Other options/Alternatives

Following review of the Workgroup Consultation responses, the Workgroup assessed the Original and the potential solutions raised. In total, 4 alternative solutions were put forward to be voted on, Alternative 4 has become Workgroup Alternative CUSC Modifications (WACM1) to be taken forwards by the Workgroup

The Alternative forms can be found in Annex 4.

|  |  |  |  |
| --- | --- | --- | --- |
| **Solution** | **Party** | **Characteristic** | **Implementation** |
| *WACM1* | *NGESO* | NGESO raised an alternative to the CMP330/374 Original solution, where the date of implementation is extended from the original proposal (of six months) by an additional six months following Ofgem’s decision. This would extend the implementation timeline to twelve months following Ofgem’s decision. | 12 months after Authority decision |

## Workgroup consultation summary

The Workgroup held their Workgroup Consultation between 17 December 2021 – 17 January 2022 and received 8 non- confidential responses. The full responses and a summary of the responses can be found in Annex 5.

* Most respondents supportive of the proposal and implementation approach.
* Some respondents highlighted that they believed further sections of the CUSC would be impacted by this change, in particular Section 2 (Connections), Section 7 (Dispute Resolution), Section 11(Interpretation and Definitions) and Section 15 (User Commitment).
* Majority of respondents agreed that there should be a process to allow subsequent applicants to take over the contestable build – however there should be a clearly defined ‘point of no return’ considered.
* One respondent challenged the point outlined in the report that “existing backgrounds” (not contracted background) would be taken into consideration when developing an offer.
* Some respondents noted that the intervention criteria require further detail as they are too broad.
* Mixed views on whether additional safeguards should be required for the delivery of non-shared infrastructure assets.
* Most respondents agree with the principles outlined in the adoption agreement, however some noted this would cause inefficiencies.
* One respondent suggested that an alternative approach for the adoption agreement could be to apply key aspects of the adoption agreement into the STC which the TOs are bound to comply with.
* Mixed views on if this proposal brings forward any additional risks of the Onshore TO’s. Some respondents noted the following concerns:
* Regulatory concerns - does not align with the regulatory price control set in 2021 and if a change is to be introduced, it should be done at the same time as the price control review for T3.
* Volume of changes required to the STC/STCP’s
* Possible license changes and T2 business plans required to deliver the proposed changes.
* Most respondents gave a view that 132kV in Scotland would introduce discriminatory treatment between parties.
* One respondent questioned the acknowledgment of public safety consequences of the User or Contractors.
* Five respondents agreed that this change would benefit their organisation, three respondents disagreed, noting this change would have a negative impact.

Following the Workgroup Consultation, Workgroup members sought further clarifications from the Proposer on the following:

**Contestability / Point of no return**

A Workgroup member questioned if rather than specifying a point of no return, could the second comer and first comer enter an agreement meaning that the first comer would not be detrimentally impacted and that the contract would not be compromised. A TO representative stated that there could be potential legal limitations to this aspect of the Proposer’s solution because legally, once User consent is given to commence builds it becomes difficult to transfer consenting rights.

The TOs will intervene where there is third-party intervention or a perceived detrimental impact whether prior to USB agreement or subsequently. Also, a TO would not extend contestable offer to a 2nd comer once the 1st comer has built a line.

Overall, the Workgroup would prefer if this aspect of the solution is revised, and the legal text states clearly when and how contestability should apply. The Proposer, in response to the comments and suggestions agreed to modify the draft legal text.

**Intervention Criteria**

The Proposer in response to the concerns raised in the Workgroup consultation, confirmed that the reasons for the broad Intervention Criteria was to prevent it becoming too prescriptive. The Workgroup agreed that where an intervention occurs (criteria outlined in 2.23.4) a written explanation will be provided to the impacted User.

**Additional Safeguards**

**Additional Risks – License Changes**

The Proposer advised that, if CMP330/CMP374 is approved by the Authority, then licence changes may be required. It was noted that the Price control T3 – commences April 2026 and this may cause some delays.

## Legal text

The legal text for this change can be found in Annex 6.

What is the impact of this change?

## Proposer’s assessment against Code Objectives

|  |  |
| --- | --- |
| Proposer’s assessment against CUSC Charging Objectives | |
| **Relevant Objective** | **Identified impact** |
| (a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity; | Positive  By enabling new connectees to the transmission network to potentially source a cheaper and/or quicker connection by opening up more Connection Assets to contestability. |
| (b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection); | Neutral |
| (c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees’ transmission businesses; | Positive  This introduces competition in building connection assets which results in the more efficient delivery of networks. |
| (d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and | Neutral |
| (e) Promoting efficiency in the implementation and administration of the system charging methodology. | Neutral |
| \*The Electricity Regulation referred to in objective (d) 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. | |

## Workgroup vote

The workgroup met on XX April 2023 to carry out their workgroup vote. The full Workgroup vote can be found in Annex 7. The table below provides a summary of the Workgroup members view on the best option to implement this change.

The Applicable Grid Code/CUSC (charging)/(non-charging) Objectives are:

**CUSC charging objectives**

1. That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;
2. That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);
3. That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees’ transmission businesses;
4. Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and
5. To promote efficiency in the implementation and administration of the system charging methodology

\*The Electricity Regulation referred to in objective (d) 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.

The Workgroup concluded unanimously/by majority that the Original and WACM1 better facilitated the Applicable Objectives than the Baseline.

|  |  |
| --- | --- |
| **Option** | **Number of voters that voted this option as better than the Baseline** |
| Original |  |
| WACM1 |  |

When will this change take place?

### Implementation date

6 months following the Authority’s decision.

### Date decision required by

A decision on CMP330/CMP374 is required as soon as practical following the Final Modification Report being submitted to the Authority.

### Implementation approach

CMP330/CMP374 amends Section 14 of the CUSC, however changes to the STC/STCP’s are also required because of this proposal. It is essential that the Workgroup factor in the changes required to the STC to allow time for implementation.

Interactions

|  |  |  |  |
| --- | --- | --- | --- |
| ☐Grid Code | ☐BSC | STC | ☐SQSS |
| ☐European Network Codes | ☐ EBR Article 18 T&Cs[[3]](#footnote-4) | ☐Other modifications | ☐Other |

The STC and STCP’s will need to be amended to take account of the processes introduced under this modification to allow contestability. A consequential STC/STCP change *(*[*CM079 ‘Consideration of STC/STCP changes in relation to CMP330/374’*](https://www.nationalgrideso.com/industry-information/codes/system-operator-transmission-owner-code-stc-old/modifications/cm079)*)* has been raised. Acronyms, key terms and reference material

|  |  |
| --- | --- |
| **Acronym / key term** | **Meaning** |
| BSC | Balancing and Settlement Code |
| CMP | CUSC Modification Proposal |
| CUSC | Connection and Use of System Code |
| EBR | Electricity Balancing Guideline |
| STC | System Operator Transmission Owner Code |
| STCP | System Operator Transmission Owner Code Procedures |
| SQSS | Security and Quality of Supply Standards |
| T&Cs | Terms and Conditions |
| ESO | Electricity System Operator |
| TO | Transmission Owner |
| TNUoS | Transmission Network Use of System (TNUoS) Charges |
| OFTO | Offshore Transmission Owner |
| BCA | Bilateral Connection Agreement |
| CATO | Competitively Appointed Transmission Owners |
| USB | User Self – Build |

Annexes

|  |  |
| --- | --- |
| **Annex** | **Information** |
| Annex 1 | Proposal forms |
| Annex 2 | Terms of reference |
| Annex 3 | Scenarios Spreadsheet |
| Annex 4 | Alternative Forms |
| Annex 5 | Workgroup Consultation Responses |
| Annex 6 | Legal Text |
| Annex 7 | Workgroup Vote |

1. The Adoption Agreement will essentially be a contract between the connecting party and the Onshore TO and how those assets are then handed over to the Onshore TO. [↑](#footnote-ref-2)
2. Contestable Assets are Plant and Apparatus that will be procured and/or constructed by a User where the ownership of said Plant and Apparatus which will be transferred to a Relevant Transmission Licensee via an Adoption Agreement. [↑](#footnote-ref-3)
3. If the modification has an impact on Article 18 T&Cs, it will need to follow the process set out in Article 18 of the Electricity Balancing Regulation (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process. [↑](#footnote-ref-4)