

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
Respondent name:	Phillip Addison
Company name:	EDF Energy Renewables Limited
Email address:	Phillip.addison@edf-re.uk
Phone number:	+44 7776 536985

I wish my response to be:

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

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

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

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

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

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

Standard Workgroup Consultation questions		
1	Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe each solution better facilitates:</p> <p>Original <input type="checkbox"/>A <input type="checkbox"/>B <input type="checkbox"/>C <input checked="" type="checkbox"/>D</p> <p><i>The Original Proposal does not better facilitate any of the applicable objectives in its current form.</i></p>
2	Do you support the proposed implementation approach?	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p> <p><i>We support a queue management approach. However, we do not support the Original Proposal for reasons detailed in responses below.</i></p>
3	Do you have any other comments?	<p><i>We have concerns that administering the QMP and its associated Milestone assessments and contract terminations will introduce a significant additional workload for teams within NGESO and Transmission Owners which are already suffering from resourcing challenges from existing requirements.</i></p> <p><i>Can clarity be provided on whether Queue Management will be applied to in-flight Mod-Apps/ Applications which have an grid return date that is after the implementation date but which was applied for before the implementation date?</i></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><i>It is intended to propose the following alternative:</i></p> <ul style="list-style-type: none"> • <i>Include “government/political” as an exception for all milestones and this should not requiring extensive proof by the User. This should cover support mechanisms such as CfD auctions being delayed.</i> • <i>“planning decision ongoing” as an exception for all milestones.</i> • <i>Include delay by DNO in the exceptions – 3rd party works should be covered by this.</i> • <i>Include delay by OFTO in the exceptions</i> • <i>Remove automatic termination from milestones M7 and M8.</i> • <i>Add a senior management escalation process ESO senior levels before any termination decision.</i> • <i>Add NGESO/ TO time commitments within the process and remove the termination right where NGESO/TO have not complied with these.</i>

		<ul style="list-style-type: none"> • <i>Change milestone M6 wording to “submit” a construction plan from the current “agree” a construction plan. Provide more detail on contents and level of detail in the plan; the timescales for submission; and what would be allowable as reasons to reject a plan.</i> • <i>Milestone dates should be based on project / technology type.</i>
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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><i>The milestone durations proposed would only be appropriate with the inclusion of “government/political/ planning decision ongoing” as an exception for all milestones, and also removal of automatic termination from milestones M7 and M8. This is to prevent the inappropriate termination of projects that have invested significant development resource and have a high probability of completion.</i></p> <p><i>We do not agree with the milestone durations. We have a lot of short build projects (1-3 year timescale) in our pipeline that stretches out till 2030. The sites have the same build/ planning program but different contracted completion dates. Under the original proposal these will be subject to different milestone dates. On short build programs the 5+ year milestone durations do not align with the standard planning and build programs of this type of project. We are concerned that the proposal is technology biased as it does not take into account shorter development and construction times for BESS and solar and requires upfront commitments more in line with technologies.</i></p> <p><i>With regards to M2 secure consent, this milestone is completely out of a developer’s control and would only be acceptable if “planning decision on-going” was a milestone exception.</i></p> <p><i>0-2 years is bilaterally negotiated. This should not be more punitive than the 2-3 year timeline.</i></p>
2	Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date	<p><i>The time from Offer Acceptance to Completion. There should also be some scope for the Milestone Dates to be negotiated within the ConsAg under certain circumstances.</i></p>

	<p>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>	
3	<p>There are differences between the arrangements at Transmission and Distribution. Do you agree with the reasons provided why there is different treatment and that these don't create undue discrimination? Please provide the rationale for your response.</p>	<ul style="list-style-type: none"> <i>The nature of the network access made available and the User commitment required differs between Transmission and Distribution, and so some variation between the two approaches is not unreasonable.</i> <i>The differences between these proposed Transmission QMP arrangements and Distribution do however create undue discrimination.</i> <i>This discrimination is particularly evident in the different approaches to termination rights and the definitive list of exceptions for Transmission vs a non-exhaustive list for distribution.</i>
4	<p>Do you agree with the evidence requirements proposed? Please provide the rationale for your response.</p>	<p><i>Consideration needs to be given as to whether each evidence requirement as worded provides robust confirmation that a project is proceeding. For example, if a project needs more than one planning consent, does obtaining only one meet the QMP need? Onerous evidence requirements (similar to providing delay under construction contracts) will create a significant administrative burden on Users.</i></p> <p><i>Milestone 6 : Agree Construction Plan are not adequate. A clearly defined process is required, which includes:</i></p> <ul style="list-style-type: none"> <i>contents and level of detail in the plan;</i> <i>the timescales for submission and agreement;</i> <i>and what would be allowable as reasons to reject a plan.</i> <p><i>Milestone 5: Contestable Design Works are not defined within the CUSC. They are not believed to be widely employed at Transmission level, if at all. If this Milestone</i></p>

		<p><i>is intended to encompass User Self Build arrangements it should be made explicit.</i></p> <p><i>Milestone 7: Capital Contributions are the primary mechanism whereby developers demonstrate user commitment for a Distribution connection. The User commitment mechanism for Transmission connections is completely different and does not typically use capital contributions -its mention in this milestone is effectively irrelevant and should be removed.</i></p>
5	Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.	<p><i>Suspension of works should be at the Users discretion, because if the Appeal is successful and the Milestone is decreed to have been met, it is not fair for the User to suffer any delay dues to works being placed on hold.</i></p>
6	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><i>It is important to include an senior management escalation process up to ESO senior levels before a termination decision, prior to getting to an Appeals/Disputes stage.</i></p> <p><i>The use of an Independent Engineer as defined by the CUSC might be an appropriate route for Appeals on later milestone M5-M8 before going to final dispute resolution.</i></p> <p><i>Ofgem might be appropriate for the Dispute resolution role depending on its capacity to handle the anticipated volume of appeals. It is understood that there is an outstanding question about where they will be involved in appeals/disputes under the CMP376 arrangements;</i></p>
7	Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response.	<p><i>Include “government/political” as an exception for all milestones and this should not requiring extensive proof by the User. This should cover support mechanisms such as Cfd auctions being delayed.</i></p> <p><i>“planning decision ongoing” as an exception for all milestones.</i></p> <p><i>Include delay by DNO in the exceptions – 3rd party works should be covered by this.</i></p> <p><i>Include delay by OFTO in the exceptions</i></p> <p><i>Add a senior management escalation process ESO senior levels before any termination decision.</i></p> <p><i>Add NGESO/ TO time commitments within the process,</i></p>

		<p><i>in order to reduce the burden of proof required to prove delay by the transmission owner/ NGESO.</i></p> <p><i>Remove automatic termination from milestones M7 and M8.</i></p> <p><i>This is to prevent the inappropriate termination of projects that have invested significant development resource and have a high probability of completion.</i></p> <p><i>Can you provide clarity how date changes relates to ATV's. If NGESO or a TO changes the grid delivery date would we have a right to change the milestone dates? We are assuming that this falls under the exception of NGESO or TO delay but we would like this confirmed.</i></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 rationale for your response.</p>	<p><i>No, we don't believe termination should be automatic sanction for all milestones. Alternative approach would be to be moved back within the queue.</i></p>
9	<p>Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.</p>	<p><i>Yes, importantly including - where a pre-CMP376 Construction Agreement is subject to a Modification Application submitted after the CMP376 Implementation Date, the Milestones should be aligned to the contractual Completion Date included within that Modification Offer rather than the contractual Completion Date that existed immediately prior to the Modification Application and the duration for the "offer date to Completion Date" will use the date of issuing the Modification Offer to the User.</i></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><i>This proposal impacts all development projects and adds an additional, unacceptable level of risk under the Original Proposal, as it attempts to effectively transfer a number of development risks (planning, third party works, political) to the User. Given these risks are either wholly or partially outside the User's control, this is not appropriate.</i></p>