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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

1. **Proposal Form**
   20 May 2021
2. **Workgroup Consultation**
   17 December 2021 - 17 January 2022
3. **Workgroup Report**
   20 April 2023
4. **Code Administrator Consultation**
   09 May 2023 - 02 June 2023
5. **Draft Final Modification Report**
   22 June 2023
6. **Final Modification Report**
   12 July 2023
7. **Implementation**
   TBC

Have 5 minutes? Read our Executive summary

Have 20 minutes? Read the full Workgroup 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 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 the CUSC Charging Applicable Objectives in Section 14 of CUSC, Contestability would be more appropriately contained in a new Part IV within Section 2 of CUSC (Connections). Accordingly, the proposed CMP414 modification should be considered in conjunction with CMP330/374 and will be assessed under the CUSC 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. To facilitate the relocation of Contestability provision from CUSC Section 14

CMP414: Enacts the CMP330/CMP374 Workgroup solution from CMP330/374, by updating Exhibit B, Section 2, and Section 11 of the CUSC. Providing a more detailed treatment of Contestable Assets and Adoption Agreement.

CMP330/CMP374 can only be approved and implemented in conjunction with CMP414.

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, with CMP330/ CMP374 and CMP414 considered in conjunction with each other in terms of approval and implementation.

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 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 seeks to enable more flexibility for users looking to connect to the transmission network by extending the scope of transmission assets which can be constructed/delivered by Users contestably to include sole-use infrastructure (as well as Transmission Connection Assets and User equipment as per the baseline).

Where contestability can be reasonably agreed between Users and Relevant Transmission Owners, this modification should provide increased potential for some infrastructure assets to be delivered more economically or efficiently than the baseline.

However, some adjustments to existing licencing and Price Control arrangements may be needed in the instance that contestable works are agreed for sole-use infrastructure assets, but the User fails to deliver the works as agreed, requiring the Relevant TO to step in.

Interactions

CMP330/CMP374 and CMP414 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' has been raised.

What is the issue?

This modification proposes to introduce the right to contestability for building sole use infrastructure assets, in addition to the baseline provision for Transmission Connection Assets and User equipment which is already permitted. This change should enable more flexibility for Users looking to connect to the transmission network and potentially enable quicker and lower cost connections.

The solution acknowledges that the Relevant TO continues to design and specify the assets for delivery, with the developer building to the TO's specification.

The User will remain liable for the works until the asset is adopted by the Relevant 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).

This modification can only be approved and implemented in conjunction with CMP414.

Why change?

This modification proposes to introduce contestability in building sole use infrastructure assets (in addition to the existing right to contestably build 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 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.

For a full review of the Impacts and Benefits see page 16

What is the solution?

Proposer's solution

The Proposer explained that their solution seeks to amend the CUSC to allow contestability in the construction/delivery of some non-shared infrastructure assets. The proposed solution is not looking to change the charging boundary, but instead clarifying what works can be done contestably (i.e., breaking the link between how assets are paid for and delivered). The Proposer stated that, as with existing Contestable build of Connection Assets, when a sole-use infrastructure asset is built, it will be legally transferred over for the Onshore TO to manage the assets as normal, recovering the costs of building and maintaining assets as per the standard charging methodologies.

The key features of the solution are as follows:

The provisions of Contestability in Section 14 of the CUSC will be relocated, and extending through the drafting of a new 'Contestability' provisions within Section 2 (see Annex 7 for CMP414 legal text)
High level principles for the legal agreement to enable Contestable build namely the "Adoption Agreement[1]" to be set out in the CUSC.
Incorporation at application stage for Users to signal intention or interest in undertaking contestable works, with Connection Offers factoring that requirement in design options for both the contestable[2] / non-contestable works
The User seeking to delivery assets via contestable works will fund the works as they are built. On completion to the specification of the Relevant TO, the User will be paid a fixed price by the TO to adopt the asset. The User will remain liable for the cost of 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.

Workgroup considerations

The Workgroup convened 20 times to discuss the proposal, detail the scope of the proposed defect, develop potential solutions, and assess these solutions in the context of the relevant CUSC applicable objectives.

Consideration Of the Proposer's Solution

Initially the Proposer's solution sought to adjust the User boundary by considering changes to the 2km definition through CMP330 "Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length".

Due to the complexity of adjusting this core component of the charging methodology, the Proposer adjusted their solution to focus on the contestable works provisions. These currently enable Users to construct/deliver Connection Assets and User equipment. The CMP374 proposal was raised to extend those Contestability provisions to include sole-use Infrastructure.

The CUSC Panel on 28 May 2021 agreed to amalgamate CMP374 and CMP330. The Panel reviewed the Terms of Reference for CMP330 and agreed that no further terms were required for the amalgamated CMP330/CMP374 Workgroup.

What are sole-use infrastructure assets

The Proposer's solution relies on the concept of sole-use infrastructure assets. Where new infrastructure asset build or extension is the consequence of a User's application, and these infrastructure works are not envisaged to be shared by adjacent or impending future applicants, the first comer User will have the right to pursue contestable works.

[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.

[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.

A Workgroup member representing the Onshore TOs challenged the underlying principle of ‘sole-use infrastructure’, noting that these assets are by definition shared (i.e., not built to serve the requirements of single Users) and are funded by end consumers for the benefit of all.

The Workgroup member’s view was that introducing a sole-use consideration to developing and constructing these infrastructure assets might lead to sub-optimal outcomes for other Users and end consumers. They flagged that Onshore TOs, in coordination with the ESO, will consider longer term investment requirements when building infrastructure assets. They were therefore wary that the consideration of what is ‘economic and efficient’ investment for the Onshore TO would not align with a User’s assessment of economic and efficient delivery for their own requirements.

The Proposer agreed to consider intervention rights to enable the TO to ensure wider network investment wouldn’t be unreasonably impacted by the contestability changes. The TOs would also be able to specify requirements for infrastructure asset delivery during the application-offer process. The User would then see if they can deliver these works quicker or cheaper.

How Users Exercise Their Right to Undertake Contestable Works

The Workgroup discussed when Users can signal their intention to deliver assets via contestable works. It was agreed that the application stage was most appropriate, with options developed during the offer and post-offer negotiation stage.

The Proposer’s initial solution was that ESO/Onshore TOs were to provide one single offer containing both contestable and non-contestable options for the User to review and consider. This would be consistent with a similar process carried about by the 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 option would not be feasible based on existing connection offer timelines (3 months for the transmission licensees 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 relaxed to avoid undue Price Control penalties. Alternatively, the Proposer suggested the network companies increase their staff and resources levels to accommodate this request. A workgroup member representing the Onshore TOs flagged that staffing levels are dictated by the budget setting process before each Price Control and are not easily adjusted. Additionally, any increased costs for the transmission licensees to deliver offers would likely feed into Application Fees for all parties - i.e., including those not wishing to undertake contestable works.

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. This compromise option was eventually incorporated into the Proposer's solution.

Managing Second Comers/Subsequent Applications by Other Users

The Workgroup discussed what would happen if a subsequent application were 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 ESO/TO intervention criteria are met and the ESO/TO exercises their right to intervene. It was agreed that the Onshore 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 therefore agreed that the Onshore TOs should have the right to intervene in contestable build, including in the event of any works potentially becoming shared.

Intervention Criteria

The Workgroup discussed the principles for ESO/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 second 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.

Dispute Resolution

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.

Workgroup discussed whether ESO could be the Arbitrator should there be a dispute between a TO and a User.

The ESO representative stated that as the ESO is not a party to the Adoption Agreement it could not act as arbitrator. This was supported by ESO legal review and confirmation that this type of dispute was not a matter for the CUSC.

A Workgroup member presented an alternative approach which suggested that this dispute resolution process could be considered as part of CUSC as long as there was a reciprocal arrangement put into the STC to allow remedy as TOs are not CUSC signatories. This would result in two different agreements between three counterparties. The ESO again rejected this as a proposal insisting that it could not and would not become involved in the dispute process between Users and TOs.

This was addressed by ESO at a Workgroup meeting where Ofgem were present and it was accepted that the ESO could not play a role in the Dispute process.

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.

A Workgroup member representing the Onshore TO flagged that any failures by Users to deliver infrastructure assets via the contestable works provisions were a significant concern. There was discussion on the situations where Onshore TOs may be required to step in (distinct from the intervention process already discussed above) where a User

cancels their connection agreement and/or the Adoption Agreement for contestable works, or for any other reasons is incapable of concluding the works. In that instance the TO may incur additional costs above and beyond the costs agreed to adopt the assets initially from the User. It may also be that the works are concluded late, impacting TO revenues and future Users.

In those instances, the Workgroup member representing the Onshore TOs felt it was likely the relevant TO would be subject to penalties under the Price Control, e.g., performance measures for apparent over-spend. They wanted to gain reassurance from Ofgem that they would not enforce penalties where Users are the factor behind failures to deliver works at agreed costs and timescales.

The Workgroup discussed this risk, and ultimately decided this was not a matter for a CUSC mod to resolve. It was agreed the ESO/ TOs should raise this separately with Ofgem.

Circuits That Become Partly Shared

The Proposer's view was that when a circuit becomes partly shared, the sole use elements should 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.

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 be liable to the TO under User Commitment. There is no change to User Commitment or Final Sums because 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 not only a greater undertaking than building distribution assets given the scale of voltages (noting that the Proposer solution potentially incorporates delivery of 400kV assets), the public safety and community considerations which result, but also the licence compliance consequences of getting this wrong. Consequently, Onshore TOs 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 unreasonably act as a barrier to contestability. The Proposer therefore sought to develop a set of principles that would be within CUSC to give reassurance to Users when entering into negotiation to deliver infrastructure assets via contestable works. These principles are explained in more detail below and will need to be incorporated in parallel into the STC to ensure that Onshore TOs, as non-CUSC parties, adhere to them.

Adoption Agreement Codification

In addition to the Adoption Agreement principles, the Workgroup initially debated the inclusion of the form of the Adoption Agreement in its entirety as an annex or exhibit to the CUSC. The Workgroup members representing the Onshore TOs found this potentially problematic, not least as the Onshore TOs are not a party to the CUSC. There was also concern that codifying the form of a bilaterally negotiated contract, which may flex depending on project-specific requirements, would limit scope to adjust to improve the form of the Adoption Agreement over time.

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 User Self Build (USB) agreement (not codified) already dealt with the transfer of ownership of assets built contestably to, 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 within CMP414). The Workgroup also agreed that the standard terms and conditions of Adoption Agreements should be available to Users on request to an Onshore TO. The Proposer also flagged that a future CUSC modification may be raised if Users needed further reassurance regarding the form and contents of Adoption Agreements.

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.

Implementation Timescales

The Proposer initially believed that should the Modification Proposals be approved by The Authority, the solution could and should be implemented 10 business days after decision. However, during Workgroup discussions, the Proposer accepted that this timeline was challenging and modified their implementation timescale to 6 months after the Authority's decision.

Meanwhile, ESO raised an Alternate Modification Proposal with same details of the original Modification proposals, except for the implementation date, which for was an additional 6-month period for implementation (therefore 12 months).

The ESO reasoning behind this centered around changes to facilitate implementation: -

- Securing additional resources
- Amending Connection Application processes ensuring additional training is provided across all relevant departments
- Adjustments required to the Connections Portal

The ESO Representative advised the Workgroup that it was presenting the Alternate Proposal to in order to prevent subsequent delays to the Connection Application and Offer process, should the Modifications be approved. Subsequently, ESO needed to ensure resourcing, system and process changes were facilitated before implementation.

This Alternate was approved by majority vote at the July 2022 Workgroup Meeting, becoming WACM1.

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’

The Workgroup discussed the potential for interactions with CMP288/289 – a modification seeking to explicitly set out the process for Onshore TOs (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’

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 related to the proposals under CMP376. The interaction to the two modifications would be flagged by Workgroup members spanning both groups.

Some Workgroup members flagged the interaction between Queue Management (QM) policy enforcement, including potential contract termination of User connection agreements, and the delivery of infrastructure assets via contestable works via an Adoption Agreement.

Additionally, depending on Ofgem’s eventual determination of the CMP376 modification, clarity may be required from ESO regarding how contestable works process may interact with the QM compliance exceptions process. Currently it is out of scope of the CMP376 solution due to CMP330/ CMP374/ CMP414 progressing on a different timeline. Further guidance or a minor tweak of the QM policy may be required in future if this modification is approved.

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.

A Workgroup member representing an Onshore TO flagged that in their view, the CATO model presented a more transparent and robust methodology for 3rd parties to deliver infrastructure assets. Whilst they understood the Proposer's right to develop this change, they did feel that the risks to the Onshore TOs regarding non-delivery of assets would not be an issue under the CATO regime, given the more stringent tender and licencing arrangements. They explained that the CUSC and Adoption Agreements could only go so far, in comparison to licencing and regulation.

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 TO is much broader than constructing transmission 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. This should lead to more flexibility for Users in making new connections and potentially more innovative solutions, reduced connection costs and faster connections. The Proposer highlighted that in their experience contestability at distribution was not only well-established but had provided them tangible benefits.

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

A Workgroup member flagged an increased risk of stranded assets or inefficient investment compared to the baseline. Other Workgroup members stated that continued engagement and collaboration between TO and developer, along with intervention process, would help ensure this not to be the case.

The Proposer also stated that if delivered assets are not completed to agreed standards that those assets wouldn't need to be adopted. A Workgroup member representing the Onshore TOs stated that for infrastructure assets this would not always be possible. They added that these assets are build for wider use, and therefore non-delivery or under specified assets would need to be rectified. The Proposer recommended that this be dealt with through the terms of the Adoption Agreement, including where infrastructure assets might not need to be adopted (i.e., where there are no subsequent applicants dependant on the works) or the works are only partially completed. In that instance, the Adoption Agreement could be written to ensure that the User decommissions and removes assets at their cost.

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 TOs. 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/STCPs
- 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 within the agreed draft legal text as part of CMP414) a written explanation will be provided to the impacted User.

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.
The legal text for CMP414 can be found in Annex 7.

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 removing an existing constraint on contestability within Section 14, this change will enable new connectees to the transmission network to potentially source a cheaper and/or quicker connection by opening up more 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 18 April 2023 to carry out their workgroup vote. The full Workgroup vote can be found in Annex 8. The table below provides a summary of the Workgroup members view on the best option to implement this change.

The Applicable CUSC (charging) Objectives are:

CUSC charging objectives

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.
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).
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;
d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
e) 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 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	4
WACM1	4

When will this change take place?

Implementation date
6 months following the Authority's decision for the Original solution, 12 months following the Authority's decision for WACM1.

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, CMP414 amends Section 2, Section 11, and Exhibit B of the CUSC and must be implemented at the same time.
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 ☐European Network Codes	☐BSC ☐ EBR Article 18 T&Cs[3]	☒STC ☐Other modifications	☐SQSS ☐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'*) 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	CUSC Panel Minutes May 2021
Annex 4	Alternative Forms
Annex 5	Workgroup Consultation Responses
Annex 6	CMP330/CMP374 Legal Text
Annex 7	CMP414 Legal Text
Annex 8	Workgroup Vote

[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.