

Workgroup Consultation Response Proforma**CMP330: Allowing new Transmission Connected Parties to build Connection Assets greater than 2km in length & CMP374: 'Extending contestability for Transmission Connections.**

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 17 January 2022**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

If you have any queries on the content of this consultation, please contact Ren Walker Lurrentia.Walker@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
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For reference the Applicable CUSC (charging) Objectives are:

- 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;*
- 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);*
- 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;*
- 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 system charging methodology.*

**Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*

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

Standard Workgroup Consultation questions		
1	Do you believe that the CMP330/CMP374 Original Proposal better facilitates the Applicable Objectives?	<p>Objective a- We do not believe this improves competition from a charging perspective. There is no competition. It is merely delivery by another party with no requirement for that party to undertake any transparent procurement process to ensure costs are appropriate nor obligation to meet timescales for delivery.</p> <p>As a result, there could be negative impacts on other customers and GB consumers who are impacted by unregulated costs passed through by the developer that are not transparently procured in compliance with the Utilities Contracts Regulations 2016 (as is the requirement for UK utilities (those developing, operating and maintaining electricity networks) ensuring procurement of goods, works and services is undertaken on an open, fair and equal basis and that those delivering the services have sufficient expertise, experience and financial standing to protect GB consumers).Nor is there any detail as to how project delays would be managed and how these would interact with the regulatory mechanisms already in place for Transmission Owners (TOs) currently through the RIIO T2 price control.</p> <p>Under the proposals there is little detail as to whether processes for cost assessment is proposed. We assume the mechanism would operate such that these costs would be passed through to the TO, who would recover these through the applicable funding mechanism in its licence, which is ultimately paid for by the wider GB User. This places a perverse burden on the TO to justify costs over which it will have no control. It is unclear what happens in the situation where developer costs are more than the TO's original cost estimate and we assume some form</p>

		<p>of reopener would need to be agreed for this purpose.</p> <p>We would expect that that in order to protect the TOs position regarding regulatory outputs, there would need to be some form of contract between the TO and developer ensuring back-to-back obligations are met, with clear transparency and reporting requirements on the developer to ensure costs are efficient, there is no degradation of standards of service or environmental standards, for example..</p> <p>Negative</p> <p>Objective b- See also response for objective a- The developer undertaking the contestable works is under no obligation or incentives to ensure costs are kept to a minimum like the TO as the customer will get paid for what they will invoice the TO, however those costs are then burdened by the wider Users of the network.</p> <p>Negative</p> <p>Objective c- Although there are some considerations for TO intervention criteria, currently it is a very broad set and would not be sufficient to allow the TO to be sufficiently satisfied that intervention where developments on the network will require us to do so, will be honoured.</p> <p>There is no certainty that the wider network Users wont have a detrimental impact from an economic and efficient perspective, especially second comers connecting to the first comers build who could be impacted from a timely connection perspective, which as a TO we are obligated to provide. We must consider the wider needs of the network which the developer doing the contestable works is not required to do, so would need regulation changes to ensure there is sufficient safeguards in place to avoid this risk.</p> <p>Negative</p> <p>Objective d- This is not applicable.</p> <p>Neutral</p>
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2	Do you support the proposed implementation approach?	<p>Currently, there is not enough detail within the modification to justify support of the approach, indeed there are areas of concern for the TO-</p> <ul style="list-style-type: none"> • Intervention criteria- These are vague in their definition and not substantial enough to remove the risk for the TO to intervene successfully where it does not believe the build of the contestable works is economic and efficient. Without this, detrimental impacts on costs and timely connections could affect direct and indirect Users. • Fixing of costs- There is little detail as to when costs will be fixed and whether there would be sufficient time for the TO to intervene when this occurs. Even with the costs being fixed, there is no certainty that those costs are robustly efficient and there is no obligation on the contestable developer to make them so. • Increase in System Planning workload to account for additional offers- DNOs have additional staff to cater for contestable and all works offers whereas this is not the case for the TOs if the contestable/all works offers are the default position. This could impact the timely provision of the offers to the ESO in what is already a constrained, licenced time frame. There is also no evidence that developers wish to have this as the default position. We believe an “on request” facility for these types of offers would be more suitable, if at all. • Procurement strategies by the contestable developer which may have detrimental effects on the network- The TO has no right to sufficiently be involved in their procurement strategies which could mean the assets procured could impact the integrity of the network

		<ul style="list-style-type: none"> Defects of build- It is not certain that any defects caused by above procurements strategies, once installed, will be fixed by the party who installed them. If the TO was then required to fix these, additional burden of costs would be on the wider GB User. We don't believe this to be appropriate or reasonable and would potentially require additional funding mechanisms to ensure this is recovered. <p>Based on these concerns we do not propose implementation of this modification.</p>
3	Do you have any other comments?	See attached letter
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No
Modification Specific Workgroup Consultation questions		
5	Do you agree with the proposed solution that one offer with two options (contestable/non-contestable) would represent the best approach?	<p>We do not believe the proposed solution of having both options of all works/non contestable within the same offer would be efficient or cost effective for the applicants as a default position. The amount of requests for a contestable connection within our territory is minimal and by increasing the workload of the TO for each application, costs associated with the extra work would either be passed through directly to the User or potentially indirectly to wider Users under the fixed application fee, and ultimately picked up through GB consumer bills.</p> <p>We believe the best approach would be to allow the option for applicants to request both sets of works in their offer if they wish to do so and at their own cost.</p>
6	Should there be a process to allow subsequent applicants to take over the contestable build already negotiated with the TO? If so, should this process have a 'point of no return'?	<p>We believe that where multiple parties would be connecting to the same line, the TO should take over the build as this becomes a shared network and therefore not for the sole use customer. This is to ensure the second comer is not detrimentally impacted by any delays by the contestable developer. The intervention by the TO should be unrestricted by time frames in this instance. However, in order to facilitate this stepping in by</p>

<p>where this option is restricted?</p>	<p>the TO where the works become 'shared', a contract will be required enabling unilateral step in rights for TOs over the contestable works. This is also highly likely to increase costs as TOs manage both the developer contestable works element, to the extent it is unfinished, alongside any new connection works associated with the subsequent connection(s), and increasing delivery inefficiency – which the TO should not be penalised for.</p> <p>If an offer with contestability has been issued and accepted by a first comer and an adoption agreement entered into (with costs fixed), how could TO issue both full works and contestable offers to a second comer as the contestable offer would be purporting to give the second comer a contractual right to do contestable works that are already subject to binding legal agreement with first comer. This would suggest that the intervention needs to be made before offers can be issued to second comer but that would seem unfeasible. What if TO intervenes in order to take over the contestable works but second comer takes all works offer instead?</p> <p>It seems that, in the case of contestable works that become shared use prior to adoption, there must always be a right of intervention for TO. For example, insolvency event befalling the first comer or its contractor, safety issues etc. However, it is appreciated that once the first comer has incurred costs, contracted for construction etc, intervention would be more significant and there is perhaps an argument for more intervention criteria applying at an early stage and less (but more critical) criteria applying after construction contract award/build commencement.</p> <p>Answer to this question is dependent on more detail around TOs liability for costs (and how this is dealt with in adoption agreements) incurred by first comer prior to intervention and new second comer costs. Second comer costs could initially look to be more efficient but when aggregated with abortive first comer costs, increase significantly. Need to understand – would TO, for example, become liable for first comers abortive</p>
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		<p>construction costs, compensation events relating to design change etc?</p> <p>Terms of adoption agreement will need to be considered re intervention events and termination of adoption agreement on these grounds and TOs liability in these circumstances.</p>
7	<p>Are the proposed intervention criteria sufficient? Are there any additional criteria that should be considered? Please provide your views.</p>	<p>No, the intervention criteria is not sufficient in detail to warrant approval of this modification. They are vague in their definition and application and it is therefore foreseeable this would likely lead to disputes without this necessary further detail.</p> <p>The TO has a licence obligation to be economic and efficient in its construction and without sufficient intervention ability, this could jeopardise the most economic and efficient solution resulting in additional unnecessary costs being borne by GB consumers.</p> <p>Please see my comments in 6 above re the point of no return and perhaps having different criteria applying before construction commences and a wider list pre construction. Disputes would appear most likely where a User has incurred costs that are not then reimbursed.</p> <p>The criteria do refer to protection of second comers/end users and other Users. Does there not need to be some reference to how these are balanced against the interests of the first comer. Could the intervention criteria not otherwise be discriminatory against the first comer if protections are aimed at all parties other than them?</p> <p>In the intervention criteria where it states that the User is not to be adversely affected by an intervention, is this intended to be the case even in circumstances where there is a blatant default by User or User's contractor eg failure to build to TO design, safety concerns, breach of adoption agreement, construction contract etc? If this principle is correct we could envisage circumstances where the TO becomes liable for</p>

		defective abortive works and costs of completing construction and rectification.
8	Do you agree that no additional safeguards are required for the delivery of non-shared Infrastructure Assets via contestable works? If not, what protections would you wish to see?	<p>We do not believe the current safeguards are sufficiently robust enough to ensure an economic and efficient construction by the applicant. Nor are there enough safeguards or any mechanism proposed to legally permit the TO to step in when it considers that the applicant is not undertaking works that will ensure efficient and timely delivery, or any detrimental impact to other network Users or GB consumers.</p> <p>As stated previously, the applicants are under no obligation to procure in a transparent and efficient manner and without a reasonable oversight of their processes and procurement strategy, which there is currently no right proposed for the TO to do so , there would be no safeguard against any potential commercial interest by the applicant. There was a point made of fixing of the costs by the applicant to try to ensure some clarity of total costs however this is ill-defined as to timing and robust process or reporting requirements.</p> <p>TOs recover the cost of sole use assets mainly through the Volume Driver mechanism, which is ultimately socialised across other Users. Without significant regulatory mitigation to protect the integrity of the system, other Users and the GB consumer, we do not believe this modification should be approved.</p> <p>Where we have intervened in a construction due to substandard build, the TO should have the right, after intervening, to be covered by the contestable party for making right the defect caused. However, with no mechanism to enforce this set out, this is an obligation upon the developer with no teeth. Contractual or regulatory mechanisms as part of the generation licence would be required.</p> <p>Default of developer under adoption agreement eg post adoption liability that developer refuses to meet or becomes insolvent.- Under construction arrangements the TO would have undertaken financial due diligence on contractors and obtained appropriate security such as parent</p>

		<p>company guarantee, bonds etc. The TO, in most instances will have established relationships with contractors and in the majority of instances any issues will be resolved as a consequence of the ongoing contractual relationships/reputational damage that would ensue. The TO therefore has greater financial exposure than under a direct construction contract.</p> <p>In the event of a defect in contestable construction works, TO will have no direct contractual relationship with the contractor in order to require remedy of the defect. TO will be reliant on the developer enforcing its contract terms with contractor. There may be circumstances in which contractor can't/won't eg insolvency of developer, developer has sold/ceased to have an interest in the connection site, developer doesn't have adequate contractual protections (what is the incentive on developer to have robust defect provisions if TO adopts and becomes liable at completion?)</p> <p>There may be a requirement for collateral warranty from the construction contractor under the adoption agreement so that we have direct recourse against the contractor</p> <p>The question posed assumes that the assets will be "non-shared" but there is inherently the potential for the assets to become shared at any point after the offer is made to first comer by the TO and therefore should all questions and drafting be framed on the assumption that adequate safeguards are required to address the possibility that assets become shared? This seems a risky strategy to build safeguards around a sole use assumption?</p>
9	Do you agree with the principles of what needs to be included in the Adoption agreement as set out in Annex 4.	<p>The form of the adoption agreement should be clear and balance the wants of the applicant, with the realities of the wider implications for the network and the obligations upon the TO to other network Users and the GB consumer. We do not believe the principles set out are sufficiently justified nor developed in order to facilitate this. Adoption agreements should be, where possible, consistent amongst Network Owners, however,</p>

		<p>we believe there could be alternative approaches to achieving this which would satisfy the requirements of the proposer, one of which being applying key aspects of the adoption agreement into the STC which the TOs are bound to comply with.</p> <p>These aspects, however, should not limit the TO in ensuring the commercial aspects, that could be negotiated with the applicant, are legally competent and negotiable.</p> <p>There would also have to be sufficient protection measures drafted into the adoption agreement requiring for example (but without limitation) compliance with standards and specifications, as set out by the TO, adherence with any policy requirements the TO may have committed to under its business plan i.e there should be no dilution of environmental, sustainability or other requirements (depletion of wider societal value) and mechanisms to ensure there is sufficient guarantees//financial instruments to protect other Users and the GB consumer from unforeseen costs or failure of the developer, and step in rights.</p> <p>Please also see comments above which are relevant to adoption agreement content.</p>
10	A potential alternative solution is that the contestability could be limited to just 132kV in Scotland, which in the Proposer's view is in line with treatment of 132kV in England and Wales. Do you think this is appropriate? Please provide justification for your views.	We believe that contestability should be limited to 132kV due to the availability of 3 rd party verification of approved contractors that could construct on the Transmission network. Currently, only the Lloyds register provides any verification of contractors but is limited to 132kV. Without any similar contractor approving system above these levels, we don't believe there is a sufficient way of ensuring our system would not be detrimentally impacted.
11	Are there any issues for stakeholders to extend contestability to building assets above 132kV.	See above response to question 10
12	Will the CMP330/374 Original	We would be impacted by the additional workload required to ensure we can provide offers with

	<p>Proposal / possible alternatives impact your business. If so, how?</p>	<p>both contestable and non-contestable works if this is the default position, as well as for drafting the additional agreements and managing and authorising additional parties to work on our equipment and additional project oversight per contestable works project – this is currently not provided for in our organisation headcount or current business plan and would therefore would cause delays and any additional cost would have to be picked up as an additional one-off cost to that customer. As explained earlier, this will include additional costs for direct/indirect customers and potentially not provide and real benefit where it is not required or requested. There is also the risk of delivering infrastructure in a timely manner where commercial issues with the applicant cause delays where there is no real obligation on them to deliver with an efficient time frame. This could have knock on impacts on other Users trying to connect.</p> <p>Finally, costs incurred by the applicant and passed through to the TO could have an impact on the economic recovery mechanisms and increase in wider GB Users funding. Where the TO is recovering allowances set on our tendered/estimated costs, it would be difficult to justify costs where a 3rd party has control over them with no transparency on how they have been incurred.</p> <p>This proposal increases the regulatory risk of our RIIO T-2 settlement that has been agreed to already. This proposal does not align or interact with the regulatory price control set in 2021. If a change is to be introduced, it should be done at the same time as the price control review for T3.</p> <p>Where the spend risk is now not in the power of the TO's and has been passed through from the Contestable developer any unregulated expenditure could have a detrimental impact on the GB consumer where effectively the GB consumer is potentially de-risking commercial projects. This would not be in their interest.</p> <p>In Distribution, the contestable costs are completely at the risk of the developer, with no interaction with the DNO's allowance/revenue.</p>
13	<p>Do you think this change will benefit your</p>	<p>We think this change would have a negative impact on end consumers caused by potential</p>

	organisation, other organisations, or end consumers? Please provide evidence and/or examples to support this.	cost concerns and integrity of the network as highlighted above. The intervention criteria is not sufficient to ensure the risk to the end consumer would be mitigated and no regulation on the developer delivering the contestable works to ensure effective cost management.
14	Do you believe this proposal brings forward any additional risks of the Onshore TO's, other than those already identified? Do you think a license change is required to mitigate the risks fully?	<p>The risks we believe this proposal could create are:</p> <ul style="list-style-type: none">• Cost inefficiency ultimately paid for by the wider GB Users.• System integrity issues for additional Users to the network as a result of procurement strategies by the developer completing the contestable works.• Timely submission of the Connection Offers caused by additional works associated with providing 2 sets of offers for non contestable and all works.• Delays to second comers who are required to wait on the completion of the works by the contestable developer who is not obligated to connect in an efficient time frame.