

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:	Dave Elvin
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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 type="checkbox"/>D</p> <p>The principle of managing the 'queue' is sound and would therefore facilitate the objectives. Whilst the Exec Summary says the queue (rightly) needs to be able to be managed, simply removing people from the process and keeping securities is not effectively managing. It is too crude and removal rather the repositioning in the queue seems unjustified.</p> <p>Overall the proposal is close to be very useful, but falls short. It seems at face value to be able to easily rectify this without any detrimental effects.</p>
2	Do you support the proposed implementation approach?	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>It would be supported if an applicant was placed further down the queue instead of removed. The net of removal and telling applicants to reapply is NG keeping in some cases large sums of money, and indeed more work for NG.</p>
3	Do you have any other comments?	<p>Interesting to note that some senior management within NG ET and ESO have said they thought a repositioning the queue rather than removal was the likely solution.</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>This has been raised at the working group but not accepted...</p>

Specific Workgroup Consultation questions		
1	Do you agree with the Milestone durations proposed? Please provide the rationale for your response.	<p>Yes the milestones seem reasonable and appropriate</p>
2	Do you agree that the time period for the milestone durations should be from the contracted Completion	<p>The date should be from acceptance. Offers frequently need amending due to errors from NG, further clarification and/or indeed more recently further consultation (which is the responsibility of NG to instigate) with OFTO's before a User is able to make an</p>

	<p>Date back to the date the Offer is sent to the User; or from the Contracted Completion Date back to the date the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.</p>	<p>informed decision on acceptance. Increasingly the offer dates are further from the dates the User applies for so this reasonably may require further review of the business case etc by the User within the acceptance period. Those involved in the application process from both sides should recognise these points and surely that is part of the reason there is an acceptance period in the first place; its just the reality of the situation rather than a complaint. Hence the acceptance date is the most justified position in our view.</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>	<p>Milestone date differences make sense and are justified with reasoning.</p> <p>The difference where there is a lack of the concept of tolerances and cumulative delay does not appear to have any reason and justification. DNOs talk to their customers and can then makes decisions if needed and they don't have such large sums of money at stake. Why does NG want to impose less flexibility and ability to review real situations, especially when much larger sums of money are involved? If Users are genuinely progressing and they can evidence it and why they are delayed (which would most likely due to a third party issue), then the NG approach seems unnecessarily harsh and inflexible compared to DNOs.</p> <p>Same point applies to 'will terminate' vs 'has the right to terminate'. A right to terminate does not diminish the ability to terminate, whereas 'will terminate' removes any discretion regardless of the justification.</p>
4	<p>Do you agree with the evidence requirements proposed? Please provide the rationale for your response.</p>	<p>Generally ok, with the exception of land rights. Compulsory powers may be required to secure land rights for land other than cable routes. These powers are granted as part of the planning consent process for NSIPs/DCOs and hence can in some case only come later. It would be reasonable for the User to confirm this to NG at acceptance or thereafter.</p>
5	<p>Do you agree that works specifically for a User, whose Construction Agreement has been terminated under</p>	<p>Hard to be definitive as its likely to need some case by case assessment, depending on what works have or have not been committed. There seems some logic in requiring the User to commit any necessary funds to continue the work whilst the dispute is ongoing. As that should have happened already then the reverse is an</p>

	CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.	interesting question – i.e. the User is paying securities on the basis works are being undertaken to a timeframe and if their appeal is upheld why should they be subject to further delay and possible costs as they will presumably have done nothing wrong in this scenario?
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.	An appeal needs independence. Ofgem would be an obvious choice. There is a wider question though. If the issue leading to termination is in relation to a planning or land matter and therefore a missed milestone, are any of the proposed options suitably qualified to assist in the resolution? Possibly in that case the only proposed option would be the court of arbitration.
7	Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response.	If the milestones remain (in our view unjustifiably) rigid, then there is insufficient flexibility in planning. Planning Authorities and statutory consultees are increasingly slow at processing applications and consultation responses. For example we can evidence many cases where a 13 or 16 week statutory planning determination period has been extended up to a year through no fault of the User.
8	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.	No we do not agree with a default termination conclusion. As per many of the above responses, there should be a greater degree of understanding and potential flexibility (where justified), and there doesn't appear to be good reasoning to either reposition the User later in the queue or failing that, to return at least a proportion of the securities. Noted a deterrent should be in place, but the timeline is usually sufficient and DNOs do not take User's funds in this way.
9	Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.	Not allowing dates to be changed by Mod Apps for applications made after CMP376 comes into force is justified. IT does however seem to be a retrospective move to say the Mod App process cannot be used for older applications – indeed there should be a process for getting older applications updated into this new rationale without penalty, i.e. if a User wants to let NG know they have new dates based on CMP376 they should be able to do so without unnecessary cost (Mod App fees are excessive for a date change), and indeed its in the interests of NG and CMP376 to get Users to go through

		this process so more Users are subject to the updated contractual position
10	Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?	<p>Provided there is</p> <ul style="list-style-type: none">a) an opportunity to sensibly update dates on older/existing applications at a reasonable costb) a change to CMP376 that means either a more flexible approach is taken such as moving further down the queue, or securities are largely refunded, <p>then our business does not any material impacts and this is a reasonably similar position to the DNO process. Otherwise, NG is imposing a potentially significant cost onto the User and therefore in turn end consumers. Where users are generators, the costs for any failed projects will ultimately be borne by other projects thereby increasing generation costs.</p> <p>There's no question on the subject of what NG will do with potentially millions, tens of millions or indeed even greater sums if Users are terminated. As a single example, we received an offer with £160+ million of securities recently. If no costs are incurred, how is this justified and is NG not abusing its position?</p>