

Modification proposal:	Connection and Use of System Code (CUSC) CMP376: Inclusion of Queue Management process within the CUSC (CMP376)		
Decision:	The Authority ¹ directs that WACM7 of this modification be made ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	13 November 2023	Implementation Date:	27 November 2023

Summary of our decision

CMP376 is a code modification which aims to tackle problems in the process related to connection to the transmission system. We have approved WACM7, which will introduce a Queue Management process into the CUSC. As a result, Milestones – essentially indicators of project progression – will be introduced into customers’ connection contracts, requiring to be complied with to demonstrate progression towards completion. Failure to meet these prescribed Milestones on time will grant NGESO contract termination rights.

As a result of WACM7, Queue Management will be introduced to:

- new connectees entering into agreements from the Implementation Date of CMP376;
- those with an existing connection contract or an offer to connect where the Completion Date is two years or more from the Implementation Date of CMP376; and

¹ References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

- those with a connection contract where the Completion Date is on or before the date two years from the CMP376 Implementation Date where NGESO has reason to believe that the User's project is not progressing in accordance with nor is reasonably aligned to the Construction Programme in the agreement, and the User is unable to demonstrate such progression to the reasonable satisfaction of NGESO.

1. Background

1.1. National Grid Electricity System Operator (NGESO) operates the electricity transmission system in Great Britain. When a party (eg a generation or demand customer, known as a 'User') wishes to connect to the transmission system, it makes an application to NGESO, which in turn issues an offer detailing the terms of connection. The resulting 'connection contract' includes details of the works required to be completed by both parties to facilitate the connection and a date by which those works should be completed (the 'Completion Date') within an agreement known as a Construction Agreement.

1.2. Users entering a connection contract are placed in a queue based on their date of acceptance of their connection offer. This is not a singular queue for all grid connections, but rather a queue of projects behind each reinforcement required to enable the network to accept the additional capacity ("required reinforcement"). In practice, this means that in each location where reinforcement is required, Users that contract earliest will be prioritised for the use of the available capacity over Users that contract later. It follows that, Users that contract later will be more likely to be reliant on reinforcement (or further reinforcement) works being carried out to facilitate their connection. Factors such as an individual project's status (ie readiness to connect) or viability are not typically considered when allocating capacity to those in the queue.³ In circumstances where a preceding User's project is not viable, delayed or stalled, this approach does not typically provide for those Users that are further down the queue to be prioritised to make use of the capacity – even if they are ready to progress.⁴

1.3. Over recent years, an increasing number of connection applications has resulted in a tenfold increase in connection offers made by NGESO per year with an increase of

³ 'Status' refers to how far along in its development the project is. 'Viability' refers to how likely a project is to connect.

⁴ It is worth noting that this described process is the one currently utilised by NGESO, in line with their licence conditions to facilitate connections and avoid undue discrimination. Such a process is not prescribed in licence by Ofgem and there are ongoing discussions regarding the possibility of changing this.

80% in the year to May 2023 alone.⁵ This is being driven in part by increased renewable generation and flexible technologies, aimed at preparing for what will likely be a renewables-heavy system in future alongside increasing electrification of demand.⁶

- 1.4. Under the current system, there is a low threshold (ie as regards proof of the User's ability to deliver the capacity contracted) to obtain connection contracts, which allows projects to enter the queue with ease. Further, the form of existing connection contracts places limited obligations on Users to progress on time in line with their programme, whilst also only granting NGENSO limited contractual rights to terminate contracts where projects are not progressing (which would facilitate better utilisation of available network capacity).⁷ In addition, Users can delay termination provisions from coming into effect by delaying their Completion Date, through submitting a Modification Application (the process by which a User applies to vary their contract) to NGENSO. It is understood that such applications, and their agreement by NGENSO, have become common, with Users often repeatedly varying their contract to delay their Completion Date: from 2018 to 2022, 57% of Users submitted a Modification Application.⁸
- 1.5. These factors, along with the prioritisation of connection dates by reference to when contracts are made, incentivise Users to submit connection applications early to secure a queue position ahead of others with the aim of retaining that position, even if the project itself is still speculative or even non-viable.

Impacts

- 1.6. The current arrangements have contributed to the size of the overall queue of projects waiting to connect to the transmission system, growing to almost 400GW.⁹ This is increasing daily and we consider that it is likely to continue to grow, as a factor in its rapid growth is likely to be Users seeking to "secure their place" ahead of others. Indeed, Users' desire to join the queue in light of its overall size is likely contributing to an increase in the number of less certain applications being lodged.

⁵ ESO Connections data, as at May 2023.

⁶ In line with some of ESO's 2023 Future Energy Scenarios, pages 14-18. [Future Energy Scenarios | ESO \(nationalgrideso.com\)](#).

⁷ A User's failure to complete User's Works by the Completion Date is not an Event of Default under clause 10 of the Construction Agreement entitling termination under clause 11. Clause 4.8 of the Construction Agreement enables termination where a User fails to complete User's Works by the later Commissioning Programme Commencement Date. However, this date is typically agreed to be 2 years after the Completion Date because it marks the point in time at which the operation and tests necessary to connect the User's Works (to be completed by the Completion Date) are to commence. This means that a User's project can fail to progress over an extended period of time without the Construction Agreement being terminated.

⁸ ESO [GB Connections Reform](#), December 2022, at page 13.

⁹ TEC Register data, September 2023

- 1.7. It is understood that many projects in the queue are not making progress against their current Completion Date. This could be as a result of the project becoming stalled (ie as it is not required under current arrangements to progress on time in line with its programme), progressing slower than expected, or because the User has applied to enter the queue on a speculative basis – meaning that it could even be non-viable.
- 1.8. The presence of stalled, slow to progress and non-viable projects in the connection queues is demonstrated by the high rate of Users utilising the Modification Application procedure (noted above) and NGESO’s reported high attrition rate of 60-70% (ie a significant proportion will ultimately fail to materialise or connect).¹⁰
- 1.9. The make-up of the current queues mean that they are not a realistic representation of Users waiting to connect. This distortion impacts the ability of NGESO and Transmission Owners (TOs) to effectively allocate scarce capacity and make accurate decisions as to the network build required to accommodate new connections.
- 1.10. This is particularly the case in the context of the forward-planning required to facilitate achievement of Net Zero targets. As it stands, if all connections in the current queue were to take place, this would enable more generation capacity than is anticipated to be needed to achieve a Net Zero power system by 2035, even under the ESO’s most demanding *Future Energy Scenarios* (FES) modelling scenario.¹¹ Given that not all of these projects are expected to materialise, decision-making by NGESO and the TOs as to what is required to facilitate Net Zero is more difficult to do accurately and in a timely way.
- 1.11. In addition, the building of network and the allocation of capacity for stalled, slow to progress or unviable projects can drive up costs, requiring network companies to incur time and resources in generating offers and associated plans for works which ultimately are not needed. As consumers bear some of these costs, either in the operational costs of the network companies or the costs of the network build itself, this may also have an impact upon bills.
- 1.12. The overall size of the queue of Users waiting to connect, the presence of stalled, slow to progress and non-viable projects, and the resulting complications in decision-making as regards capacity allocation and network build have resulted in new connectees receiving very distant Completion Dates, which are now present in a large proportion of contracts. The average gap between requested and offered dates

¹⁰ ESO [Connections Reform Consultation](#), June 2023, at page 9.

¹¹ [ESO Future Energy Scenarios](#), July 2023, p.129 – Figure ES.10

has widened from around 18 months (2019-20) to 5 years (2023) and (as of May 2023) over 40% of the almost 400GW of new generation capacity hold transmission connection contracts that have connection dates of 2030 or beyond – with some as late as 2037.¹²

1.13. This means that viable projects face inefficient delays and are being hindered from progressing in a timely way, particularly in the case of those that are behind stalled, slow to progress or non-viable projects in their queue. There are concerns that delays to renewable projects could hinder Net Zero targets, particularly given that more than 90% of the MW share of queued projects with connection dates of 2030 and beyond are either renewable energy or storage projects.¹³

1.14. The size of the queue of those waiting to connect to the transmission system could also undermine investor confidence for prospective transmission connection customers and those at distribution level that have an impact on the transmission network. It is foreseeable that this may hinder necessary investment for the transition to Net Zero, if projects which would enable decarbonisation are disincentivised from connecting by the size of the queue and the potential time it will take for them to connect.

1.15. These impacts all potentially inhibit ambition to realise Net Zero in a timely, cost-efficient way, maximising benefit for consumers. As stated above, we consider that there is a real risk that viable (and often low carbon) projects are currently being delayed behind stalled, slow to progress or non-viable ones. This simultaneously hinders efficient and intelligent build of the network, capacity allocation, and investor confidence in the GB market.

2. The modification proposal

Context

2.1. NGENSO is required under its licence to maintain and operate the Connection and Use of System Code (the 'CUSC').¹⁴ The CUSC constitutes the contractual framework for connection to, and use of, the electricity transmission network in GB.

2.2. In accordance with the transmission licence, Section 8 of the CUSC provides a mechanism for parties to propose changes to better facilitate the achievement of the

¹² [Open letter on future reform to the electricity connections process | Ofgem](#); ESO data.

¹³ TEC Register data, September 2023. Renewable projects include solar, offshore wind, onshore wind, and other renewables.

¹⁴ SLC C10 paragraph 2.

'Applicable CUSC Objectives' (the 'ACOs').¹⁵ The proposals and any alternatives (known as Workgroup Alternative Code Modifications or 'WACMs') are reviewed by industry participants through a consultation process, including workgroups, and the process is overseen by the CUSC Modification Panel (the 'Panel'). All CUSC modification proposals, other than modifications following the self-governance or fast track processes, can only be implemented upon approval by the Authority.

2.3. In deciding whether to approve or reject a proposal or any WACM, the Authority must consider whether the proposed modification would, as compared with the then existing provisions of the CUSC and any WACMs set out in the Final Modification Report (the 'FMR'), better facilitate the achievement of the relevant ACOs (which are set out below), as appropriate. In making its decision, the Authority must also act in accordance with its principal objective to protect the interests of existing and future consumers, and its statutory duties.¹⁶

The ACOs

2.4. The ACOs against which the options under CMP376 are to be assessed are set out in paragraph 1 of Standard Licence Condition ('SLC') C10 of the transmission licence:

(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence;

(b) 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;

(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and

(d) promoting efficiency in the implementation and administration of the CUSC arrangements.

CMP376

2.5. CMP376 'Inclusion of Queue Management process within the CUSC' was raised by NGESO (the Proposer) on 22 July 2021.

¹⁵ Applicable CUSC Objectives are defined in paragraph 1 of SLC C10 of NGESO's Transmission Licence. There are also Applicable CUSC Charging Objectives, defined in paragraph 5 of SLC C5 of NGESO's Transmission Licence, which are not relevant to this decision.

¹⁶ The Authority's statutory duties are detailed mainly in the Electricity Act 1989 (in particular, but not limited to section 3A) as amended.

2.6. CMP376 proposes to implement a new 'Queue Management Process' into the CUSC, which would apply to customers with a CUSC Construction Agreement.¹⁷ In summary, this would introduce 'User Progression Milestones' ('Milestones') into connection contracts (specifically the Construction Agreements). Milestones will represent key stages of progress in a project towards completion, which must be met by Users by prescribed dates. Contractual termination rights are provided for NGESO where dates are not met by Users.

2.7. CMP376 presents an Original Proposal and 11 WACMs. The Implementation Date for CMP376 is 10 Working Days following the Authority's decision – with the exception of WACMs 8, 9 and 11, which propose implementation 6 months after decision.¹⁸

2.8. As explained in more detail below, all options would:

- Insert into the CUSC a new Section 16, entitled 'Queue Management Process'. Section 16 details the specifics of the new process including the various Milestones, the evidence required to show satisfactory progression and the time period for completion (in uniform terms, eg 18 months working backwards from the Completion Date).
- Make changes to the pro forma Construction Agreements annexed to the CUSC as Schedule 2, Exhibits 3 and 3A to introduce a new Appendix Q, allowing for User-specific dates (calculated in accordance with Section 16 of the CUSC) to be set against each of the Milestones and incorporating the Queue Management Process into the contract, including termination rights for NGESO where Milestones are not met;
- Make consequential changes to other parts of the CUSC, eg the addition of new defined terms within Section 11.

2.9. The proposals are based on some of the core concepts established by the Energy Network Association's ('ENA') Open Networks initiative.¹⁹ The output of this work, following industry consultation, was the publication of the ENA's Queue Management guidance in July 2021.²⁰ The CMP376 proposals are intended to encourage robust project planning and align more closely with project requirements at the distribution level, where Milestones already exist.

2.10. CMP376 will also be accompanied by published NGESO guidance (*Guidance for the new Queue Management policy for Transmission Customers*). This will be published

¹⁷ See 16.2 of the legal text.

¹⁸ [CMP376 FMR](#), at page 4.

¹⁹ [ENA's Open Networks](#).

²⁰ [ENA Queue Management guide, 30 July 2021](#).

by NGESO on the CMP376 Implementation Date and is intended to enable CUSC parties to understand in practical terms how the Queue Management policy will work operationally. For example, the process which will be followed where Users fail to meet Milestones, as well as the manner in which NGESO will exercise discretion. Having discussed with NGESO, we are aware of the approaches which it intends to take in relation to key aspects of the CMP376 implementation, which will be reflected in this guidance. As such, we make reference to these positions and how they will be reflected in the published guidance in our decision below.

The Original Proposal

2.11. Under the Original Proposal, the Milestones shown in Table 1 would be introduced into the CUSC by a new Section 16. Section 16 would also prescribe the evidence required to demonstrate progression against a Milestone and uniform timelines for Users to reach each Milestone, calculated working backwards from a User’s Completion Date.²¹

Table 1: Queue management milestones proposed to be introduced by CMP376 Original Proposal

Milestone	Detail
<i>Conditional Progression Milestones</i>	
M1	Initiated Statutory Consents and Planning Permission
M2	Secured Statutory Consents and Planning Permission
M3	Secure Land Rights
M4	N/A for Transmission ²²
<i>Construction Progression Milestones</i>	
M5	Contestable Design Works Submission
M6	Agree ²³ Construction Plan
M7	Project Commitment
M8	Project Construction

2.12. Milestones are categorised as either Conditional Progression Milestones (M1 – M3) or Construction Progression Milestones (M5 – M8). Once achieved, a Conditional Progression Milestone must continue to be met on an ongoing basis.

²¹ The Milestones under the Original Proposal, with associated timeframes, are presented on p 11-12 of the [FMR](#).

²² The Milestones mirror those at Distribution level; however Milestone 4 is not relevant to transmission connected projects and is not included.

²³ WACM1 replaces the word “agree” with “submit” in Milestone 6.

- 2.13. Under the Original Proposal, Milestones would be reflected in Construction Agreements (by the introduction of a User-specific Appendix Q) for: (a) new Users entering into agreements; and (b) existing Users when an offer to vary their existing contract is made by NGENSO (a 'Modification Offer') – in both cases, where these events occur after the CMP376 Implementation Date.
- 2.14. Our understanding is that a Modification Offer will ordinarily be instigated by a User applying for a contract variation. Under the Original Proposal, where Modification Offers are made after the Implementation Date of CMP376, NGENSO will include revised terms to introduce Queue Management provisions, as well as any other changes proposed to be agreed by the User or NGENSO.
- 2.15. This means that existing Users (looking to vary their contracts) would have the option as to whether to accept the introduction of Queue Management provisions. In circumstances where the Modification Offer was not accepted, the User would remain bound by the existing terms of their contract.
- 2.16. Over time, as existing Users request and then accept Modification Offers, the Queue Management Process would be introduced into existing contracts, bringing existing contracts in line with those entered into after the Implementation Date of CMP376. Introducing the Queue Management process via the contract variation process would allow NGENSO and the User to consider revisions to wider contract terms at the point of Queue Management being introduced. This could include a change to the Completion Date, eg to take account of delays to the progression of the project. Given that Milestone Dates are calculated working backward from the Completion Date, this would mean that Milestones would be calculated by reference to the new Completion Date rather than the existing date. This would enable Users to seek to ensure that Milestones are reasonably achievable from the point of Queue Management provision being inserted into their contract.
- 2.17. Once Milestones are introduced into a User's contract, the User will have obligations to submit satisfactory evidence to NGENSO to demonstrate compliance ahead of the specified Milestone Dates.

Termination process and exceptions

- 2.18. Save for exceptional circumstances (explained below), if insufficient evidence is provided to demonstrate that a Milestone has been met in the requisite timeframe, a User's project will be categorised as "Termination". NGENSO will notify the User of this, and that the Project Milestone Remedy Period has started, this being a period of 60 days within which Users are given an opportunity to provide satisfactory evidence

that the Milestone has been met. If such evidence is provided by the User during this period, the project will be re-categorised by NGESO as being 'On track'. If at the end of the Project Milestone Remedy Period, the User has not provided satisfactory evidence the status, it will remain as 'Termination' and the following will apply:

- In the case of 'Conditional Progression Milestones' (M1-M3), NGESO will terminate the connection contract.
- In the case of 'Construction Progression Milestones' (M5-M8), NGESO may terminate the connection contract – it being a matter for NGESO's discretion. Such discretion is to be exercised in line with its published guidance.

2.19. NGESO has confirmed that the guidance will provide that when it is considering whether to exercise the 'right to' terminate in relation to Milestones 5 – 8, NGESO will engage with the User, the relevant TO and (where necessary) Ofgem and DESNZ to establish the likelihood that the project is in a position to progress to the Completion Date. Before taking any decision, NGESO will also escalate this internally. We expect NGESO to take account of all relevant factors and act consistently and reasonably in the interests of all parties when determining whether to exercise its right of termination. This applies to the Original Proposal and WACMs 1 to 7. A different approach for WACMs 8 to 11 is set out below.

2.20. To account for situations outside of the User's control, CMP376 allows for exceptions from termination (under CUSC 16.5) in the case of particular failures to reach Milestones. The following Exceptions apply to both Conditional Progression Milestones and Construction Progression Milestones:

- a) Where the User is prevented from completing works as a result of Force Majeure²⁴ and is entitled to fix a later date or dates under Clause 3.2 of the Construction Agreement;
- b) Where the User is not able to meet a User Progression Milestone due to an event of Force Majeure;
- c) Where delays caused by a party (other than the User, NGESO or a relevant TO) can be demonstrated to have an impact upon the User meeting a Milestone and the User could not have avoided these delays or their impact by the exercise of Good Industry Practice²⁵;
- d) Where a User is not able to meet a User Progression Milestone due to Planning appeals and third-party challenges in relation to the User's Consents;

²⁴ As defined in CUSC Section 6.19.

²⁵ As defined in CUSC Section 11.

e) Any delay in the achievement of a User Progression Milestone by the User which is caused by a relevant TO or NGESO.

2.21. In such circumstances, the User shall provide written evidence to NGESO which will be supported by confirmation from the User’s board of directors or equivalent. Provided NGESO is satisfied the exception is met, the delay will not result in the User’s project being categorised as “Termination” and NGESO will issue a new Milestone Date for the missed Milestone.

2.22. Following the introduction of Milestone Dates into Construction Agreements (via Appendix Q), specific Milestone Dates will be fixed in respect of each connection and NGESO does not intend to agree contract variations to change those dates (even where a variation to the Completion Date is agreed), save where the Exceptions process or ESO discretion in relation to termination of Milestones M5-M8 is engaged. This position is reflected in NGESO guidance. This applies to the Original Proposal and WACMs 1 to 7; a different approach for WACMs 8 to 11 is set out below.

2.23. The Proposer’s view is that the Original Proposal will have a positive impact on ACOs (a), (b), and (d), with a neutral impact on (c). Their reasoning is that this modification will (a) provide clarity to all parties on the correct process to efficiently manage stalled projects; (b) better support effective competition by making it potentially easier for parties to connect to the transmission system swiftly and economically where they are able to progress; and (d) clarify a consistent process for proactively managing connection offers, thereby reducing ambiguity and promoting efficiency in contract management.

Workgroup Alternative Code Modifications

2.24. As noted above, CMP376 has 11 WACMs in addition to the Original Proposal. The various WACMs operate in general terms in the same way as the Original Proposal (by introducing the Queue Management Process into the CUSC and Construction Agreements) but propose variations to the specific operation. The WACMs and the way in which these differ from the Original Proposal are shown in Table 2 below.

Table 2: Workgroup Alternative Code Modifications WACMs)

Other Solutions	How does it differ from Original
WACM1	Milestone M6 provides for Users to “Submit” a Construction Plan (rather than “Agree” one as in the Original Proposal)
WACM2	As WACM1, but applies to ‘wider’ category of Users per WACM7
WACM3	The timeline to demonstrate achievement of Milestone 3 (securing land rights) is calculated <i>forward</i> from the date of the connection contract rather than <i>backward</i> from Completion Date, as in the Original Proposal. The result of this is that Users are afforded between 3-6 months to meet this Milestone from date of acceptance

Other Solutions	How does it differ from Original
	of connection offer, regardless of how far in the future their Completion Date is ²⁶
WACM4	As WACM3, but applies to 'wider' category of Users per WACM7
WACM5	The timescales for demonstrating achievement of Milestones 7 (Project commitment) and 8 (Project construction) are to be bilaterally agreed between Users and NGENSO
WACM6	As WACM5, but applies to 'wider' category of Users per WACM7
WACM7	Operates as the Original Proposal but extends the scope to capture Users with existing agreements where (a) the contracted Completion Date is 2 years or more from the Implementation Date of CMP376; and (b) the contracted Completion Date is less than two years from the Implementation Date of CMP376 but the project is deemed by NGENSO to not be progressing satisfactorily. Options which apply as per WACM7 are referred to as 'wider' in scope.
WACM8	Dynamic queue management for the Construction Progression Milestones (M5-M8) – Prior to facing contract termination for missing a Milestone, Users are able to submit a Modification Application to change their Completion Date and corresponding Construction Progression Milestone Dates up to a maximum of three times, provided they have met and continue to meet all Conditional Progression Milestones. Upon agreement with NGENSO, it would reassign the User's queue position instead of terminating the contract. Implementation Date – 6 months after Authority Decision.
WACM9	As WACM8, but applies to 'wider' category of Users per WACM7
WACM10	Allows Users in their connection application to elect (subject to agreement with the ESO), which period of time (ie the column from the Milestone Duration table ²⁷) is most proportionate to their project, where the User considers that the scale and technology of their project requires a different Milestone duration to that which would normally apply to them. Users also choose the date by which they have to demonstrate compliance with Milestone 1 by. The time afforded to satisfy the other Milestones is calculated by working backwards from the contracted Completion Date to the date to satisfy Milestone 1
WACM11	Combines WACM1 and WACM8, and adds an Exception "Where a User is not able to meet Milestone 7 (Project Commitment) because it has not yet been awarded the governmental or regulatory subsidy which provides financial support or incentive to the User's project. A User cannot rely on this exceptional issue more than twice." Implementation Date – 6 months after Authority Decision

²⁶ See Progression Milestone Tables on Final Modification Report pages 11-12.

²⁷ See Progression Milestone Tables on Final Modification Report pages 11-12.

2.25. One of the key distinctions between the different proposals is the extent to which the Queue Management provisions will be applied to Users. There are two distinct groupings:

- WACMs 1, 3, 5, 8, 10 and 11 would operate in the same way as the Original Proposal by capturing: (a) new connectees entering into agreements; and (b) existing connectees that accept Modification Offers including Queue Management provisions, in each case after the CMP376 Implementation Date. We refer to these collectively as the '**narrower**' options.
- WACMs 2, 4, 6, 7 and 9 would extend the application of CMP376 to capture not only the Users captured by the 'narrower' options, but also the following existing connectees: (a) those with a connection contract or an offer to connect where the Completion Date is two years or more from the Implementation Date of CMP376; and (b) those with a connection contract where the Completion Date is on or before the date two years from the CMP376 Implementation Date where NGESO has reason to believe that the User's project is not progressing in accordance with nor is reasonably aligned to the Construction Programme in the agreement, and the User is unable to demonstrate such progression to the reasonable satisfaction of NGESO. We refer to these collectively as the '**wider**' options.

2.26. In respect of the 'wider' options, NGESO would notify existing Users that they are captured by the implementation of CMP376 and invite them to make a Modification Application within six months (or two months where the customer is due to connect within two years) to incorporate the Queue Management Process into their existing agreement.

2.27. When making this Modification Application, we understand from NGESO guidance that these existing Users will be given the opportunity to apply for a revision to their contractual terms, including a change to their Completion Date. Given that Milestone Dates are calculated working backward from the Completion Date, this would mean that Milestones would be calculated by reference to this new date rather than the existing contracted date, which would enable Users to ensure that Milestones are reasonably achievable from the point where Queue Management provisions are inserted into their contract. NGESO has confirmed that it will engage in discussions on contract variation on a reasonable and proportionate basis and that it is likely to agree any proposed Completion Date that is reasonable and requested in good faith by a User, although in some cases it may be required to offer a later date or other

revised terms in order to ensure compliance with its wider obligations (eg under Section 9 Electricity Act 1989).

2.28. Where a User does not make a Modification Application within the applicable time period or does not accept the Modification Offer made by NGESO in response, NGESO will issue a 'CMP376 Agreement to Vary' as soon as practicable thereafter. The legal text and FMR show that this will involve NGESO invoking clause 15.2 of the User's Construction Agreement to effect the insertion of Queue Management provisions as required by the amendments to the CUSC. In such cases, the Milestone Dates will be calculated by reference to the Completion Date in the existing contract.

Workgroup views

2.29. A majority of the Workgroup voted in favour of the Original Proposal and all WACMs, with the exception of WACM9, as better facilitating the ACOs than the existing arrangements (baseline).

CUSC Panel recommendation

2.30. At the CUSC Panel²⁸ meeting on 26 May 2023, the Panel unanimously agreed that the Original Proposal, WACM1, WACM5 and WACM10 better facilitated the ACOs than the baseline. They also agreed by majority that all other solutions better facilitated the ACOs than the baseline.

2.31. The Panel did not reach an overall majority consensus as to the 'best' overall option. The Panel generally considered that the options which they believed better facilitated the ACOs overall, better facilitated ACOs (a), (b), and (d), with (c) being viewed neutrally. We discuss our own assessment against the ACOs in Section 3 of this document, and present further detail of the Panel's assessment.

3. Our decision

3.1. We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 7 June 2023, taking into account the responses to the industry consultations on the modification proposal which are attached to the FMR.²⁹ We have also considered and taken into account the votes of the Workgroup and CUSC Panel on CMP376.

3.2. We have concluded that:

²⁸ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

²⁹ CUSC modification proposals, modification reports and representations can be viewed on NGESO's [website](#).

- All proposed solutions better facilitate ACOs (a) (b), and (d)³⁰ than the baseline, and all have a neutral impact on ACO (c). Overall, implementation of **WACM7** will best facilitate the relevant ACOs.
- Directing that **WACM7** be approved is consistent with our principal objective and statutory duties.³¹

We set out below our assessment against each of the relevant ACOs.

(a) The efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence³²

Workgroup and Panel view

3.3. Support for the Original Proposal and all WACMs in meeting ACO (a) was high, with between 21 and 25 “Yes” votes out of a possible 26 (number of Workgroup and Panel members) and with minimal “No” and “Neutral” votes (between 0 and 4).

3.4. The reasons given by Workgroup and Panel members in relation to the Original Proposal were that it would place obligations on parties seeking to connect to the transmission system to do so in a timely manner. It would also give these parties an informed view of capacity and timings to enable connection and would allow NGESO to manage stalled projects more effectively. This was seen as a means of maximising the utilisation of built capacity, which would provide better value for end customers via efficiently allocated network investment.

3.5. WACM1 and WACM2 (which require a construction plan in the context of Milestone 6 to be “submitted” rather than “agreed” and where WACM2 is ‘wider’ in scope) received strong support in relation to ACO (a),³³ although specific comments were not provided in respect of either of them. It is worth noting that as a general trend the ‘wider’ version of any WACM saw less support (fewer Yes’s and more No’s) than its ‘narrower’ equivalent. The reasons given for this were that ‘wider’ proposals could make otherwise feasible projects uneconomical and increase risk for developers after agreements have been made. We address these concerns at paragraph 3.24 below.

3.6. WACM3 and WACM4 (which require Milestone 3, relating to securing land rights, to be met within a specified period calculated forward from the conclusion of the

³⁰ As set out in Standard Condition C10(1) of the [Electricity Transmission Licence](#).

³¹ The Authority’s statutory duties are detailed mainly in the Electricity Act 1989 (in particular, but not limited to section 3A) as amended.

³² This refers to licensees’ obligations under the Electricity Act 1989 and otherwise in the transmission licence. The most relevant obligations are set out in s9 of the Electricity Act.

³³ WACM1 – 25 Yes; 0 No; 1 Neutral. WACM2 – 24 Yes; 1 No; 1 Neutral.

Construction Agreement rather than backward from the Completion Date and where WACM4 is 'wider' in scope) were supported by some³⁴ on the ground that these would (a) assist in preventing speculative projects from entering the queue and (b) send signals earlier as to a project's viability since more proactive project management is required. This in turn could cause TO investment to be more economic and efficient. However, there was criticism around the potential for discrimination against onshore wind and solar power projects. Such projects involve individual negotiations with landowners, which are not subject to statutory timelines. As such, these projects may not be able to obtain the requisite evidence within the shorter timescales required under WACM3 and WACM4. Overall, these options received the lowest support in relation to ACO (a) as compared to other options.

3.7. WACM5 and WACM6 (which require Milestones 7 and 8 to be bilaterally negotiated and where WACM6 is 'wider' in scope) were supported³⁵ on the basis that they reduce risk for Users, making it more likely that Milestones 7 and 8 will be met and in turn, less likely that terminations will arise. Further, it was commented that this would reduce investment risk for the TOs on the basis that more projects progressing to completion would provide greater confidence that investment being made for specific projects would be utilised over time. A concern around the potential for less efficient arrangements for TOs was raised but conversely another positive was identified in that TOs could operate more efficiently by agreeing timescales and resource commitment across multiple connections in a more coherent manner.

3.8. WACM7 (which is akin to the Original Proposal except it applies the queue management provisions to some existing Users in the queue from the Implementation Date of CMP376), received strong support for ACO (a).³⁶ The reasons given for this support were that it would remove stalled projects and deliver a consistent approach.

3.9. WACM8 and WACM9 (which remove the right to terminate for missing Milestones 5 to 8, instead moving a User's position in the queues up to 3 times and where WACM9 is 'wider' in scope) and WACM11 (which adds an exception for awaiting financial support/subsidy) received slightly lower support than some other proposals.³⁷ The concept of Dynamic Queue Management ('DQM') was seen as good in principle, allowing connection arrangements to be facilitated more efficiently and resulting in less lost time and expenditure by not immediately terminating slower projects.

³⁴ Both – 21 Yes; 4 No; 1 Neutral

³⁵ WACM5 – 23 Yes; 2 No; Neutral 1. WACM6 – 22 Yes; 3 No; 1 Neutral.

³⁶ 24 Yes; 1 No; 1 Neutral.

³⁷ WACM8 – 22 Yes; 2 No; 2 Neutral. WACM9 – 21 Yes; 3 No; 2 Neutral. WACM11 – 21 Yes; 2 No; 3 Neutral.

However, it was also stated that it could be very uncertain in practice which in turn would create uncertainty for investment and planning decisions by TOs. Another criticism was that DQM would allow projects to stay in the queue for an unknown period of time.

- 3.10. WACM10 (which gives more flexibility to project/technology type by allowing them to select dates by which Milestones must be met) also saw similar levels of support³⁸ for the same positive and negative reasons as WACM8, WACM9 and WACM11.

Our view

Overview

- 3.11. In assessing ACO (a) we have considered NGENSO's and the TOs' statutory obligations, in particular their duty to develop and maintain an efficient, co-ordinated and economical system of electricity transmission under s 9 of the Electricity Act 1989 (the 's 9 obligation'). We consider the efficient discharge of this obligation is better facilitated by the Original Proposal and WACMs presented. This is because the introduction of CMP376 is expected to enable contract termination for projects which are non-viable or are not progressing adequately; reduce speculative or uncertain applications; and improve the rate of progression for contracted projects.
- 3.12. Together, these changes will see the queues become a more realistic picture of those seeking and able to connect in a timely manner and will provide greater certainty. This in turn will enable NGENSO and TOs to make more efficient decisions regarding network build and capacity allocation – and where terminations occur, it will be possible in some cases for this capacity to be allocated to parties that are more ready to progress.
- 3.13. Of the solutions proposed, we consider those that are 'wider' in scope and apply to existing contracted parties from the outset best facilitate the achievement of ACO (a). This is because the benefits outlined above will be greater overall and achieved more quickly compared to those options which apply only to newly concluded agreements.
- 3.14. Of the 'wider' options, we consider WACM2, WACM6 and WACM7 to perform best against ACO (a). The other 'wider' options, WACM4 and WACM9, do not perform as well at meeting ACO (a) for the reasons given below.

³⁸ 21 Yes; 2 No; 3 Neutral.

Advantages of all proposals in facilitating efficient discharge of the s9 obligation

- 3.15. All proposals will provide NGENSO with new powers and/or duties to terminate projects which fail to meet Milestones. Provided that the timings of Milestones reflects what can realistically be expected from a viable project which is being adequately progressed (which we consider it does – see paragraph 3.25 below), this will result in projects to be removed from the queue that are not viable, are entirely stalled, or are not progressing adequately.
- 3.16. The introduction of new termination powers/duties is also likely to improve project progression to delivery in line with contracted plans, as there will be a significant incentive for Users to exercise their best endeavours to meet Milestones.
- 3.17. We consider that the introduction of new termination powers/duties is also likely to disincentivise, and therefore reduce the number of, speculative new applications. Future applicants will know that there is no benefit to submitting a connection application at an early point where there remains considerable project uncertainty simply to 'bank' a place in the queue – and indeed that this approach is liable to generate a real risk of termination and potential for associated adverse financial consequences. Instead, all the proposals are likely to have the effect of incentivising new applications that are based on robust development plans that are more likely to progress in a timely way.
- 3.18. For these reasons we further consider that all proposals will, as compared with the status quo:
- 3.18.1. Improve the certainty with which NGENSO and TOs can engage in network planning and development. With greater certainty about which Users will connect, and on what timescales, they will be better able to plan to deliver the network required to connect those projects which are expected to proceed. This is in contrast to the status quo where NGENSO and TOs are planning under a significant degree of uncertainty as to which projects will actually progress, and how quickly. This additional certainty is also likely to support more efficient investment decisions by NGENSO and the TOs, focusing resources on works which are more certain to be required.
- 3.18.2. Support improved efficiency in the utilisation of network capacity. The ability to terminate projects which are not progressing frees up the capacity that had been planned for them. This will give NGENSO and the TOs the firm ability to allocate that capacity to other Users that are progressing, potentially enabling their connection dates to be brought forward and / or

any required reinforcement works reduced. This should help make fuller use of available network capacity.

3.19. All these outcomes are conducive to the efficient discharge of the s 9 obligation.

Comparative advantages of 'narrower' vs 'wider' proposals

3.20. We consider that the options which apply CMP376 to existing as well as new agreements best facilitate the achievement of ACO(a), by a considerable margin.

3.21. This is because, as outlined under **Impacts** from paragraphs 1.6 – 1.15 above, CMP376 has been brought forward in light of problems associated not only with new applications but (critically) with the *existing* transmission queue. As a result, the efficacy of the proposal in contributing to the resolution of these problems depends to a significant extent on the extent of its impact on projects in the existing queue.

3.22. Under the 'narrower' proposals this impact would be slower to take effect, as Milestones and Queue Management would only be introduced into existing Construction Agreements in circumstances where existing Users agree a contract variation to introduce Queue Management.

3.23. By contrast, under the 'wider' proposals this impact will be significantly faster to take effect, as Milestones and Queue Management will be introduced into the majority of existing Construction Agreements shortly after implementation. As a result, these options will:

- Enable the rapid identification and termination of a higher proportion of existing projects which are not viable, are stalled, or are not progressing adequately.
- Apply the incentives provided by Milestones and Queue Management to a higher proportion of existing projects, thereby encouraging timely project progression to delivery.
- As a result, contribute more quickly to improving certainty in network planning and development – because the queue will more quickly and more closely represent future connections.
- Also as a result, free up more network capacity more quickly – enabling this to be more efficiently allocated to new projects in some cases.

3.24. This being said, stakeholders noted the 'wider' proposals could make otherwise feasible projects uneconomical and increase risk for developers after agreements have been made. On balance, we do not share these concerns, particularly as Users

are given the opportunity to agree a new Completion Date at the point of Milestones being introduced, meaning that they can seek to ensure that dates are reasonably achievable.

3.25. We are generally satisfied that the Milestones proposed across all options are reasonable (with the possible exception of M3 under WACM3 and WACM4 for some Users, as discussed further under *Milestone Suitability* below), particularly given they have been devised by a cross-group of industry participants with expertise in this area and received broad support in consultation. Under 'wider' options, projects due to connect within 2 years of implementation are able to bilaterally negotiate milestone dates. In addition, protections exist to ensure that Users with viable projects which are being diligently progressed are not unduly adversely affected by Queue Management, including the defined Exceptions process and through NGESO's commitment to exercise its discretion as to whether to terminate projects which miss Construction Progression Milestones. We encourage any Users with concerns around meeting Milestones to constructively engage with NGESO proactively if these concerns arise.

3.26. In summary, the benefits outlined in the subsection above will be greater overall under the 'wider' options, particularly as they are expected to be achieved more quickly. This is particularly relevant in view of the time criticality of addressing current issues to facilitate the efficient achievement of Net Zero targets.

3.27. We consider variants of these 'wider' options below.

Comparative advantages of different method of calculating Milestone 3 (securing land rights)

3.28. We recognise that, in order for CMP376 to have a positive impact on ACO (a), the Milestones it inserts need to be appropriate in the sense that they reflect realistic and achievable timelines for User projects. If this were not the case, viable projects which were being diligently progressed would be terminated; this could undermine project certainty and TOs' decisions on network build and capacity allocation; and there would be an undesirable disincentive to the making of new applications. As noted above, we are generally satisfied that the Milestones proposed across all options are appropriate. However, we consider that the alternative method of calculating Milestone 3 (securing land rights) contained in WACM4 (ie working forward from the contracted date, rather than backwards from the Completion Date) poses risks in this regard and therefore furthers ACO (a) less effectively than the other 'wider' options.

3.29. WACM4 – the ‘wider’ version of WACM3 – differs from the other ‘wider’ options in that it provides for Milestone 3 (concerning obtaining land rights) to be calculated by reference to a 3-6 month period *forward* from the date of conclusion of the agreement, rather than *backward* from the Completion Date. In general, the result would be that Milestone 3 would fall considerably sooner and particularly for large scale, complex projects.

3.30. We consider that, although this would generally enable the quicker termination of stalled projects, unviable projects or projects progressing inadequately, it could make Milestone 3 unachievable for some projects despite these projects being viable and diligently progressed. This is notably the case for projects with inherently longer lead times, such as offshore wind projects. Risking termination of such viable projects does not further the s 9 obligation or ACO (a), and may indeed – for the reasons identified above – undermine it. In addition, to the extent viable projects sought to rely upon the Exceptions process to avoid termination, this could create inefficiencies for NGESO and the TOs in planning in relation to capacity allocation and network build.

3.31. Finally, long lead time projects might try to respond to this by applying for connection contracts which require substantial network build at a late stage. To the extent projects sought to do this, this would undermine the efficient planning of the network under the s9 obligation, although they may not have confidence in their required completion date being met under such an approach.

Comparative advantages of proposals involving DQM as opposed to termination provisions

3.32. WACM9 – the ‘wider’ version of WACM8 – differs from other options in that it proposes queue reordering (Dynamic Queue Management or DQM) in place of termination rights in the event of failure to meet Construction Progression Milestones (M5-M8). Specifically, it would allow Users three opportunities to have their Completion Date and corresponding Construction Progression Milestone Dates revised, with NGESO in turn revising the User’s queue position, before a right of termination arose.³⁹ We consider that this would be less effective in furthering ACO (a) (having regard in particular to the s 9 obligation) than the alternatives.

3.33. Because the DQM arrangements dilute NGESO’s new rights of termination as compared with other proposals, they would likely provide less of a disincentive to the

³⁹ Provided they have met and continue to meet all Conditional Progression Milestones and provided they have not reached the expiry of a Project Milestone Remedy Period.

making of speculative new applications; and provide a less powerful incentive for Users to meet Milestones 5-8, and therefore progress these stages of the project in a timely way, in the first instance (as Users would be aware that they had three opportunities to miss these Milestones without a right of termination arising). While Users were able to avail themselves of these opportunities, projects which were stalled or not adequately progressing would remain in the queue. As a result, WACM9 would be less effective in improving certainty for network planning and development, and in improving efficiency in the allocation and utilisation of network capacity.

- 3.34. A key factor in any benefit is the extent to which it enables efficient network utilisation by releasing capacity from stalled or unviable projects. DQM measures could offer some benefits compared to the current approach, in that where Users sought to defer their Completion Date and associated Milestones, their queue position could be reallocated to other customers. However, we note that allowing up to three opportunities to change their Completion Date, could perpetuate the possibility that Users repeatedly apply to delay connection. In circumstances where delays were only for a short period, opportunities to make effective use of that capacity in the interim would be hindered.
- 3.35. This is compounded by the fact that implementing WACM9 (or any proposal involving DQM) would necessitate the development and adoption of detailed further guidance in relation to (in particular) the way in which a User's new queue position would be calculated following a changed Completion Date. At present, the necessary detail has not been developed and hence WACM9 envisages that implementation be delayed for six months from the date of a decision by the Authority. This would – compared with other proposals which could be implemented substantially more quickly – constitute a further comparative disadvantage in achieving the benefits of the proposal. Overall, therefore, we consider WACM2, WACM6 and WACM7 to perform best against ACO (a).

b) 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

Workgroup and Panel view

- 3.36. There were general positive comments towards all proposals to the effect that they would better facilitate effective competition than the status quo through enabling well managed, faster progressing projects to connect more quickly to transmission networks. One general criticism of all proposals was their potential to

adversely impact the attraction of GB for future investment, but the proposals were still overall thought to better facilitate this ACO than the status quo. Another concern was that offshore wind may be disadvantaged as this technology can have long lead times.

- 3.37. Out of WACM1 and WACM2 (which require a construction plan in the context of Milestone 6 to be “submitted” rather than “agreed” and where WACM2 is ‘wider’ in scope) the former saw strong support when compared to the latter.⁴⁰ Both were praised for ensuring a consistent approach between different types of User meeting Milestone 6.
- 3.38. WACM3 and WACM4 (which propose stricter timelines for demonstrating land rights have been obtained under Milestone 3 and where WACM4 is ‘wider’ in scope) were among the lowest scoring options, with a high proportion of “No” votes.⁴¹ They were criticised for potentially making the land rights requirements too onerous, creating difficulty for some projects to meet Milestones and their Completion Date, which could result in terminations and would therefore negatively impact on competition. This was considered to be the case especially in respect of onshore wind projects, projects that are many years away from connecting, and projects where land rights cannot (on occasion through no fault of the relevant Users) be secured quickly enough. That being said, a positive identified for these two proposals was that the timeframes to secure land rights being calculated forward 3-6 months from point of contract would help to reduce the prevalence (and negative outcomes) of distribution projects (which impact on the transmission system) experiencing delays to connection as a result of transmission projects without land rights. It was thought this could positively impact competition by seeing these projects connect earlier.
- 3.39. Out of WACM5 and WACM6 (which require Milestones 7 and 8 to be bilaterally negotiated and where WACM6 is ‘wider’ in scope), the former⁴² saw more support than the latter.⁴³ In general, members considered that the deviation from a standardised system of Milestones (a feature of both options) could create discrimination between technology types and different Users. Further, it could lead to increased complexity and uncertainty, thus harming competition. WACM6 scoring less than WACM5 can be understood as part of the trend to support ‘narrower’ proposals more strongly (see paragraph 3.5 above).

⁴⁰ WACM 1 – 25 Yes; 1 No; 0 Neutral. WACM 2 – 18 Yes; 7 No; 1 Neutral.

⁴¹ Both – 16 Yes; 9 No; 1 Neutral.

⁴² 22 Yes; 4 No; 0 Neutral.

⁴³ 15 Yes; 10 No; 1 Neutral.

3.40. WACM7 (which is akin to the Original Proposal except it applies the queue management provisions to some existing Users in the queue from the Implementation Date of CMP376) received mixed support similar to other 'wider' options in relation to ACO (b) although overall support clearly predominated.⁴⁴ It was criticised by some parties for making potentially otherwise feasible projects uneconomical and increasing risk for developers after agreements have been made. Offshore wind in particular was seen as being more adversely affected under the 'wider' options as this technology negotiates its supply chain as it is developing and agreeing the Construction Agreement. Therefore, it may have signed third party contracts with its supply chain that do not meet the requirements of the later Milestones thus impacting third party contracts financially. These points are addressed at paragraphs 3.24 – 3.25 above and 3.46 – 3.47 below.

3.41. Options involving Dynamic Queue Management (WACM8, WACM9, and WACM11), were quite highly supported with regard to facilitating effective competition (excluding WACM9, due to its 'wider' effect).⁴⁵

3.42. While some support was seen from members for WACM10 (which gives more flexibility to project/technology type by allowing them to select dates by which Milestones must be met) and its approach to allowing Users and NGESO to bilaterally agree timelines for meeting certain Milestones, many saw it as introducing inconsistency and complexity thus reducing standardisation.⁴⁶ This was considered to negatively impact upon competition, similar to WACM5 and WACM6.

Our view

Overview

3.43. We consider that the CMP376 proposals, with the exception of WACM3 and WACM4, better facilitate ACO (b) than the status quo.

3.44. Overall, we consider that introducing Milestones will enable well-managed projects to connect faster to the transmission system, which in turn will facilitate competition, particularly in the generation (including storage) of electricity. In particular, Queue Management will better enable the termination of non-progressing projects quicker, which will improve connection dates for other projects and increase confidence to bring new projects forward, further increasing effective competition. It will also

⁴⁴ 18 Yes; 7 No; 1 Neutral

⁴⁵ WACM8 – 21 Yes; 2 No; 3 Neutral. WACM9 – 14 Yes; 8 No; 4 Neutral. WACM11 – 20 Yes; 2 No; 4 Neutral.

⁴⁶ 18 Yes; 3 No; 5 Neutral.

mitigate the risk that an unsuitable connection date is a barrier to bringing forward new investment.

3.45. In assessing ACO (b) we have considered the following factors, which we will address in more detail below:

- Milestone suitability and concerns regarding any resulting competitive disadvantage
- Enhancing consistency between transmission and distribution
- Equal treatment of parties seeking to connect and concerns regarding application to existing Users
- Impact of facilitating timely, efficient connection for viable new generation projects

Milestone suitability

3.46. We share the general view of the Workgroup and Panel⁴⁷ that the Milestones proposed are sensible and effective for the majority of projects. We do note that across all of the CMP376 proposals, concerns were raised by stakeholders that some projects with particularly long lead times, such as offshore wind projects, may have insufficient time to meet Milestones and as such be put at a competitive disadvantage. However, with the exception of Milestone 3 under WACM3 and WACM4, Milestone Dates are calculated and fixed by reference to a User's Completion Date when they are first introduced. As such, Users with longer lead times will be afforded more time proportionately according to how far away their contracted Completion Date is.

3.47. Crucially, however, additional measures also exist to ensure that Users with viable projects which are being diligently progressed are not unduly adversely affected by Queue Management, including the defined Exceptions process and NGESO's ability to exercise discretion as to whether to terminate projects which miss Construction Progression Milestones. As noted above, NGESO has committed to engaging with projects to establish the likelihood that the project will be in a position to progress to the Completion Date before terminating. As such, we do not consider that the introduction of Milestones will result in any structural competitive disadvantages which would undermine ACO (b).

⁴⁷ See Workgroup and Panel view sections.

3.48. That being said, we consider that the proposals which calculate the Milestone 3 date forward from the date of contracting (WACM3, WACM4) do raise legitimate concerns regarding potential competitive disadvantage for certain types of project. Although these proposals would encourage robust project planning and more closely align with what is required of projects at the distribution level (as Milestone 3 at distribution is also calculated from offer acceptance), they could make Milestone 3 difficult for some to meet – especially for projects in particular categories, including offshore wind. This could be the case even for projects which are viable, genuine and actively progressing – and the Exceptions process may not be applicable in all instances to avoid this outcome. For example, projects with complex landowner scenarios, or where a landowner is engaged in negotiations with multiple prospective parties, may be unable to meet Milestone 3 as calculated under WACM3 and WACM4 despite being viable and diligently progressed, and may be ineligible to rely on the Exceptions process. For some Users, these risks could be mitigated by behavioural change through submitting their connection application later in time than they would do today, although this could have disadvantages in terms of system efficiency, as set out under ACO (a) (see paragraph 3.31 above); for others this could be unachievable.

3.49. As a result, we consider that the method of calculating Milestone 3 proposed by WACM3/4 means these may disproportionately impact certain project types, placing barriers to their entrance to the market and therefore negatively impacting effective competition. As such, these options facilitate ACO (b) less effectively than the other options, and indeed may do so less effectively than the status quo.

Consistency between transmission and distribution

3.50. Further, as noted in Section 2, queue management is already in place at distribution level. As a result, the implementation of the Queue Management Process at transmission level improves alignment of arrangements between transmission and distribution, even if there are some differences in the specifics (eg in relation to Milestone 3). Reducing undue differences between the two will mitigate against the risk of conferring an advantage of one group over the other in this regard and therefore better facilitate effective competition in the generation of electricity and ACO(b). Additionally, projects which are able to connect at Transmission or Distribution level will now no longer be able to avoid queue management by connecting at transmission, which removes any advantage such Users have over those who can only connect at Distribution, therefore further facilitating ACO(b).

Equal treatment of parties seeking to connect

3.51. In order to set the same competitive bar for projects of different types, the starting position is that Milestone requirements should be consistent across Users unless there is a clear reason why differential treatment is required. From this perspective, of the CMP376 proposals, those most likely to best facilitate ACO (b) are the ones that apply the Queue Management process to both new and existing Users. Any other course would see customers with otherwise materially identical projects being held to different standards.

3.52. We recognise that concerns have been raised around implementing Queue Management for existing Users, since it requires the amendment of existing contracts: see paragraph 3.40.40 above. It was suggested that this could undermine market confidence in the connections agreement process which could consequently reduce the number of entrants to the market, inhibiting competition.⁴⁸ It was also suggested that offshore wind projects could be most affected by applying queue management to existing Users. We do not share these concerns, both for the reasons set out in relation to *Milestone Suitability* above and because an important feature of all 'wider' proposals is the opportunity afforded to existing Users to modify their Completion Date at the point where queue management is introduced – with Milestones then set by working backward from this new date. These features avoid any structural disadvantage to existing projects with long lead times, such as offshore wind; and, in our view, render it unlikely that the adoption of a 'wider' proposal would undermine market confidence or reduce the number of new entrants (save those whose applications would have been made on a speculative or uncertain basis and not otherwise).

3.53. To the extent that 'wider' proposals might be thought to carry a greater risk of impacting market confidence than those which are 'narrower', we consider this to be outweighed in the context of ACO (b) by the considerations at paragraph 3.20-3.23, 3.524 above and paragraph 3.566-3.57 below. In addition, we understand that the status quo arrangements could be undermining investor confidence and that approval of WACM7 should help alleviate this. The result is that, in our view, the proposals which have the most positive impact on ACO (b) are those which are 'wider' in scope.

3.54. Of the 'wider' proposals, those which introduce a degree of flexibility to Milestones and reduce standardisation – in particular WACM2 and WACM6 – could see like-for-

⁴⁸ CMP376 consultation responses

like projects being held to different standards, creating the potential to distort competition. This would in turn less positively impact on ACO (b).

Impact of facilitating timely, efficient connection for viable new generation projects

- 3.55. Greater market access and competition can be achieved through increasing the attractiveness of GB to future investment, in particular by capitalising on existing capacity such that viable and actively progressing Users can connect more quickly, and by improving connection offer dates that can be made to new projects.
- 3.56. The best means of enabling viable and actively progressing projects to connect more quickly is through the termination of non-viable, stalled or inadequately progressing projects and (in consequence) their removal from the queue. For the reasons given above, we consider that all proposals other than WACM3 and 4 are likely to achieve this more effectively than the status quo; and that 'wider' proposals are likely to be the most effective in achieving this. For the reasons given at paragraphs 3.33 and 3.35 above we further consider that, within the 'wider' options (or otherwise), those which replace termination rights with DQM arrangements will be less effective in achieving this objective. As a result, we consider that insofar as facilitating timely, efficient connection for new generation projects is ultimately liable to increase competition, WACM7 is most likely to do so.

Overall conclusion on ACO (b)

- 3.57. For the reasons given above, we consider that:
- The introduction of Milestones to ensure timely project progression, which lead to improved network planning and utilisation as set out under ACO(a) should have a positive effect on competition between Users. This is because facilitating more timely, efficient connection for viable current and new generation projects is likely to improve market access for these projects and thereby increase competition.
 - However, concerns regarding the calculation of Milestone 3 under WACM 3-4 mean these options facilitate ACO (b) less effectively than the other options, and indeed may do so less effectively than the status quo.
 - The introduction of queue management at the transmission level generally enhances effective competition in that it enhances consistency between transmission and distribution.

- To the extent that consistent treatment of new and existing Users is desirable to ensure a level competitive playing field, 'wider' options are more likely than narrow options to facilitate ACO (b). Of these, WACM2 and WACM6 are less desirable as they introduce inconsistencies between Users by reducing standardisation in the calculation of Milestones.
- Although we acknowledge the potential impact on market confidence arising from applying Queue Management provisions to existing projects, we consider that the changes represent a positive change on the status quo which should alleviate some concerns of investors. Overall, the positive impacts outweigh any negatives by facilitating timely, efficient connection for viable new generation projects – which in the bigger picture is likely to improve market access for these projects and thereby increase competition. Further, for the reasons given previously, we consider that these objectives will be more effectively achieved by WACM7 than by the DQM options.

3.58. Taking these factors together, we consider that on balance WACM7 is likely to have the most positive impact on ACO (b).

(d) Promoting efficiency in the implementation and administration of the CUSC arrangements

Workgroup and Panel view

- 3.59. There was a view that all proposals could define a consistent process for NGESO to manage parties seeking to connect, thus increasing efficiency in the implementation and administration of the CUSC.
- 3.60. WACM1 saw more support than WACM2 (both of which require a construction plan in the context of Milestone 6 to be "submitted" rather than "agreed", and WACM2 is 'wider' in scope than WACM1 in this regard) in relation to ACO (d),⁴⁹ but both were criticised for risking inefficiency in both implementation and administration, with one reason given being that they make it harder for the ESO to know if a project is on track.
- 3.61. WACM3 and WACM4 (which propose stricter timelines for demonstrating land rights have been obtained under Milestone 3 and where WACM4 is 'wider' in scope)⁵⁰ scored similarly for this objective. They were directly praised for giving earlier sight of potential compliance issues which may help guide the ESO's next steps.

⁴⁹ 21 Yes; 2 No; 3 Neutral VS 15 yes; 7 No; 4 Neutral.

⁵⁰ WACM3 – 15 Yes; 6 No; 5 neutral. WACM4 – 15 Yes; 7 No; 4 Neutral.

3.62. WACM5 and WACM6 (which require Milestones 7 and 8 to be bilaterally negotiated and where WACM6 is 'wider' in scope), were seen as potentially beneficial in theory (for example because they might allow TOs to operate more efficiently by agreeing timescales and resource commitment across multiple connections in a more coherent manner), but likely to cause complexity which would make for a more inefficient and burdensome process for all parties involved.

3.63. WACM7 (as per the Original Proposal, but 'wider' in scope) received no specific comments regarding this ACO and it received neither a particularly high nor low share of positive support in votes.⁵¹

3.64. Dynamic Queue Management (DQM), featured in WACM8, WACM9 (which is 'wider' in scope) and WACM11, was seen as likely to be very difficult to implement from a technical and contractual perspective and create uncertainty – all drawbacks which could outweigh the potential benefits in the context of ACO (d) and as such they received less support than other options under this objective.⁵² WACM10 saw similar criticisms in that it could lead to more disputes and as such saw a low level of support.⁵³

Our view

Overview

3.65. We consider that, in assessing the impact of the Original Proposal and WACMs on ACO (d), an important part of the context is the administrative burden currently born by NGESO as a result of the problems outlined in Section 0 above. In particular, we understand that NGESO and TOs currently expend considerable time and resources managing projects which are not progressing in a timely way toward completion. One reason for this is that NGESO currently receives a regular inflow of Modification Applications seeking to push back Users' Completion Dates, which require processing by NGESO and replanning by corresponding TOs.⁵⁴ This generates an administrative burden which reduces its overall efficiency. Recognising that the introduction of any new proposal is likely to create some short-term administrative burden, the question is whether and to what extent this is likely to be outweighed by longer-term efficiency gains.

⁵¹ 16 Yes; 4 No; 6 Neutral.

⁵² WACM8 – 16 Yes; 6 No; 4 Neutral. WACM9 – 13 Yes; 9 No; 4 Neutral. WACM 11 – 17 Yes; 5 No; 4 Neutral.

⁵³ 15 Yes; 6 No; 5 Neutral.

⁵⁴ CMP376 FMR, page 7.

3.66. Below we consider the extent to which the different types of proposals are likely to create or reduce administrative burden, and/or increase efficiency in the implementation of CUSC arrangements more generally.

Comparative advantages of proposals involving DQM as opposed to termination provisions

3.67. We consider that the proposals involving DQM (WACM8, WACM9 and WACM11) are likely to be least effective in meeting ACO (d) than those involving only termination rights/duties.

3.68. DQM proposals are likely to generate a high initial administrative burden. This is because, as noted at paragraph 3.35 above, the implementation of these proposals would require the development and implementation of additional policy through a further code modification, involving further work by NGESO and other parties – relating, for example, to the manner in which Users’ new position in the queues would be determined. This has yet to occur and is liable to prove complex (as indicated by the six-month period considered necessary before any DQM proposal could be implemented).

3.69. DQM proposals are also likely to result in a higher ongoing administrative burden than those involving only termination rights/duties – and (by the same token) to be less effective in removing the kinds of burden NGESO is currently experiencing. This would be due, in particular, to the need to consider applications from Users to amend their Completion Dates and Milestone Dates (something Users would be able to do up to three times without termination rights arising) and, where those applications were allowed, to make decisions about Users’ new position in the queue. These decisions, like the underlying policy, could potentially be complex and/or time-consuming. In addition, because these “demotions” would not remove non-viable, slow to progress or stalled projects from the queue, it is likely that in a meaningful proportion of cases, NGESO would need to take steps to exercise its termination rights even after the third demotion.

3.70. The ongoing administrative burden is also less likely to decrease over time than is the case in respect of other options, given that – for the reason set out at paragraph 3.33.33 – we consider that DQM options are likely to be less effective in discouraging speculative applications.

Comparative advantages of ‘narrower’ vs ‘wider’ proposals

3.71. We consider that all other options better serve ACO (d) than the status quo, as they would reduce the current administrative burden over the longer term and make

that effort more efficient by driving better outcomes than under the status quo – where administration does not address problems with the queues and indeed causes problems in the case of repeat Modification Applications.

3.72. Stakeholders raised concerns that ‘wider’ proposals, specifically WACM7, could see inefficiency in the implementation of the CUSC through administration and efficiency challenges.⁵⁵

3.73. We recognise that the implementation of any ‘wider’ option is likely to result in a higher initial administrative burden than ‘narrower’ options. This burden would be associated with (for example) issuing notices to existing projects; considering initial applications for modifications to Completion Dates (see paragraph 2.26 above); conducting initial reviews against Milestones; and making decisions regarding potential terminations.

3.74. There would also be a comparatively higher ongoing burden associated with reviews against Milestones and decisions about termination in the medium term, as the queue management provisions would apply to a substantially higher proportion of existing agreements (see paragraph 2.25 above) sooner. However, we would expect to see this ongoing burden decrease materially with the passage of time because – for the reasons set out at paragraphs 3.7116 and 3.22 – 3.23 above – ‘wider’ proposals are likely to be the most effective in ensuring that projects which remain in and enter the queue progress in a timely way and meet Milestones as they arise. In addition, if a ‘narrower’ option were adopted, then – of the larger number of agreements not subject to Queue Management – a meaningful proportion would remain stalled and/or non-viable and would likely ultimately generate an administrative burden by seeking a Modification Application to their Completion Date in due course.

3.75. As a result, and taking a longer-term view, we do not consider that ‘wider’ options are likely to generate a materially greater administrative burden on NGESO than ‘narrower’ ones.

Comparative advantages of proposals introducing additional flexibility in calculation of Milestones

3.76. We consider that those which introduce additional flexibility in the calculation of Milestones – WACM5 and WACM6, which allow Milestones 7 and 8 to be bilaterally negotiated – further ACO (d) marginally less effectively. This is because the need to

⁵⁵ CMP376 consultation response: Drax.

engage in negotiations (which opens the possibility of disputes) is likely to impose an additional administrative burden on NGESO. However, we recognise there is a possibility that this may be counterbalanced (at least to some extent) in some cases by Users being more likely to meet these Milestones where they have been bilaterally negotiated – resulting in fewer cases where NGESO would need to incur the burden associated with exercising termination rights.

Comparative advantages of different methods of calculating Milestone 3

- 3.77. Considering WACM3 and WACM4, which modify the standard process for calculating Milestones such that Milestone 3 is calculated forward from the date of contracting, we consider this approach is likely to be marginally less effective than other proposals.
- 3.78. In the short to medium term the approach in WACM3 and WACM4 is likely to result in the termination of a larger number of existing projects (see paragraphs 3.29 - 3.30 above), which would impose a greater initial administrative burden on NGESO. In addition, to the extent viable projects sought to rely on the Exceptions process to avoid termination where tighter timelines were impractical, this would create an administrative burden for NGESO. In the longer term, there is unlikely to be a material difference in the extent to which the two options disincentivise speculative applications (and therefore minimise the proportion of cases in which termination becomes necessary) – because, however Milestone 3 is calculated, there will be a similar incentive to ensure that Users submitting new applications will be able to meet it.
- 3.79. As a result, WACM3 and WACM4 fare marginally less well in respect of ACO (d) due to the likelihood of a higher initial administrative burden without correlative longer-term advantages.

Overall conclusion on ACO (d)

- 3.80. For the reasons above, we consider that options which involve DQM are likely to facilitate ACO (d) least effectively. Of the remaining options, there are marginal differences but WACM3, WACM4, WACM5 and WACM6 are likely to perform worse against ACO(d) on the basis that they are expected to generate a greater administrative burden overall. We consider the differences between the Original Proposal, WACM1, WACM2 and WACM7 are unlikely to be material and so these options perform best overall.

Our assessment against the Authority's Principal Objective and 'wider' statutory duties

- 3.81. Having concluded that overall **WACM7** better facilitates achievement of the ACOs in our assessment above, we have also assessed whether its approval is in line with our statutory duties. This includes our Principal Objective to protect the interests of existing and future consumers and the various specific matters identified in Section 3A of the Electricity Act 1989. Those interests include but are not limited to: (a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases; and (b) their interests in the security of the supply of electricity to them: s3A(1A).
- 3.82. We consider that approval of WACM7 will protect the interests of existing and future consumers. This is because we expect WACM7 to enable significant improvement to the management of the transmission queue, both in relation to new entrants and to those already holding capacity, through in particular encouraging timely project progression and the removal of stalled, slow to progress or otherwise unviable projects. This in turn is likely to allow for more efficient use of existing network capacity and give greater certainty to decisions in relation to future investment, allowing investment to be made more economically and efficiently and at the lowest cost to consumers. See further paragraph 3.18.2 above.
- 3.83. It is also expected that the active management of the existing transmission queue in accordance with WACM7 will result in an improvement in connection offer dates, through the removal of stalled, slow to progress and non-viable projects from the queues. Generation projects are likely to be able to connect more quickly than they otherwise would have been, where NGENSO is able will be able to better optimise free up additional capacity resulting from terminations: see further paragraph 3.18.2 above. This would see GB consumers realising the benefits of viable generation projects earlier. Overall, we believe that approval of this code modification change is likely to better enable the connections to the transmission system in a timely and efficient way, including projects which will support the transition to Net Zero and security of supply which is in the interests of existing and future consumers.
- 3.84. Finally, in this case, we have considered whether approval of WACM7 would be consistent with our obligations under s6 of the Human Rights Act 1998, particularly with regard to the right to peaceful enjoyment of possessions. We have concluded that it is: Construction Agreements require parties to comply with the CUSC, including any subsequent modifications, that is any property right comprised in the contract is contingent on its terms. Further, for the reasons explained above, our view is that WACM7 is a necessary and proportionate means of seeking to address the issues outlined in Section 1 above. That is so, having regard to the seriousness of

those problems, the strong public interest in addressing them, and the advantages of WACM7 over the other available options as an effective means of doing so. In our view a fair balance has been struck between the relevant interests involved.

Decision notice

3.85. In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that **WACM7** of modification proposal CMP376: *Inclusion of Queue Management process within the CUSC* be made.

Jack Presley Abbott

Deputy Director, Market Design

Signed on behalf of the Authority and authorised for that purpose