

Code Administrator Meeting Summary

Meeting name: Application of Gate 2 Criteria to existing contracted background (Workgroup 17)

Date: 04/09/2024

Contact Details

Chair: Catia Gomes, ESO Code Administrator

Proposer: Alice Taylor, ESO (CMP435), Steve Baker, ESO (CM096)

Key areas of discussion

The key areas for discussion in Workgroup 17 were to:

- Review the approach to the CMP435 legal text so the Workgroup could have an understanding of this and ask questions of the ESO Legal representative.
- Review the RFI update shared with the Workgroup for questions to be asked to support Alternative Requests.

Timeline Update

ESO stated that the new timeline will be coming soon, there are just a few things that are still waiting to be confirmed before it can be shared with the Workgroup. It was questioned by a Workgroup member what the holdup was for it to be shared who was informed by the Chair that considerations were being made across both workstreams. It was agreed to be shared when it is finalised and approved to be circulated.

Walkthrough of Approach to CMP435 Legal Text

The notes from the meeting will be circulated, along with the initial first draft of the conditional clause, which is the clause that will go into the Gate 1 agreement.

It was highlighted that the legal text is a key component to the connections modification because it has the potential to change the status of the existing agreement and will be scrutinised by industry for projects that are affected by it. The legal text will outline the process to establish existing contracts as Gate 1 or 2 and updating agreements to those statuses accordingly. It was noted that the initial legal text drafting was underway based on this approach.

It was stated that there are three different options for where the draft legal text will sit in the CUSC:

- CUSC Section 10
- At the end of the relevant section, i.e., Section 17
- A new section, Section 18.

The need for a new section is dependent on the level of detail and structure of the legal text, so a judgement will be made on this.

What is in scope:

The document shared outlined the types of existing agreement the legal text will cover, and it was noted that it will address differences in process for the different types of existing agreements involved.

Workgroup members debated whether transitional projects should follow the CMP434 or CMP435 process. The ESO SME noted that accepted transitional offers will have a process outlined as part of Element 19 and took an action to confirm whether CMP434 or CMP435 processes would be applied to them, and how transitional offers are treated differently for Gate 1 and Gate 2 (how treatment of CMP435 projects will differ from the first batch in CMP434). The ESO SME noted that this was being considered as part of cutover arrangements in Phase 2 discussions as well.

A Workgroup member noted that Generation Supply Points (GSPs) would not be included in existing BCA agreements as part of CMP435 and asked if that was defined as generation-triggered or generation-associated supply points. ESO responded that, in simple terms, an application would go through the process via generation or demand but acknowledged that this is being looked at already to clarify what happens if categorisations change or an application deals with generation and demand. The Workgroup member noted that discussions were ongoing with the ESO about new GSP and small/medium embedded generation with future progressions and whether such scenarios will be captured by the reforms or not (suggesting the generation could be applied for at the same time as the supply point).

Timings of processes and activities:

It was noted by the ESO legal representative that current thinking is that existing agreements will continue as they are until a new status is assigned (of particular interest for the points that securities and liabilities may fall away). The list of key milestones to be allocated timings was shared and it was noted that the designation and reservation processes would need to outline the process for designated/reserved projects being turned to Gate 2 status.

Process and mechanisms to change status of existing agreements to Gate 2:

On questioning from a Workgroup member, the ESO legal representative and SME confirmed that acceleration would need to be applied for via a mod app requiring a fee. It was discussed that this was reverting to an existing process, so the fee applied (whereas accelerated connections via the 5 point plan were via a one-off project).

The ESO Legal representative noted that there will be confirmation that acceleration of connection date is possible (but different to a standard mod app as it will not be a given that an accelerated date will be granted).

It was explained that the CNDM process would apply once Gate 2 'existing agreements' are established (including those accelerating) to give the projects for the first batch of Gate 2 offers. A Workgroup member responded with reference to the impact of whether a project is deemed as 'needed' or not, or needing a connection bay more than another project, and the risk for projects of being moved to a different location as a result of that assessment. The ESO legal representative noted that in light of these policy updates, the consequences for projects that have met Gate 2 (but will need to be assessed for whether 'needed' as a result of the Clean Power 2030 discussions) are being considered but are expected to be dealt with as part of the CNDM to determine the offer made, rather than the CMP435 legal text. The need for the Workgroup to understand the methodology for that was acknowledged.

Outcome for the Existing agreements at the end of the Gate 2 process:

ESO

The ESO Legal representative outlined that as a result of the Gate 2 process, Existing agreements would be:

- Confirmed as Gate 2 by AtV (with an update to Appendix Q as a minimum to reflect M3 milestone now being forward-facing)
- Confirmed as Gate 2, and accelerated, by AtV (with necessary updates to the agreement to reflect the acceleration)

A Workgroup member suggested a third option of:

- Confirmed as Gate 2, no acceleration requested, with updates to M1

The Workgroup member encouraged the inclusion of text to clarify what could change in an existing agreement, even if confirmed as Gate 2, e.g., potential changes being connection dates accelerating/moving back, connection dates confirmed at a requested location/a non-requested location and outage conditions become less/more onerous (with impacts on Appendix D and F potentially). The ESO legal representative noted that the extent of such potential changes would be set out in the CNDM but was happy to add an indication of what could change as those points became clear from the ongoing methodology work. The Workgroup member presumed this would need to be reflected in legal text if the ESO was seeking the ability to change connection dates and connection points in this way (i.e., potentially detrimentally to projects) and felt that this should be fully socialised with industry for views and feedback to be provided. In light of the recent policy position update generating this scenario, the ESO were not in a position to state whether they would, or would not, be seeking the ability to change existing agreements in this way, even if projects have met the Gate 2 criteria. The ESO were comfortable adding a point to the approach document to say that the full changes needed to Gate 2 agreements are to be established, acknowledging the current uncertainty.

A Workgroup member asked if a request to accelerate a non-firm connection was possible, to which the ESO confirmed that this would be possible via the relevant question on the self-declaration letter.

A Workgroup member pointed out that all existing contracts will be issued an AtV to either accept a Gate 2 offer, accept an accelerated Gate 2 offer, or a Gate 1 offer if Gate 2 hasn't been met or accepted. The ESO agreed to clarify that, adding that if you don't meet or accept Gate 2, you will be given a Gate 1 offer or a project can choose to terminate.

Another question asked by a Workgroup member was whether there was the intent to vary the BCA, whether the criteria by which to vary it would be captured in the CUSC and if the CNDM needed to be complete before this task? It was outlined that the CUSC would acknowledge the CNDM as part of the process (not detail the methodology itself) to inform the changes to all existing agreements and link to the current variation clause to allow those changes. It was noted that the totality of the CUSC and methodologies will affect agreements. If the CNDM will affect changes to agreements, a Workgroup member queried whether using methodologies in this way subverted the codes as they were not subject to Significant Code Review or code governance processes, to which the ESO noted that the methodologies would be approved by the Authority, albeit not undergoing the same impact assessments as SCR/code governance employ. A Workgroup member asked why the ESO felt it was compliant with the law to have such elements outside the CUSC as they were concerned about domestic legal challenge or international investor settlement disputes. The ESO legal representative was not aware of a law to stop the approach taken with the code and methodologies in this way and noted that terms and conditions for the CUSC have to be Authority-approved. The ESO stated that they were not ignorant to the impact of the agreement and its need to act reasonably and transparently as per European regulation. They noted that the methodologies would need to be clear and published and while being aware of how proportionate changes to contracts are made, variation processes are standard in all contracts.

Another question raised for the Proposers was whether the ESO thought methodologies are appropriate given that CUSC and governance code are current options, considering that the methodologies will go through consultation at the same time as the Code Administrator Consultation.

ESO suggested that they are not moving away from methodologies, and that there will be an update on Clean Power 2030 and methodologies in mid-September.

Another Workgroup member then suggested the possibility of legislative change to ensure that some aspects of the reform are legally robust. ESO then raised the point that the challenge is that legislation will not be changed quickly, in terms of the timelines they have. It was counterargued by a Workgroup member that emergency legislation could be used here rather than waiting on legislative changes to happen, as raised the point of subsequent licence changes for designation to the Secretary of State (as use of the Workgroup's work for CUSC changes via this route.).

A question was then asked by a Workgroup member, in relation to methodologies, as to the mechanism for changing them, who is controlling them and how frequently they can be changed. They were looking for the specifics of the methodologies as they thought these to be unclear. It was stated that references to the methodologies would be included in the code, but they will sit outside the code process and will not be detailed in it.

A Workgroup member asked if an Alternative would be legally sound if, by referencing a methodology in the code, it proposed additional text to outline the process for constructing the methodology and annual reviews of it as per a licence (if that was to be raised as an Alternative). The ESO responded that this would be acceptable to create this as a contractual mechanism (as opposed to a licence obligation which is the ESO's approach).

Process and mechanism to change status of existing agreements to gate 1:

The ESO outlined that a conditional clause would be added (existing agreement rights and obligations have no effect until a Gate 2 offer is accepted) and would be circulated soon for review.

A Workgroup member suggested having codified timescales for applicants to respond and trigger the ESO's right to sign on their behalf. The ESO stated that any ESO action of that sort would not be taken lightly and only to provide a clear point for the CMP434 process to start. Due notice would be given with ample opportunity for the applicant to sign themselves, which the ESO will consider for the legal text. Another Workgroup member suggested that if an offer is given adequate time to be reviewed, it could be terminated instead of the ESO signing to relieve an administrative burden (and possible factor in network planning). The ESO highlighted that this would be a dramatic step to take, but it could be proposed by a Workgroup member as an Alternative, if the right balance was found.

A question was then raised by a Workgroup member about the drafting required around projects that are going from Gate 2 to Gate 1, as they understood that there would be a release of the User Commitments, i.e., a refund any securities or liabilities that have been paid to date. ESO stated that one consequence of the change of project status would be that security or liability would not need to be provided, but the question remains of what happens to what has been provided to date. This would need to be clarified, either in legal text, or via another mechanism. Another Workgroup member suggested that to retain a Gate 1 position and be accounted for in network planning, an option could be for securities/liabilities to not be paid back (only returned if terminating). The ESO acknowledged the challenge of holding securities without transmission works in the Gate 1 agreement (as per the ESO's proposal) but welcomed the group to consider it if they wished.

RFI Update

Workgroup members asked for clarity on certain numbers and graphs that were used in the slides, with some additional data points requested to be included in a new pack to be circulated.

It was explained that wind had not been requested as separate onshore/offshore responses which is reflected in the graphs shared. A Workgroup member raised caution about use of the term 'oversubscribed' in relation to technology type as the data was being set against only one set of scenarios (so shouldn't be misconstrued).

A Workgroup member suggested that cross-referencing with DNO data could be undertaken, and it was stated by ESO that further analyse is still happening.

There was an action taken here to make alterations to the RFI slides based on the feedback from the Workgroup members (and provide an anonymised spreadsheet of key data). This will ensure that any Workgroup member who wants to raise an Alternative will have the correct data to use to do so.

Action Log

Actions agreed to be closed were 72, 74, 78, 82, 91, 92, 97, 103, 104, 106.

On Action 78, a Workgroup member asked whether the Expression of Interest process is expected to be completed before 31 January 2025 to understand whether connections have been brought forward before developers make about accelerated connections (and paying the associated fees). The ESO stated that it was the working assumption that it would, and they are awaiting further updates from NGET.

Next Steps

The legal text approach document would be shared with the Workgroup once refined following the meeting.

Actions would be taken for progression and updates shared for the next Workgroup on Thursday 12 September 2024.

AOB

In relation to the STC legal text development, proposers for CM095 and CM096 are having weekly calls with TOs and the legal team, including addressing STCPs that are likely to be required. An update will be given at the STC Panel this month. Also, the Authority have also indicated that they are expecting STCPs raised on the back of this workstream to have materiality (which would require Authority decisions on them).

Workgroup members enquired about the proposed session on Clean Power 2030 and the methodologies, and the ESO clarified that it will be a separate session with a date to be circulated very shortly.

Actions

Action number	Workgroup Raised	Owner	Action	Comment	Due by	Status
21	WG3	ESO Connections Team	When considering transitional arrangements, include guidance for staged projects	To be covered in more detail under Phase 2	WG6	Open
36	WG5	Angie	Statement from ESO as to the CAP150 powers and how they are applied /can be applied re: ongoing compliance (include link to CAP150 info on ESO website)	Suggested to raise in CMP434 but also remain in CMP435 if it applies to existing contracts	Ongoing	Open

42	WG6	AC/FP	Check with legal as to the clock start dates for new applications considering the point of implementation after an Authority decision (is 15th of November date is legally acceptable as the Gate 1 process only comes to existence 10 Working days after Authority decision?)	Clarity on this should be provided by the legal text	Ongoing	Open
56	WG8	MO	Clarification with legal regarding guidance and introduction of any new obligations.		Ongoing	Open
57	WG8	MO	ESO set out the processes and timing for determining liability and security for April 2025 and October 2025.	To be answered once the implementation and go-live timescales have been confirmed	Ongoing	Open
59	WG8	MO	Provide WG with the list of documents outside the mod, the principles for guidance docs and timelines for the development of methodology documents.	Awaiting methodology content and timescales before the ESO can update on this	Ongoing	Open
60	WG8	RP	(Replacement for action 35) Provide relevant updates from SCG	Kyle Smith to provide verbal update on TM04+ Impact Group emerging thinking	Ongoing	Open
72	WG9	RM/JH	Workgroup request appendix/annex re: transmission connection queue – how many projects impacts re diff tech and dates + information on the RFI for the consultation (majority/minority party)	The RFI information has been shared with the WG	Ongoing	Closed
74	WG10	PM/GG/ RW	To consider wider context of projects for Gate 2 criteria and implementation aspects to map project types and considerations for 'minimum options' suggestions/proposal	GG contacted for whether this is being pursued. The ESO are not proposing to do anything further on this. We have confirmed our intention that land options ahead of authority decision date do not need to meet the minimum 3 year period.		Closed
78	WG10	AC	Explore difference between treatment of mod app fees vs	The TWR / CPA was a one off project as part of the 5 point plan.		Closed

			expression of interest from 5 point plan	This is an on going process and as such when a customer makes a request for a change to their agreement such as a change of date then a mod app fee is applied due to the studies required to see if the requested change can be facilitated, this is the same.		
79	WG10	MO	Develop a diagram for consultation for alignment of methodologies' timings vs the modifications	Post Workgroup Consultation		Open
80	WG10	MO	Provide further clarity on the nature of the projects designated in 2025, and separately those projects would have reserved capacity.	Further clarity will be provided on designation once draft methodology is available. No further clarity available at this stage in relation to capacity reservation.		Open
82	WG11	MO	To update whether/when/what information from RFI will be published (update Tues from Mike or Ruth)	The RFI slide pack has been sent to the WG with an opportunity to ask clarification questions in a WG	Ongoing	Closed
83	WG11	CD/RP	To update WG on securities for offers (re: small/med embedded generators)		Ongoing	Open
84	WG11	PM/HS	To discuss how to make Offshore projects holding offers in scope of the modification	Ongoing discussions between Connections and Offshore Coordination team and have spoken to HS	Ongoing	Open
85	WG11	AC/DD	Comeback to WG with Justification on proposals on exempting mod apps from implementation date	HS contacted in relation to the correct action owner for this	Ongoing	Open
88	WG14	EB	Email to be shared with Workgroup from CMP434/CM096 compiling emails received about timelines.		w.c. 19 Aug	Open

89	WG14	MO	STC solution to expand on intended process and contract changes (particular importance for TOs)	Meeting arranged with TOs for Monday 2nd Sept with outcome to be fed back to the workgroup	Ongoing	Open
90	WG14	EB	Summary slides for the Workgroup Consultation responses are to be updated		w.c. 19 Aug	Open
91	WG14	EB	Timings for sharing Alternatives with the Workgroup to be clarified	ESO has been discussing certain submissions with potential Proposers which has impacted whether some progress. Latest submissions to be shared 21.08	w.c. 19 Aug	Closed
92	WG14	EB	Code Governance to check the codified requirements for Workgroup attendance of voting Workgroup members	50%+ attendance does feature in the ToR for Workgroup Vote	w.c. 19 Aug	Closed
93	WG14	ESO Connections Team	Update on the pathway of modifications in relation to the wider Reform package	ESO general update from Robyn Jenkins in WG15. Further updates to be shared with the Workgroup	Ongoing	Open
94	WG15	ESO Connections Team	Clarification sought on whether the change to assess whether projects are needed introduces any risk to projects before the new arrangements go live (in context of an investment hiatus).	ESO are looking to hold a session in the next couple of weeks where workgroup and CPAG members will be invited	Ongoing	Open
95	WG15	RP	Will demand connection dates be reviewed as part of queue re-organization		Ongoing	Open
96	WG15	PM	CNDM team to be asked how existing projects not meeting Gate 2 will be factored into the CNDM (in case of any consequential issues for removing the Gate 1 longstop)		Ongoing	Open
97	WG15	PM	Ask CNDM team if it would help them to know what stage projects are at from the self-declaration letter	Added as part of self-declaration letter that CMP435 users will complete when providing evidence	Ongoing	Closed

				they meet Gate 2. Will be marked up in the red-line changes.		
98	WG15	PM	To check if TEC reduction will still mean projects are open to liabilities		Ongoing	Open
99	WG15	PM	ESO to consider the new proposed reforms to National Planning Framework for nationally significant solar projects and any impacts for the Planning Regime timescales for Town & Country Planning (TCP)		Ongoing	Open
100	WG15	RM	Will timescales for submitting offers change with changes in programme timelines		Ongoing	Open
101	WG15	RM	Workgroup require timings for the further updates on Element 19		Ongoing	Open
102	WG15	MO	Swim lane document to be produced for CMP434 and 435		Ongoing	Open
103	WG16	AT/AQ	List of CUSC Sections expected to be changed for CMP435 legal text to be shared to the Workgroup (for background reading if needed)		WG17	Closed
104	WG16	PM	Slides presented by James Norman to the ENA SCG on 29 Aug to be shared with the Workgroup		30 Aug	Closed
105	WG16	AT/SB	Request for ESO to provide comment on how options will be created for Govt decisions on capacity mix (and the legal basis for decisions)		TBC	Open
106	WG15	TBC	Will there be Code changes to allow for onshore connection site changes, can ESO be confident giving assurances on connection points (if		TBC	Closed

			whether it is 'needed' means it's not guaranteed).			
107	WG17	AC	Clarify the process for transitional accepted offers in relation to 434 and/or 435 processes	Discussions are ongoing	TBC	Open
108	WG17	AQ	Come back with a clarificatory position on application routes where GSPs are involved		TBC	Open
109	WG17	RM	Updates to the RFI analysis slides to be made and re-shared with the Workgroup		TBC	Closed
110	WG17	AQ	Provide the document outlining the CMP435 legal text approach for sharing with the Workgroup		TBC	Open

Attendees (excluding Observers)

Name	Initial	Company	Role
Elana Byrne	EB	Code Administrator, ESO	Chair
Catia Gomez	CG	Code Administrator, ESO	Chair
Alice Taylor	AT	ESO	Proposer CMP435
Stephen Baker	SB	ESO	Proposer CM096
Paul Mullen	PM	ESO	Subject Matter Expert
Ruth Mathews	RM	ESO	Subject Matter Expert
Alex Curtis	AC	ESO	Subject Matter Expert
Angela Quinn	AQ	ESO	Subject Matter Expert
William Kirk - Wilson	WK	ESO	Subject Matter Expert
Andrew Yates	AY	Statkraft	Workgroup Member Alternate CMP435
Andy Dekany	AD	National Grid	Workgroup Member CMP435
Andrew Colley	AC	SSE Generation	Workgroup Member Alternate CMP435
Barney Cowin	BC	Starkraft	Workgroup Member Alternate CMP435
Brian Hoy	BH	ENWL	Workgroup Member Alternate CMP435

Charles Deacon	CD	Eclipse Power	Workgroup Member CMP435
Ciaran Fitzgerald	CF	Scottish Power	Workgroup Member Alternate CMP435
Claire Hynes	CH	RWE Renewables	Workgroup Member CMP435
Clare Evans	SE	Scottish Power Energy Networks	Workgroup Member CMP435
Darcy Kiernan	DK	NGV	Workgroup Member Alternate CMP435
Donald Fu	DF	Nat Power Marine	Workgroup Member CMP435
Ed Birkett	EB	Low Carbon	Workgroup Member CMP435
Gareth Williams	SW	Scottish Power Transmission	Workgroup Member CMP435
Garth Graham	GG	SSE Generation	Workgroup Member CMP435 & CM096
Helen Stack	HS	Centrica	Workgroup Member Alternate CMP435
Helen Snodin	HS	Fred Olsen Seawind	Workgroup Member CMP435
Hooman Andami	HA	Elmya Energy	Workgroup Member CMP435
Hugh Morgan	HM	Energy Technical and Renewable Services Ltd	Workgroup Member Alternate CMP435
Jonathan Whitaker	JW	SSE	Workgroup Member Alternate CMP435 & CM096
Jonathan Hoggarth	JH	EDF Renewables	Workgroup Member CMP435
Jack Purchase	JP	NGED	Workgroup Member CMP435
Joe Colebrook	JC	Innova Renewables	Workgroup Member CMP435
Kyran Hanks	KH	WWA Ltd	Workgroup Member CMP435
Luke Scott	LS	Northern Power Grid	Workgroup Member Alternate CMP435
Mireia Barenys	MB	Lightsoursebp	Workgroup Member Alternate CMP435
Mpumelelo Hlophe	MH	Fred Olsen Seawind	Workgroup Member Alternate CMP435
Niall Stuart	NS	Buchan Offshore Wind	Workgroup Member CMP435
Nirmalya Biswas	NB	Northern Powergrid	Workgroup Member CMP435
Paul Jones	PJ	Uniper	Workgroup Member CMP435 & CM096
Paul Youngman	PY	Drax	Workgroup Member CMP435

Philip John	PJ	Epsilon Generation	Workgroup Member CMP435
Philip Robinson	PR	ITPEnergised	Workgroup Member CMP435
Ravinder Shan	RS	FRV TH Powertek Limited	Workgroup Member CMP435
Robin Prince	RP	Island Green Power	Workgroup Member Alternate CMP435
Rob Smith	RS	Enso Energy	Workgroup Member CMP435
Ross O'hare	RO	SSEN	Workgroup Member Alternate CMP435
Ross Thompson	RT	UK Power Networks	Workgroup Member CMP435
Salvatore Zingale	SZ	Ofgem	Authority Representative
Sam Aitchison	SA	Island Green Power	Workgroup Member CMP435
Samuel Railton	SR	Centrica	Workgroup Member CMP435
Tim Ellingham	TE	Scottish Power Renewables	Workgroup Member Alternate CMP435