

Workgroup Consultation Response Proforma

CMP435: Application of Gate 2 Criteria to existing contracted background

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm on 06 August 2024**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

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

Respondent details	Please enter your details	
Respondent name:	Deborah MacPherson	
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Which best describes your organisation?	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network Operator <input checked="" type="checkbox"/> Generator <input type="checkbox"/> Industry body <input type="checkbox"/> Interconnector	<input type="checkbox"/> Storage <input type="checkbox"/> Supplier <input type="checkbox"/> System Operator <input type="checkbox"/> Transmission Owner <input type="checkbox"/> Virtual Lead Party <input type="checkbox"/> Other

I wish my response to be:
 (Please mark the relevant box)

Non-Confidential (*this will be shared with industry and the Panel for further consideration*)

Confidential (*this will be disclosed to the Authority in full but, unless specified, will not be shared with the Workgroup, Panel or the industry for further consideration*)

For reference the Applicable CUSC (non-charging) Objectives are:

- a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission 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.*

*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.

Standard Workgroup Consultation questions							
1	<p>Do you believe that the Original Proposal better facilitates the Applicable Objectives?</p>	<p>Mark the Objectives which you believe the Original solution better facilitates:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Original</td> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/>A</td> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/>B</td> <td style="width: 10%; text-align: center;"><input type="checkbox"/>C</td> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/>D</td> </tr> </table>	Original	<input checked="" type="checkbox"/> A	<input checked="" type="checkbox"/> B	<input type="checkbox"/> C	<input checked="" type="checkbox"/> D
Original	<input checked="" type="checkbox"/> A	<input checked="" type="checkbox"/> B	<input type="checkbox"/> C	<input checked="" type="checkbox"/> D			
<p>Whilst we do have some concerns regarding some areas of the proposal, some items not in scope and potential unintended consequences, overall we believe the Proposal has the potential to better facilitate the Applicable Objectives than the Original solution.</p> <p>This position is based upon the concerns raised in this response and that of CMP434 and therefore our response marked above sets out those objectives we believe the proposal could satisfy if further work is undertaken to address the concerns raised in this response and from others.</p>							
2	<p>Do you support the proposed implementation approach? (See page- 57-58)</p>	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p>					
<p>SPR recognise and support the need for connections reform given the scale of the connections queue and the problems facing developers. Whilst supportive of the implementation approach as summarised on Page 57, we do have some concerns given the scale of change being proposed, the now delayed CUSC Modification timescales, and the impact this has had on the revised date by which Ofgem will make its decision. With the date now expected as late as 13th December, which as the consultation rightly highlights as being just prior to the festive season, this leaves very little time for the ESO to ensure that stakeholders can fully engage in any supporting guidance and engagement that may be available to them. We would further express concern that there has been indication given by the ESO that the proposed reforms may not go far enough to deliver the envisaged queue benefits and that further reform measures will be required post implementation. Such an approach will introduce further risk and uncertainty for the development of projects which are at present trying to adapt to the not yet implemented proposed arrangements. Industry has already witnessed earlier attempts to reform the queue (5-Point Plan) only for further changes to be introduced before the benefits of any initiative could be fully realised. Whilst we recognise the rationale for what has happened in the past, we would urge that the ESO and Ofgem implement a reformed process that is fully assessed to work and deliver the required benefits without the need for further adjustments down the line. Both this consultation, and CUSC Modification CMP434 being consulted upon in parallel, detail significant proposed changes to the connections process. This consultation alone,</p>							

	<p>comprising of 18 Elements, is open for a very short period of time (9 working days) and at a time when many in industry are on holiday, which will most likely have an impact on the ability for industry to fully engage in an informed manner. We suggest that further work is needed as part of the implementation approach to inform and fully prepare the industry.</p>	
3	<p>Do you have any other comments?</p> <p>No</p>	
4	<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p><input type="checkbox"/> Yes (the request form can be found in the Workgroup Consultation Section)</p> <p><input checked="" type="checkbox"/> No</p>
	<p>Click or tap here to enter text.</p>	

Specific Workgroup Consultation questions			
5	<p>Do you agree with the elements of the proposed solution for CMP435? <i>Please note that the application of these elements may be different to CMP434, therefore please answer the questions in respect to CMP435.</i></p> <p>Elements 2,4,6,7,12,15,17 and 18 are not part of the CMP435 Proposal and is only part of the CMP434 Proposal. Element 10 is proposed to be codified within the STC through modification CM095.</p> <p>Please provide rationale for your answer and any suggestions for improvement to each element?</p>		
	<table border="1"> <tr> <td> <p>Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p> </td> <td> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> </td> </tr> </table>	<p>Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>
<p>Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>		
	<p>We agree that in certain instances, it is reasonable to develop methodology documentation on the basis that such methodologies are subject to a consultation and approval process outwith CUSC to ensure that such methodologies cannot be amended at any time at the discretion of the ESO. We do however note that the extent of documentation proposed under Element 1 to be somewhat limited in its scope. It is for this reason we cannot support the proposed solution.</p> <p>The development of separate methodology documents should be done to ensure that each methodology is easy to understand and accessible to all stakeholders, ensuring that any rules, criteria and policy are clearly understood.</p> <p>We do however believe further consideration should be given to expanding the scope of "Authority approved Methodology" to include other key documentation such as Significant Modification Application Guidance (given the intention to codify the concept of "Significant Modification Application"), Material Technology Change Guidance and Letter of Authority Guidance to ensure interpretation and application of each is not at risk of being applied on a discretionary basis by the ESO/TOs or amended without due process and engagement.</p>		

<p>Element 3: Clarifying which projects go through the Primary Process (See pages 10-11,29-31)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>We agree that the scope of projects listed represents the principal project types that should go through the Primary Process. We do however believe that consideration should be given to directly connected projects which trigger works on the DNO network and how the impact of such connections will be considered under the TMO4+ process. Whilst we note CUSC Modification CMP 328 “Connections triggering Distribution Impact Assessment” has been sent back to the working group by the Authority, we believe the TMO4+ arrangements must fully consider the impact of such connection types.</p>	
<p>Element 5: Clarifying any Primary Process differences for customer groups (See pages 11-12,32)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>We believe further consideration should be given to the the primary process difference for customer groups. For example, we have concerns regarding the proposed approach to the DFTC which will govern the relevant embedded small and medium power stations. We believe there is risk to ensuring embedded customers are treated fairly and equitable under the new proposed arrangements. The current proposals, along with detail as to how the ESO/DNO interface will operate is lacking at this time.</p> <p>We also believe further consideration should be given to a previous proposal which considered the option of Crown Estate to secure future leasing rounds as part of Gate 1. Such an approach could lead to a more efficient process in the co-ordinated development of offshore connections. Given the problems experienced over the past few years as a consequence of the HND process and lessons should be learned from this.</p>	
<p>Element 8: Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>We agree that it is a reasonable proposal to introduce a longstop date for Gate 1 Agreements. Whilst we welcome the proposal for NGENSO to have the discretion to extend this timeframe in certain circumstances, we would argue that such an approach will require supporting published guidance setting out the level of supporting evidence required in order to demonstrate sufficient progress is being made. Guidance on evidence required and basis upon which extension shall be granted is essential to ensure all decisions made are done so on a fair and equitable basis. Such discretion should presumably also extend to DNOs/IDNOs when managing any customers impacted by the process.</p> <p>As a leading developer of renewable projects we develop, construct and operate our sites, which means we negotiate and secure all necessary land agreements to a high standard. Consequently, this can, on occasions, mean that the timescales to conclude can take longer. It does however ensure that the project can be developed fully with all necessary land agreements in place post Gate 2. In our experience, we have seen that other developers, especially companies with no intention of constructing and operating the sites, take a different approach and will secure minimal requirements with respect to land agreements resulting in many terms requiring to be re-negotiated at a later date or the site being sold to another developer who is also likely to renegotiate the terms – this would occur post Gate 2. Whilst we support the proposed criteria, we do believe it will incentivise</p>	

<p>unhelpful behaviours by some (both landowners/ their agents and developers) to secure a hollow land right expressly to fulfil Gate 2 criteria.</p> <p>For offshore development however, 3 years may not always be sufficient without work arounds or exceptions. Given there are multiple interacting elements to this proposal, with aspects yet to be fully defined, we would suggest the approach for offshore projects is given further consideration.</p>	
<p>Element 9: Project Designation (See pages 14-15, 33-34)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>We recognise the benefits of such approach, and the need for the ESO to meet their licence obligations with respect to security of supply, system operation and the reduction of system and network constraints. The proposal to introduce the concept of Project Designation is a sensible means to facilitate their licence obligations, however the governing methodology must provide absolute clarity and transparency of the principles of how it will be applied to ensure no repeat of the problems encountered with respect to the Pathfinder Projects.</p>	
<p>Element 11: Setting out the criteria for demonstrating Gate 2 has been achieved and setting out the obligations imposed once Gate 2 has been achieved (See pages 16-21, 34-39)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>We agree that existing option agreements should not need to meet the 3-year minimum length set out in CMP434. It does not seem reasonable to expect the option agreements to be of 3 years minimum length until at least the authority decision date. It could be argued that the implementation date is more appropriate than the authority decision date as the threshold for when the 3-year minimum length applies. We do not object to the 3-year minimum length in itself, but the communication could be clearer to indicate there would only be 2 years from Gate 1 offer acceptance, until gate 2 evidence would need to be provided (as is alluded to in the consultation). We would support the principle that passing QM milestone M1 has been achieved should give sufficient evidence of project progression that a minimum option length is not required to meet Gate 2.</p> <p>The proposal is not clear however on how regularly ongoing compliance will be monitored and what the minimum requirement is on an ongoing basis – this requires further consideration and clarity in terms of any published guidance/methodology.</p> <p>We agree with the constraints noted on building outside of the red line boundary.</p> <p>We agree with there being a requirement to submit planning within a certain period of Gate 2 Offer Acceptance. Given the timescales are from gate 2 offer acceptance, the period from now until then (Dec 2025) should give the projects with existing contracts sufficient time to prepare to meet that milestone (Dec 2026 earliest). We would however reinforce the importance for further consultation with regards to the potential issue of planning lapsing due to early forward looking milestones.</p> <p>If Gate 2 criteria is ultimately not codified, there must be clear and transparent guidance on how the criteria is to be changed, how changes to the criteria would be scrutinized and how frequently the criteria is likely to be reviewed.</p>	

<p>Element 13: Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>In principle, we agree with Gate 2 Criteria Assessment, however we do have some concerns with regards to the submission of copies of option/lease agreements. The ESO must ensure that any copies of option/lease agreements submitted as evidence are held in a secure location with no ability for information to be accessible by anyone unless they have the authority to do so. This information cannot under any circumstance be made public.</p> <p>Whilst we support the use of self-certification, we would disagree with the requirement for all projects to upload supporting evidence of land documentation if only a certain % are required - these should be made available on request to minimise the administrative burden on developers, particularly during the CMP435 implementation period. We would also question the ESO's ability to resource and manage the checking process that will follow.</p> <p>Whilst the current proposal is for all projects to submit evidence, such as option/lease agreements, most lease agreements for existing projects are likely to require landowner approval prior to sharing with a third party. It may also be necessary to redact some aspect of the agreements. If we are able to share agreements, we would question if an NDA is required to be put in place to govern the exchange of sensitive data. It is also not clear at this stage if any of the documentation will require to be redacted in some areas. Depending upon the answers to these questions, this may take some time before the relevant documentation can be submitted as evidence.</p> <p>We would support the red line boundary checks and the initial step of the ESO raising a query with the applicant. However, the query should be raised with both the existing and new developer who have the overlapping red line boundaries as it may be the new applicant who has secured the land rights appropriately. We would agree with the proposal to not allow other changes to be made to the offers in the Gate 2 to Whole Queue process as this could hold up the process unnecessarily and these changes would not have been funded by the developer (as no mod-app fee at this stage). We agree that a mod-app fee should not be charged for developers moving into Gate 2 through this initial process.</p>	
<p>Element 14: Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>We do not agree with the principles set out within Element 14 with respect to the Gate 2 Offer and Project Site Location Change. Whilst we would hope such an outcome would be rare, this would present significant risk to the project and creates multiple land and planning risks. Projects cannot simply move the project to a different connection point at Gate 2 stage. If the TO becomes aware of the need likelihood of the indicative connection point changing if a project were to meet their Gate 2 criteria, the impacted developer(s) should be notified as soon as possible to allow for the impact to be fully assessed. In the event the new proposed connection point is not acceptable, this could result in the project becoming unviable. For example, if additional landowners are required and they subsequently refuse to engage. We believe such a change could lead to planning risks of moving site boundaries that could infringe on other consenting risks such as proximity to properties and other environmental constraints. The proposed period of 12 months is most likely too short in our opinion and consideration of a longer time period should be given.</p>	

<p>Element 16: Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Element 16 sets out that the CNDM should not be codified, although this is on the assumption that the Authority introduces a licence obligation for the ESO/TO to have the methodology in place and set out the processes etc for the CNDM. It is essential that this process is transparent and subject to appropriate scrutiny to ensure fairness across all projects.</p> <p>Whilst we agree with the proposal to introduce the concept of a Connections Network Design Methodology and agree this should be an Authority approved methodology. However, given the lack of detail on what the CNDM will include and what outputs it will deliver for Gate 1 studies versus Gate 2 studies, we believe this information is crucial to ensuring the final solution is robust and delivers the intended benefits. As the CNDM is linked to other elements in the proposal, and the timing of the CNDM being available remains unclear, a successful implementation it Given several other Elements are linked to the CNDM, it is unclear from the proposal how proposed implementation can succeed without a complete or significantly complete methodology.</p>	
<p>Element 19: Contractual changes (See pages 26-28, 43-46)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Provided that projects are given ample opportunity to provide gate 2 evidence, and to appeal against a decision where appropriate, we would not object to projects in the first group (do not meet gate 2) having their contracts updated without the need to sign an ATV. This would avoid unnecessary administrative burden and resources on developers and the ESO. We would support the process for the second group - highlighting the risk that issuing and signing ATVs to introduce forward looking milestones and ongoing compliance could take considerable time and could still be ongoing whilst milestone dates are passed.</p> <p>We have no objection to the process outlined for the third group. If projects are expected to pay a mod-app fee to request advancement, it would be important for the ESO to provide insight or indicative guidance on the likelihood of advancement in that geographical area. Otherwise, developers and the ESO could waste time, resources, and costs if advancement is unlikely/unrealistic.</p> <p>It is essential that projects seeking advancement receive confirmation of this opportunity (or otherwise) as early as possible to provide certainty and allow the projects to be programmed appropriately.</p> <p>We have no objection to process outlined for the 4th group.</p> <p>We believe that for projects in the 2nd group - i.e. those looking to progress to gate 2 but not seeking advancement - should expect to see their agreement updated if the landscape associated with the offer changes/improves. For example, if following a review of the new contracted background, the TO determines that there is a requirement to update the scope of works such that it would result in a change change to the levels of access/degree of firmness and/or any reduction in TORIs/ decoupling of enabling works, we believe this is a key obligation on the TOs to ensure that all agreements are updated to reflect an efficient and coordinated network. We do not believe this assessment is currently in scope for the ESO or TOs, and whilst we acknowledge the additional resource risk this places on the TOs, we believe it is In lined with their primary licence obligations.</p>	

	<p>Element 20: Cut Over arrangements (See page 28, 47)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Whilst support the requirement for a cutover period to allow the ESO and TOs to migrate to the new process, the outcomes of these derogations, which will impact on new applications and mod-apps, should be communicated to industry as early and widely as possible.</p> <p>We note however that any decision from the Authority (based on the indicative timeline) will come just ahead of the Festive Season. This leaves little time for those with existing agreements or industry to respond. It is also not clear how any required licence changes and other modifications required to enable CMP434 and or CMP435 will be delivered in order to meet a 1st January 2025 implementation.</p> <p>We have noted in our response to 434 and 435 that previous industry initiatives to address the queue (5 Point Plan, 2 Step offer, etc) did not deliver any benefits or impact to the queue. It is therefore important to consider the balance of changes being proposed and what they will deliver. We believe further consideration is required to fully address the impact of the arrangement on DNOs and their connecting customers, existing agreements with staged projects, the mechanism for return of S&Ls and capital payments.</p>		
6	<p>Are there any elements of the proposed CMP435 solution - as per Q5 - which you believe are not appropriate to include when you consider how to most effectively implement TMO4+ to projects in the existing contracted background (as opposed to the process for new applicants via CMP434)? If yes, please provide supporting justification.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Evidence of land documentation should only be uploaded to the ESO portal for projects within the sample range of checks, rather than by every project. This is to avoid significant unnecessary admin for the developers.</p>		
7	<p>In relation to Q6, are there any features which you believe are missing in the proposed CMP435 solution that would more effectively facilitate implementation of TMO4+ to the existing contracted background. If yes, please provide details and justification.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Further details of supplementary/associated processes i.e. those not being codified, is required to be published prior to the conclusion of the consultation process, to allay concerns over the items not under the scope of the modification</p>		
8	<p>Do you believe any groups of projects should be exempt from the scope of CMP435 or from some elements of the proposed solution? If so, please advise on which groups and elements and provide rationale to why.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>The aim should be for all projects to fall under the process. However, if there are a small number of a specific project type (eg. OHAs) that bring unnecessary complexity and slow down the implementation of the modification, then these could be exempt from the MVP whilst an appropriate alternative process is devised for them.</p>		
9	<p>Do you believe that the proposed solution could duly or unduly discriminate against any particular types of projects? If so, do you believe this is justified?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>We do believe there is a material risk that the proposed process could lead to the unintended consequence of discriminating on technology types and project size. For example, securing</p>		

land for a battery energy storage project is typically less onerous than that for a wind farm project, or a smaller scale solar project for example with less landowners will fair far better via the proposed process than a large windfarm capable of achieving much larger MWs, and larger net zero impact. BESS projects for example may only have 1 landowner but a typical windfarm will have circa 4-5. We have experience where projects can range from having a single landowner to one where 19 leases were required across the main site. It is clear on this basis, one project would fair more favourably under the proposals compared to others.