

## 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](mailto: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](mailto:cusc.team@nationalgrideso.com)

Respondent details	Please enter your details	
<b>Respondent name:</b>	Holly MacDonald	
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<b>Which best describes your organisation?</b>	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network Operator <input type="checkbox"/> Generator <input type="checkbox"/> Industry body <input checked="" type="checkbox"/> Interconnector	<input type="checkbox"/> Storage <input type="checkbox"/> Supplier <input type="checkbox"/> System Operator <input checked="" 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:

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;*
- Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and*

- 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	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	<div>Mark the Objectives which you believe the Original solution better facilitates:</div> <div>Original <input type="checkbox"/>A <input type="checkbox"/>B <input type="checkbox"/>C <input type="checkbox"/>D</div>
<p>It is challenging at this stage of the process to effectively comment on whether the proposed Primary Process better facilitates the Applicable Objectives of the CUSC, namely because the majority of the detail underpinning the proposals is yet to be developed. Note that the proposals at this stage do not include draft legal text, in our view this level of detail is needed to be able to present a fully formed assessment of whether the proposal better facilitates the Applicable Objectives.</p> <p><u>Objective (a)</u> Given the Primary Process is proposing changes to obligations in the licence on parties such as ESO and the relevant TO's without the legal text, it is not possible to conclude whether this this better facilitates objective (a). We are concerned that the proposal to migrate to an annual process seems to extend the process timelines, meaning developers are having to wait longer to get a connection offer in comparison to the existing process. Whilst the need to progress projects to meet net zero targets is essential, the First Ready First Connected approach should ensure not to penalise those projects which are more complex and therefore take longer to develop, and should account for projects which have strategic priority.</p> <p><u>Objective (b)</u> Given our concerns that this proposal will delay connection timelines in comparison to existing timelines, it is not possible to conclude that the proposal will better facilitate objective (b).</p> <p><u>Objective (c)</u> Neutral impact</p> <p><u>Objective (d)</u> The proposals outlined in Element 1 to migrate the detail of the Primary Process into "Methodologies", as opposed to being detailed in the code, does not appear to support the fulfilment of this objective. The efficient delivery of the Primary Process also relies upon it being well resourced, planned and managed, as batched application and assessment periods will be time and resource intensive.</p>		

2	Do you support the proposed implementation approach? (See page- 57-58)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	We are very concerned that the proposed implementation approach is setting unreasonable timeframes for projects to meet the Gate 2 criteria in order to retain their position in the queue	
3	Do you have any other comments?	
	Given the very limited timeframe for consultation, we have focussed our review and response on the individual Elements of the Modification Proposal. See below out response for details.	
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<input type="checkbox"/> Yes (the request form can be found in the <a href="#">Workgroup Consultation Section</a> ) <input checked="" type="checkbox"/> No
	Click or tap here to enter text.	

### 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 <a href="#">CMP434</a>, 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 <a href="#">CMP434</a> Proposal. Element 10 is proposed to be codified within the STC through modification <a href="#">CM095</a>.</p> <p>Please provide rationale for your answer and any suggestions for improvement to each element?</p>	
	<b>Element 1:</b> Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>We are concerned with the proposed approach to codify the “high level concept” of the Primary Process and have the detail contained within Authority approved Methodologies and supporting Guidance. Whilst we recognise the desire to find a balance between governance and flexibility, currently there is a severe lack of clarity on the level of detail being proposed for the codified high-level principles and Methodologies which means at this stage it is not possible to agree to the proposed solution.</p>	

<p>At a minimum, the essential elements of the connections process, such as timescales for submitting and receiving offers at key milestones must be codified and/or outlined in the ESO's licence, as well as the detail of what customers will receive within key documents (e.g. Gate 1 and Gate 2 offer). Otherwise there is a risk of long delays, an example being the recent HND process, whereby holding offers (akin to the Gate 1 offer) were given with an 18 month delay between that and the formal offer.</p> <p>The proposed Methodology governance process is of concern as the timelines for consultation and engagement are short and it does not allow for industry to propose Alternatives or raise own modifications. This would be a step-back from the existing arrangements under the code governance process, which allow for industry to actively engage and shape the arrangements which directly impact them as customers. It also appears to be out step with other similar industry processes, such as the Capacity Market Rules change process, where industry can raise rule changes for consideration and implementation by Ofgem.</p> <p>If a Methodology approach was to be pursued, to ensure industry is able to effectively engage and plan resources to do so it should follow an annual process for review, consultation, approval similar to the Frequency Risk and Control Report<sup>1</sup>.</p>	
<b>Element 3:</b> Clarifying which projects go through the Primary Process (See pages 10-11,29-31)	<input type="checkbox"/> Yes <input type="checkbox"/> No
No Comment	
<b>Element 5:</b> Clarifying any Primary Process differences for customer groups (See pages 11-12,32)	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>We agree with the requirement for interconnectors and offshore hybrid assets to provide the land rights for the onshore converter station as evidence. We support, the proposal in Element 19, that if interconnectors or OHAs are allocated under Gate 1 under this modification that they retain the connection point and date as per their current agreement.</p> <p>However as outlined in our response to Element 19, we are concerned with the proposal to retrospectively apply the Gate 2 criteria to existing projects in the queue.</p>	
<b>Element 8:</b> Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Agree that the 3 year long-stop dates should start from the point at which a project becomes akin to a Gate 1 contract. However as outlined in our response to Element 19, we are concerned with the proposal to retrospectively apply the Gate 2 criteria to existing projects in the queue.</p> <p>In addition, the longstop date of 3 years working effectively is primarily reliant upon ESO and the relevant TO's undertaking their roles and responsibilities adequately,</p>	

<sup>1</sup> [Frequency Risk and Control Report \(FRCR\) | ESO \(nationalgrideso.com\)](#)

<p>and in line with the required timelines and quality of offer and submission. This again reiterates the importance of these elements of the process being codified and transferred into licences, to ensure there is an effective route to hold these parties to account with respect to their obligations and duties.</p> <p>To ensure there is fair treatment of all customers, there should be clarity on the criteria that ESO considers relevant for an extension, as opposed to the high-level principles that it would be at “ESO discretion”.</p> <p>We would reiterate the concern that the process should not penalise projects which are inherently more complex and therefore may take longer to progress. Whilst we recognise the importance of a longstop date to support the progression of projects, we would be concerned if this was applied in such a way as to unfairly punish projects where development takes more time due to their complexity.</p>	
<p><b>Element 9:</b> Project Designation (See pages 14-15, 33-34)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>It is unclear from the proposal how much, under Project Designation, a project could really “accelerate” versus other projects. In order to effectively comment on this proposal, there needs to be further clarity on how a project might accelerate, for example would it be within the “batch” of projects it applies for Gate 1 or Gate 2 with? As currently described, the proposal seems to be more akin to within-batch prioritisation rather than acceleration, in that projects still need to meet Gate 1 and Gate 2 criteria, but their queue position would be prioritised in the next batch of Gate 2 batch assessment.</p> <p>It would also be helpful to clarify how frequently this may be used, through there being further details on the proposed criteria around Security of Supply, system operation, and system/network constraints. In addition, we would request further clarity on the impact any prioritization or acceleration may have on other projects, for example may it cause those projects to be delayed? Further detail is required to ensure that projects are being treated reasonably, and that any form of acceleration or prioritisation is clearly evidenced and justified.</p>	
<p><b>Element 11:</b> 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>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>We are concerned that the proposal does not offer a Gate 2 criteria exemption, or flexibility, for developers who may need to obtain land via CPO powers. It is our view that Gate 2 should allow for recognition that if a developer has moved into a CPO process, it has the powers to acquire the necessary land and has started the process, rendering it in a position to have passed the Gate 2 criteria. (Should it be helpful, we would be pleased to discuss an appropriate milestone within the CPO process that may best align for the Gate 2 test.)</p> <p>Where the Option Agreement does not meet the Gate 2 criteria, developers should be given the chance to demonstrate why the existing agreement is fit for purpose, or has a reasonable expectation to meet the criteria in the future. ESO should then act reasonably in response. We are concerned with the proposed requirement to ensure an Option Agreement must have at least a 3-year period</p>	

<p>during the development phase of the project, and the requirement for this in the proposal is unclear. It would also be helpful to confirm if this proposal to have an Option Agreement with a minimum 3-year period is only for the satisfaction of the Gate 2 criteria, or will be an enduring requirement.</p> <p>In addition, projects with existing connection agreements should not be required or expected to make changes to existing land agreements, such as Option Agreements, as this would require renegotiation with the land owners. As such, this risks land owners being able to take advantage of the developers' need to acquire land within a specific timeframe to get a connection agreement in negotiations.</p> <p><b>Compliance – Land Requirements</b> We are concerned that the current proposals, with respect to continued demonstration of the appropriate land rights, utilising the red line boundaries are unduly restrictive. It is necessary to maintain an element of flexibility through the development and planning phases, where project design alterations can impact upon red line boundaries. We would therefore suggest there is more flexibility in these proposals.</p> <p><b>Compliance – Planning</b> We are concerned that the addition of another “gate” for grid compliance will exacerbate the complexity of already complex project programmes. We also have concerns that the timescales on planning (outlined in the table on page 21) are an underestimation, particularly in reference to S.36 and DCO applications.</p>	
<p><b>Element 13:</b> Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>CMP435 states that “Within the self-declaration letter, developers can also identify if they wish to advance the current contracted connection date and if so to which connection date, if possible.” It would be helpful to clarify further what is meant by “advance”, and whether this opportunity would only be available to projects who meet the Gate 2 criteria before the proposed deadline of 21 January 2025. Further detail on how options for advancement would be identified, assessed and allocated to projects would also be required. In addition, the proposal refers to applicants paying an additional fee to be considered for advancement. However it is not clear if there is an incentive to try and seek an advancement, and pay the required fee, if there is little clarity on how this may be assessed and the likelihood of success.</p> <p>However as outlined in our response to Element 19, we are concerned with the proposal to retrospectively apply the Gate 2 criteria to existing projects in the queue.</p>	
<p><b>Element 14:</b> Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>To be able to appropriately assess Element 14, there needs to be further clarification of how projects might be impacted. It would seem this Element implies that projects have no certainty on their project connection location, capacity and connection date until after they have passed Gate 1, applied for Gate 2, and then</p>	



<p>potentially been given an Offer for a location which they have not planned for. As the annual process extends the timelines in comparison to the current process, this brings another layer of risk to the process for developers. In order to properly assess this proposal, there needs to be further clarity on what might trigger a different location to what is applied for in Gate 1, if an earlier indication could be provided to parties (for example at Gate 1) that they may be offered a different location than applied for. In addition, it is likely that 12 months is an ambitious timeline for projects to meet the Gate 2 criteria, especially if they are having to relocate to a site where they have not had any engagement with respect to land requirements to date. Again, this could also increase the risk that land owners take advantage resulting in non-reasonable negotiations, which may result in the need to utilise CPO processes. As outlined before this process takes time and are out of the developers control, risking that the developer cannot progress past Gate 1.</p>		
<b>Element 16:</b> Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)		<input type="checkbox"/> Yes <input type="checkbox"/> No
No comments		
<b>Element 19:</b> Contractual changes (See pages 26-28, 43-46)		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>We are fundamentally concerned with the proposal to apply the Gate 2 criteria to the existing queue, and as such change the contractual arrangements of developers with respect to grid connection. There appears to be no assessment of the legal feasibility of this proposal, as well as it seemingly being outside of the scope of the initial proposal for connection reform.</p> <p>Whilst we understand that the connection queue needs to be effectively managed and reduced, there are changes which have taken place, such as the introduction of Queue Management Milestones which should support the overall reduction of the queue and remove zombie projects. The proposal to retrospectively apply the Gate 2 criteria to projects with a firm connection offer/agreement, and who have already paid the relevant fees undermines the existing process, causes uncertainty and therefore risk with investors. Developers could go from having a firm connection offer, to an indicative offer at Gate 1, and have increased risk of a location change when they reach Gate 2 (unless captured under Element 5).</p> <p>In addition, there are projects which have recently been provided a connection offer following the Holistic Network Design (HND) process, and it would seem they are now having to prove compliance with the Gate 2 criteria in order to retain that offer. This is an unreasonable requirement on developers, and undermines the HND process. Consideration should be given to projects which have grid connections offers following a COIN or HND process, whereby ESO has already decided and confirmed the connection location and date, on whether these projects should be captured in Element 5 and treated differently.</p>		
<b>Element 20:</b> Cut Over arrangements (See page 28, 47)		<input type="checkbox"/> Yes <input type="checkbox"/> No
Click or tap here to enter text.		
6	Are there any elements of the proposed CMP435 solution - as per Q5 - which you believe are not appropriate to include when you	<input type="checkbox"/> Yes <input type="checkbox"/> No

	<p>consider how to most effectively implement TMO4+ to projects in the existing contracted background (as opposed to the process for new applicants via <a href="#">CMP434</a>)? If yes, please provide supporting justification.</p>	
	<p>As outlined in our response to Element 19, we are fundamentally concerned with the proposal to apply the Gate 2 criteria to the existing queue, and as such change the contractual arrangements of developers with respect to grid connection. There appears to be no assessment of the legal feasibility of this proposal, as well as it seemingly being outside of the scope of the initial proposal for connection reform. Whilst we understand that the connection queue needs to be effectively managed and reduced, there are changes which have taken place, such as the introduction of Queue Management Milestones which should support the overall reduction of the queue and remove zombie projects. The proposal to retrospectively apply the Gate 2 criteria to projects with a firm connection offer/agreement, and who have already paid the relevant fees undermines the existing process, causes uncertainty and therefore risk with investors. Developers could go from having a firm connection offer, to an indicative offer at Gate 1, and have increased risk of a location change when they reach Gate 2 (unless captured under Element 5).</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>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</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> <p>As discussed in our response to Element 19, we are fundamentally concerned with the proposal to apply the Gate 2 criteria to the existing queue, and as such change the contractual arrangements of developers with respect to grid connection. There appears to be no assessment of the legal feasibility of this proposal, as well as it seemingly being outside of the scope of the initial proposal for connection reform.</p> <p>Whilst we understand that the connection queue needs to be effectively managed and reduced, there are changes which have taken place, such as the introduction of Queue Management Milestones which should support the overall reduction of the queue and remove zombie projects. The proposal to retrospectively apply the Gate 2 criteria to projects with a firm connection offer/agreement, and who have already paid the relevant fees undermines the existing process, causes uncertainty and therefore risk with investors. Developers could go from having a firm connection offer, to an indicative offer at Gate 1, and have increased risk of a location change when they reach Gate 2 (unless captured under Element 5).</p> <p>In addition, there are projects which have recently been provided a connection offer following the Holistic Network Design (HND) process, and it would seem they are now having to prove compliance with the Gate 2 criteria in order to retain that</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>



	offer. This is an unreasonable requirement on developers, and undermines the HND process. Consideration should be given to projects which have grid connections offers following a COIN or HND process, whereby ESO has already decided and confirmed the connection location and date, on whether these projects should be captured in Element 5 and treated differently.	
9	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?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Click or tap here to enter text.		