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Code Administrator 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@nationalenergyso.com by **5pm GMT on 26 November 2024**. Please note that any responses received after the deadline or sent to a different email address will not be accepted.

Please be aware that late responses will not be accepted.

If you have any queries on the content of this consultation, please contact elana.byrne@nationalenergyso.com and catia.gomes@nationalenergyso.com or cusc.team@nationalenergyso.com

| Respondent details | Please enter your details | |
|--|---|--|
| Respondent name: | Garth Graham | |
| Company name: | SSE Generation | |
| Email address: | Garth.graham@sse.com | |
| Phone number: | 01738 456000 | |
| 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 checked="" 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 Panel or the industry for further consideration)

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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.*

Please express your views in the right-hand side of the table below, including your rationale.

| Standard Code Administrator Consultation questions | | |
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| 1 | Please provide your assessment for the proposed solution(s) against the Applicable Objectives? | Mark the Objectives which you believe the proposed solution(s) better facilitates: |
| | | Original <input checked="" type="checkbox"/> a <input checked="" type="checkbox"/> b <input type="checkbox"/> c <input checked="" type="checkbox"/> d |
| | | WACM1 <input checked="" type="checkbox"/> a <input checked="" type="checkbox"/> b <input type="checkbox"/> c <input checked="" type="checkbox"/> d |
| | | <p>[a]</p> <p>We broadly agree with the Proposer's assessment that the Original proposal (from the NESO) does better facilitate Applicable Objective (a) as this change will; when the Transmission Licence is changed (which, as we understand it, will occur in due course, and in any event at the same time as or before this proposal is approved by the Authority); ensure the efficient discharging by the NESO of its obligations. WACM1, as it is based upon the Original, likewise better facilitates Applicable Objective (a).</p> <p>[b]</p> <p>We broadly agree with the Proposer's assessment that the Original better facilitates Applicable Objective (b) as it should, in principle, facilitate connection for readier and more viable projects which, therefore, should enhance effective competition. WACM1, as it is based upon the</p> |

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| | | <p>Original, likewise better facilitates Applicable Objective (b). However, by adding the 'pause' to allow market participants to consider the information (and act in a more efficient and effective manner) then this means that the WACM1 is better, than the Original, in terms of Applicable Objective (b).</p> <p>[c]</p> <p>In our view there is a degree of legal uncertainty regarding the approach that is proposed to be followed within the Original (and WACM1); in terms of the need for the terms and conditions for connection to be approved by the Authority; which the proposed approach, with the 'Methodologies', does not align with.</p> <p>In this regard we are also mindful that these concerns, around legal uncertainty, have been recognised by DESNZ and Ofgem in their 5th November joint letter (as well as in a Utility Week article last Friday "Ofgem chair: We may need legislation to ward off legal challenges to connections reform") which stated that DESNZ planned to introduce legislation as this "should provide certainty to all parties on the direction of travel for connections". (Aligning grid connections with strategic plans)</p> <p>This is something we would welcome as it should; within the context and limitations of the general legal requirement set out within, for example, (i) the Trade & Cooperation Agreement and (ii) wider international treaty obligations for investors (such as those pertaining to property rights with Article 1 of the First Protocol of the European Convention on Human Rights); ensure that the CMP435 Original proposal (and WACM1) conforms with the wider legally framework.</p> <p><u>if</u> the legislation is not put into effect then there is a heightened risk that CMP435 Original (and WACM1) is <u>not</u> in compliance with the Electricity Regulation and the relevant legally binding decisions of the European Commission and / or ACER – and <u>if</u> this were so, then CMP435 Original and WACM1 would not better facilitate Applicable Objective (c).</p> <p>[d]</p> <p>We broadly agree with the Proposer's assessment that the Original better facilitates Applicable Objective (d) as the greater coordination of network designs (which the batched assessment approach, via the windows mechanism,</p> |
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| | | <p>achieves) should result in a more efficient administration of the connection agreements, as set out within the overall CUSC arrangements. WACM1, as it is based upon the Original, likewise better facilitates Applicable Objective (d). However, by adding the 'pause' to allow market participants to consider the information (and act in a more efficient and effective manner) then this means that the WACM1 is better, than the Original, in terms of Applicable Objective (d).</p> |
| 2 | <p>Do you have a preferred proposed solution?</p> | <p><input type="checkbox"/> Original</p> <p><input checked="" type="checkbox"/> WACM1</p> <p><input type="checkbox"/> Baseline</p> <p><input type="checkbox"/> No preference</p> |
| | | <p>In our view there is merit in having a short pause within the process to allow for market participants to assess their status; regarding the likelihood of receiving either a Gate 1 or a Gate 2 Offer; prior to the NESO and TOs progressing with their more detailed evaluation as part of the batched assessment process. In this way WACM1 will reduce the level of nugatory work undertaken by the NESO and TOs (as well as projects that, absent this pause, would have 'progressed'...to 'nowhere'...which could be avoided if the WACM1 element is taken forward to implementation).</p> <p>Therefore, in light of the positive attributes in WACM1, our view is that WACM1 does better facilitate Applicable Objectives (a) and (b) and (d) and is preferred over the Original (which, in turn, is preferred over the Baseline).</p> |
| 3 | <p>Do you support the proposed implementation approach?</p> | <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> |
| | | <p>We support the proposed implementation approach, in regards to CMP435, as set out on pages 91-93 of the consultation document.</p> <p>However, we are mindful of the legal uncertainty aspects (noted in our answer to Q1 [c] above) that have been both discussed in Workgroup meetings and in some of the</p> |

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| | | <p>response to the Workgroup consultation in July which could, if they were to materialise, impede the overall proposed implementation approach; be that in terms of the application window through to the Gate 2 offer acceptances; from spring 2025 to winter 2025 (or even beyond?).</p> |
| 4 | <p>Do you have any other comments?</p> | <p>We have two additional comments.</p> <p><u>Capital contributions</u></p> <p>We note the Workgroup deliberations (as set out on pages 77-78 of the consultation document) on this matter and, in particular, the following:</p> <p><i>“Following initial discussions with the TOs, the Proposer gave an update that they were assessing the size of the challenge to know how to tackle it to avoid double-charging of Capital Contributions. Until all information is gathered on parties who have not met the Gate 2 criteria, the Proposer and TOs are currently unable to assess the scale of this potential issue, so a modification in 2025 may be suitable to address it.”</i></p> <p>In our view it will be very important to address (with alacrity) this matter, of refunding any capital contributions where an existing project is provided with a Gate 1 Offer, to ensure that those parties are not unduly impacted and not subject to, in effect, a non-cost reflective charge (if a refund was not to be provided where the associated assets are used (re-used?) for other projects / purposes).</p> <p><u>Transparency</u></p> <p>We note that there have been a number of examples, within the consultation document, where the NESO could have embraced the views of Workgroup members and accepted the recommendations of the joint DESNZ/Ofgem Energy Data Taskforce for greater energy data transparency.</p> <p>It is therefore regrettable that the NESO has chosen not to embrace the demonstrable benefits; as set out by the</p> |

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| | <p>Energy Minister at the time¹; from energy data transparency, in terms of a better electricity network outcomes and lower costs to consumers.</p> <p>For example, as per footnote 14 (page 17 in the consultation document) the NESO does <u>not</u> intend to publish the planning timescale for novel technologies (or, indeed, nuclear) once the NESO has determined those timescales.</p> <p>Therefore, any future projects, that follow ‘<i>the first in class</i>’, of a novel technology will be unaware of what the applicable planning timescales are which the NESO (exercising, as it must, according to the CUSC ‘Good Industry Practice’) will be applying to those later projects.</p> <p>Another example relates to designated projects. As noted on page 36 (in the consultation document):</p> <p><i>“The Workgroup expressed that they would want to see the list of designated projects published, with a Workgroup member suggesting that a rationale for rejected projects should also be publicly available. The Proposer confirmed that the list of designated projects could potentially be published as part of the CMP435 original solution. The Proposer confirmed that the rationale for rejected projects designated could potentially be published as part of the CMP435 original solution. However, at the time this report was published, <u>the Original proposal does not include any requirement on NESO to publish either the list of designated projects or the rationale for each project’s rejection of being designated.</u>” [emphasis added]</i></p> <p>The lack of transparency; around which projects have been designated (and why) as well as the NESO’s reasoning for the rejection of a project; will result in at least three (and possibly more) of the 12 <u>benefits</u> of energy data transparency (identified by the Taskforce) <u>not</u> being realised, namely:</p> |
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¹ From the Energy Minister’s Forward to the Energy Data Taskforce report: “Data is fundamental to the future of our economy, which is why it is the focus of one of the Grand Challenges in our Modern Industrial Strategy. In the power sector, it is the key to unlocking system and consumer benefits and managing the fast approaching challenges of flexibility, resilience and costs in the most efficient way”.

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| | | <p><i>“(x) Opening the system to new markets and better price discovery, (xi) Data visibility creates opportunity for all, and (xii) Attracting new players to the sector.”</i></p> <p>Furthermore, this lack (on the part of the NESO) of embracing the ‘presumption of openness’ approach to energy data transparency, in terms of connection matters, will mean that the <u>detrimental effects</u>; as summarised by the Energy Data Taskforce: will be seen in the GB electricity market, namely; (a) Slower more expensive transformation, (b) Fragmented datasets reducing efficiency, (c) Increased risk to system stability, and (d) Reduced innovation.</p> <p>It also means, as the Energy Data Taskforce identified, that: <i>“[t]he value of data is not being maximised: innovation is being stifled, the system is less efficient, and the consumer is worse off”</i>.</p> <p>In summary, this lack of ambition (on the part of the NESO) towards energy data transparency, with this CMP435 proposal, is a ‘missed opportunity’.</p> |
| 5 | <p>Do you agree with the Workgroup’s assessment that the modification does not impact the Electricity Balancing Regulation (EBR) Article 18 terms and conditions held within the CUSC?</p> | <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Yes, we agree with the Workgroup’s assessment that the modification does not impact the Electricity Balancing Regulation (EBR) Article 18 matters held within the CUSC; although, as per our answer to Question 1, there are concerns as to the impacts; in respect of the legal certainty for this proposed change; around the terms and conditions for connection as set out in the Third Package and the associated Network Codes related to the connection of generation, demand and HVDC assets.</p> |