

**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>	Vladimir Temerko	
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<b>Phone number:</b>	Click or tap here to enter text.	
<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 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?	<p>Mark the Objectives which you believe the Original solution better facilitates:</p> <p>Original <input type="checkbox"/>A <input checked="" type="checkbox"/>B <input type="checkbox"/>C <input checked="" type="checkbox"/>D</p> <p>We believe the proposal facilitates Applicable CUSC Objectives B and D (listed in page 56 of the consultation) as follows;</p> <ul style="list-style-type: none"> <li>ACO B – A reformed connections process should be effective in facilitating competition in the generation of electricity by ensuring that the principle of ‘first ready, first connected’ is implemented and so allow progressing projects to connect. This will in turn increase liquidity and competition in the generation market.</li> <li>ACO D – The reformed process should increase efficiency of the connections process by allowing the creation of a coordinated network design and allowing resources to focus on projects most likely to connect.</li> </ul>
2	Do you support the proposed implementation approach? (See page- 57-58)	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>We support the implementation approach proposed in respect of projects in scope of CMP435 however we note that the timescales involved in implementation are challenging. We would encourage ESO to be forthright with any prospective delay risk to ensure industry is aware and the solution is not rushed and poorly implemented.</p>
3	<p>Do you have any other comments?</p> <p>The responses to this consultation should be read in conjunction with AQUIND Limited consultation response to CMP434.</p>	
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<p><input type="checkbox"/>Yes (the request form can be found in the <a href="#">Workgroup Consultation Section</a>) <input type="checkbox"/>No</p> <p>To be confirmed based upon any refinements to the ESO's solution from this consultation.</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 <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>
<p><b>Element 1:</b> Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>In addition to our comments from CMP434, we believe it should be clarified by ESO as soon as possible how these methodologies will be developed, reviewed by industry and approved by Ofgem for the planned implementation date.</p>	
<p><b>Element 3:</b> Clarifying which projects go through the Primary Process (See pages 10-11,29-31)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>There are no additional comments from our CMP434 consultation response</p>	
<p><b>Element 5:</b> 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>Our consultation response to CMP434 captures the majority of our concerns but we have the additional points to raise in respect to CMP435.</p> <p>Any changes to the ESO's proposal needs to be clarified as soon as possible to allow developers to gather the required information to justify receiving a Gate 2 offer. Failure to do this could result in significant risks to projects who have put significant time and money in to progressing projects based on a contract which could be, in effect, withdrawn.</p>	
<p><b>Element 8:</b> Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>There are no additional comments from our CMP434 consultation response</p>	
<p><b>Element 9:</b> Project Designation (See pages 14-15, 33-34)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>No comments</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 <input checked="" type="checkbox"/> No</p>	
<p>Building on our response in CMP434, the objective of the proposed connections reform and the Gate 1 and 2 approach is to encourage timely delivery of projects and prompt applications for planning consent. Any existing project that has applied for the planning</p>	

consent at the go-live date should not be subjected to Gate 1 and Gate 2 of the Primary Process. The reasons for this are:

- 1) The project has already fulfilled the stated objectives of the connection reform by applying for a planning consent. This means that such project has already undertaken significant level of work preparing a planning application on the basis of the existing contractual arrangements with the ESO, and that includes certainty around connection location and capacity.
- 2) Different developers may have different approaches to securing land rights. Some may apply for a planning consent under a Town and Country Planning Association (TCPA) regime without having secured all land rights for one reason or another, and seek a CPO in relation to land rights required following the grant of consent. Other developers may apply for a DCO and associated CPO powers within that Order. It is typical under the DCO regime that not all land rights are secured before the application is made and that those are secured within the DCO, to some extent, in addition to other relevant statutory approvals. Indeed, many landowners knowing that the applicant is following DCO regime may prefer to wait until the application and CPO power are granted before finalising land negotiations (e.g. to save money or in cases where a project is contentious and could create issues for individuals who are seen to be supportive in the face of objection groups). The ESO proposals require developers seeking a DCO to secure land rights (land rights for the converter station in case of interconnector) to pass the Gate 2 Criteria. A project requires the certainty of Gate 2 to be capable of making the necessary investment to undertake the necessary surveys and assessments to support the application materials required and to produce those, as well as to be capable of engaging with communities and stakeholders on a project with a necessary certain footing. The requirement for land rights to have been secured would mean that an applicant could not with confidence undertake those processes without having secured those, and this would effectively remove the essential benefit of this necessary statutory right to obtain compulsory acquisition for the most significant (and often controversial) projects from all project proposers. This would fundamentally undermine the way planning regime works in GB, including particularly in respect of the consideration of alternatives in the planning context which is more particularly explained in our response on CMP434. It should be noted before an application for a DCO can be made, a developer will be working on a project for significant periods, possibly years, undertaking project optioneering alongside discussions with the ESO on a connection location (which will be hard-wired in the application). In respect of such major projects of national significance this requires investment of millions of pounds and the undertaking of extensive multi-disciplinary assessment, including terrestrial and marine surveys. To finance such work investors require confidence that the key parameters of the project, connection to the grid being one of them, are not likely to be subject to change and that this is a matter which they have a reasonable degree of control in respect of. Therefore, as a result of this proposal for the ESO to seek to retrospectively recall connection from a well progressed project at no fault of its own can significantly undermine ongoing planning considerations at critical consent stages and breach legitimate expectations. This will also undermine investors' confidence in GB when it can be perceived that multi-million

	<p>investments can be at a significant risk at any moment of time by changes of rules by the ESO.</p> <p>3) From an administrative perspective, it is far simpler, quicker and more robust to check if projects have submitted their respective planning application, including seeking the necessary compulsory acquisition powers or having outlined their clear intention to do so (for TCPA 1990 projects only) than review declarations that have secured their land rights. We accept that as part of the enduring process (CMP434) declarations should be provided and reviewed to proof land rights but for CMP435, we question the benefit this will add compared to the time/effort needed.</p>	
	<b>Element 13: Gate 2 Criteria Evidence Assessment</b> (See pages 22-23, 39-40)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	There are no additional comments from our CMP434 consultation response	
	<b>Element 14: Gate 2 Offer and Project Site Location Change</b> (See pages 23-24, 40-41)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	There are no additional comments from our CMP434 consultation response	
	<b>Element 16: Introducing the proposed Connections Network Design Methodology (CNDM)</b> (See pages 24-25, 41-42)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	There are no additional comments from our CMP434 consultation response	
	<b>Element 19: Contractual changes</b> (See pages 26-28, 43-46)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Notwithstanding our previous comments on the Gate 2 criteria, we agree with the 4 broad contracting groups in element 19 and how existing contracts will be updated based on evidence provided.	
	<b>Element 20: Cut Over arrangements</b> (See page 28, 47)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>We agree with the general need for a transition period between the current and proposed processes however we believe ESO should urgently clarify further details of the cutover arrangements, for example.</p> <ol style="list-style-type: none"> <li>1. Will this apply to all modifications, including non-significant modifications (novations, etc)?</li> <li>2. How will invoices due for payment between now and developers receiving revised Gate 2 offers be managed?</li> <li>3. Will historic payments (including User Commitment) that are no longer required be returned to developers? In what instances will/won't this happen?</li> </ol>	
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 <a href="#">CMP434</a>)?</p> <p>If yes, please provide supporting justification.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Not that we are aware of.	

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.</p> <p>If yes, please provide details and justification.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>Not that we are aware of.</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>While we do not believe any projects should be exempt from the scope of CMP435, we do believe that elements of the scope need to change to reflect different technologies and associated planning processes. This includes changing the requirements for Gate 2 progression (Discussed in Elements 5 and 11) and the length of the Gate 1 longstop date (discussed in Element 8).</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>We do not believe any projects should be discriminated against. However, in the proposal's current form the Gate 2 requirement of securing land rights before a DCO application undermines NSIP developer's statutory rights in progressing planning consent. This is discussed in Element 11 here and in CMP434 consultation response.</p>		