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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](mailto: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](mailto:elana.byrne@nationalenergyso.com) and [catia.gomes@nationalenergyso.com](mailto:catia.gomes@nationalenergyso.com) or [cusc.team@nationalenergyso.com](mailto:cusc.team@nationalenergyso.com)

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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 checked="" type="checkbox"/> Generator <input type="checkbox"/> Industry body <input type="checkbox"/> Interconnector	<input checked="" type="checkbox"/> Storage <input checked="" 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		
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 type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d
		WACM1 <input type="checkbox"/> a <input checked="" type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d
		<p><b>Summary</b></p> <p>We consider the original proposal as negative against both ACO (c) and (d); neutral against ACO (a) and we are unable to form a judgement against ACO(b). In common with CMP434, the detailed obligation and process are outside of the code in draft methodologies. This increases the level of complexity and potential for conflicting provisions. In our opinion this division has resulted in differences in scope between the development of CMP435 and the draft methodologies.</p> <p>The stated scope and intent of CMP435 is that projects in the final steps of connection were to be out of scope of the primary process. Following draft publication of the methodologies, this</p>

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		<p>appears not to be the case. Such projects are brought within scope through the draft methodologies contradicting the scope and intent of CMP435.</p> <p>The WACM1 may have some merit in that it enables the market to self-correct by introducing a pause after initial evaluation by networks. However, it maintains the inherent defect and contradictions of the original proposal with the methodologies.</p> <p>We also note that a project requesting advancement will be at risk of losing its existing place in the connection queue. This change was only clarified towards the end of the process by the proposer. With this important clarification it is now clear that projects cannot be accelerated without losing any existing connection commitment the NESO and relevant TO have already agreed. This is counter to the objective of the proposal to <i>'reduce the current queue so that viable projects can be connected more quickly and so that the benefits of our proposed Connections Reform model can be delivered earlier.'</i></p> <p><b>General points</b></p> <p>We support connections reform where there is evidence it can further the applicable objectives and is consistent with these principles:</p> <ul style="list-style-type: none"> <li>• Ensures firm capacity rights and the integrity of developments that are substantially constructed are not put at risk.</li> <li>• Does not <i>unduly</i> increase barriers to project development.</li> <li>• Does not increase overall the complexity of the connection process.</li> </ul> <p>As workgroups have progressed, we have become concerned that the modifications are not addressing the specific defect. We have also grown concerned that the approach taken has created further uncertainty for in-flight developments that are already in the construction phase having met land rights, planning consent, built assets and agreed firm capacity and specific connection dates. Continued progression of these projects now appears to be at risk if developments are not connected prior to Q2 2025.</p> <p><b>Assessment</b></p> <p>Against ACO (a), very little evidence has been submitted as to how the approach will materially impact projects and investments. It was encouraging that the RFI data that the</p>
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		<p>workgroup asked for was presented by the NESO, however, debate or assessment of the original proposal against the RFI data was not facilitated within workgroup. Therefore, the outcome for ACO(a) is Neutral.</p> <p>For ACO (b), the competition assessment was focussed on the impact from a procedural and modelling basis for the NESO, DNO's and TO's. In contrast, there has been limited quantitative analysis or assessment of the impact on competition for market participants. There has been little consideration of the potential distortion of competition and if that distortion is warranted or not. Without quantitative evidence and assessment, the original proposal cannot properly be assessed against ACO(b). It is not clear if any distortion because of the code modification and proposed approach is merited and proportionate.</p> <p>For ACO(c), there is a potential legal issue as the applicable terms and conditions are not clear given the contradiction identified between the draft methodologies and the scope and intent of CMP435. Given that, our assessment of CMP435 against ACO(c) is negative.</p> <p>We also consider it to be negative against ACO(d) for the same reason as ACO(c), noting that the approach increases complexity and the potential for conflicts of this nature. This can result in costly and unintended detrimental consequences and the risk of successful legal challenge.</p>
2	Do you have a preferred proposed solution?	<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>If Ofgem is to implement a version of CMP435, then we would prefer WACM1. We think that there are significant issues and conflicts between CMP435 and the draft methodologies. These could be addressed by codifying and altering the methodologies, and/or changes to CMP435. NESO could also change the methodologies to match the scope and intent of CMP435, though this can only be done by NESO. A final alternative is an urgent modification to re-establish the scope, and to specifically exclude</p>

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		those projects about to connect from the process as was originally intended.
3	Do you support the proposed implementation approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		<p>The implementation approach chosen is complex with multiple interdependencies between separate CUSC modifications, methodologies, licence changes and potentially additional legislative changes required (Ref. <a href="#">Open letter from DESNZ and Ofgem: Aligning grid connections with strategic plans (5 November 2024) - GOV.UK</a>). As we have highlighted, our initial assessment of the draft methodologies indicates there are substantive and material conflicts between the scope, purpose and intent of CMP435 and the methodologies.</p>
4	Do you have any other comments?	<p>The CUSC modifications are not mutually exclusive. CMP435 and CMP434 are intrinsically linked and are interdependent on each other, as well as the supporting methodologies. We are not aware of any other code proposal where this level of interdependence across modifications, and complex dependence on rules and obligations outside of CUSC, has been approved by Ofgem outside of a Significant Code Review. We also note that the draft methodologies were published on the 5<sup>th</sup> November and we have yet to complete a full analysis of conflicting provisions. Moreover, the methodologies are a series of presentations rather than legal text, so it is unclear what status they have in relation to the provisions of a contract and the terms and conditions for connection.</p> <p>We finally note that a couple of votes on more substantive alternatives in both CMP434 and CMP435 were close to a hung vote, and that the code administrator has chosen not to progress these. We were surprised by this action as it appears inconsistent with the approach taken in other workgroups.</p>

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5	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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		Yes, we agree with that assessment, but note that it may not comply with other legislation including retained law, as is highlighted in the Consultation report ( <a href="#">p65</a> ) related to having clear approved terms and conditions for connections.