

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:	Claire Hynes & Tim Ellingham	
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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	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	Mark the Objectives which you believe the Original solution better facilitates:
		Original <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D
<p>Objective A and D - Positive</p> <p>This code change will reorder the connection queue based on the principles of <i>'first ready, first served'</i> which we consider will improve the efficiency of the implementation and administration of the CUSC arrangements. The reordered connection queue will place the ESO in a more informed position when offering terms for connecting projects under its transmission licence.</p> <p>Objective B – Negative</p> <p>The ESO is seeking to move to a <i>'First ready, first served'</i> connection process. If the new gated connection process produces the alignment of more progressed projects being connected more quickly then it will produce a more efficient system based on the competition incentives to be first ready to connect.</p> <p>NESO's designation of projects methodology is proposed under three extremely loose definitions that are subject to interpretation. This creates a greater potential for falling foul of the obligation to facilitate effective competition. We encourage the ESO to tighten the definitions proposed.</p> <p>If the authority approved methodologies (NESO Designation, Gate 2 Methodology and CNDM) sit outside of the code and if the remit is expanded then should there be any competition issues between different technology types, a governance process will have been introduced that leaves the developer without an appeal process or the ability of a developer to raise a change. We therefore consider that depending on the development of the remainder of this change, there is a possibility of this proposal not facilitating effective competition and in fact embedding a governance process that is more likely to deliver this outcome.</p> <p>In the round, this proposal better facilitate the objectives.</p>		
2	Do you support the proposed implementation approach? (See page- 57-58)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		Yes, we agree with the implementation approach so long as it provides sufficient notice to developers to submit the agreed evidence determining whether the

	projects has a connection queue position and that the quality of the solution has not suffered due to the expedited timetable.	
3	Do you have any other comments? n/a	
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 Workgroup Consultation Section) <input checked="" type="checkbox"/> No
	Please see response to CMP434.	

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>	
	<p>Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<p>There are three methodologies being proposed by the ESO to be placed in Authority approved methodologies which sit outside of the CUSC with separate governance, namely NESO Designation for priority projects (giving the ESO complete control over capacity reallocation), Connection Network Design Methodology (CNDM) (Gate 1 indicative connection offers) and the Gate 2 Methodology (gives the ESO complete control over reordering the connection queue). We understand that the ESO is also not ruling out placing new obligations into the methodology that are not contained in the CUSC.</p> <p>These documents give the ESO an unprecedented level of control over the makeup of the connection queue, whilst leaving developers little/no input into a methodology which significantly affects their projects. This relative imbalance of power is likely to create unnecessary additional risk in project development, which inevitably translates to increased consumer cost.</p> <p>From a legal perspective, we consider that the use of guidance to implement the methodology proposals rather than via the code is problematic. Strictly, guidance itself cannot impose enforceable obligations on a party in the same way as an obligation under statute/code or contract. There would need to be a legal mechanism by which adherence to/compliance with the guidance was made</p>	

<p>binding on parties. We are further concerned that should the guidance be written in such a way that it could give rise to a disadvantage for a particular project in certain circumstances, ordinarily a party would have the ability to utilise mechanisms under the code to make a change or appeal which would no longer be the case if it did not sit under open governance. Given the short timeframes to develop this solution, there is a real risk that a hastily drafted document that can change at the ESO's will, can result in a project having to change its entire strategy. As a result, we believe the use of guidance in lieu of the CUSC is entirely inappropriate – adding unnecessary risk and consumer cost.</p> <p>This proposal is an unwelcome departure from the purpose of code reform to simplify the codes and to set up a best practice overarching governance framework for code managers. We consider that all obligations should sit within the industry code and the guidance notes should provide a practical explanation on how it applies to different technology types. For new entrants to the market, we consider the proposed approach to not be transparent if there is not an obligation in the code to direct the new entrant to the relevant guidance. In fact, this new connection process with it's myriad of guidance documents is creating increased complexity and may act as a barrier to market entrants. Furthermore, the consolidation of both the DCUSA and the CUSC under code reform, will provide a unique opportunity for a whole system connection management process to be introduced to these combined codes that could be essential to the future work being undertaken by NESO as the FSO.</p> <p>We are keen for the detail behind the three methodologies and guidance documents to be in place in time for the issuing of the code administrator consultation to allow parties to comment on the detailed final solution. If the ESO does not change its approach following consideration of the workgroup consultation responses, taking in to consideration the expedited timescales, we will consider raising a code modification to place an obligation on the ESO to implement the obligations in to the CUSC within a specified timeframe which should allow the ESO sufficient time to develop their solution.</p>	
<p>Element 3: 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>We are supportive of the scope of projects outlined to go through the Gate 2 to whole queue process.</p>	
<p>Element 5: Clarifying any Primary Process differences for customer groups (See pages 11-12,32)</p>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>We recognise the differences in the application of the primary process for these customer types. We recommend that the ESO connection reform team work closely with their colleagues on the Celtic Sea project to ensure that a consistent message is being provided as these projects will lose their connection queue position prior to the sea bed auction.</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>RWE agrees with the proposal for a longstop date of 3 years from Gate 1 acceptance for directly connected projects to submit land rights at Gate 2 or be removed from the connection queue.</p> <p>However, this approach should be mindful of offshore wind projects such as those subject to the Celtic Sea design which have not yet gone through the auction for the sea bed lease. Those that are successful at the auction would have a foreshortened negotiating time with the Crown Estate for the Agreement for Lease (AfL) as this can only occur after the auction. In this scenario, we would expect the ESO to be allowed to show some form of discretion should the negotiations take slightly longer.</p> <p>The introduction of a longstop date provides landowners with a negotiation strategy where they can withhold agreements until close to the deadline to increase the price of the land they are selling. This policy may have long term consequences for the cost of the project and ultimately for the cost to the consumer. It is also worth noting that projects pursuing the use of compulsory purchase orders will be able to meet this burden of proof more easily than those negotiating with multiple landowners for their small scale project that do not hold a generation licence and therefore do not have the luxury of compulsory purchase powers. This would include projects that are less than 50 MW and any projects that are 50 -100 MW that are subject to a licence exemption.</p>	
<p>Element 9: Project Designation (See pages 14-15, 33-34)</p>	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p>
<p>Under the reform of the transmission connection process, the ESO is looking to propose three new definitions to be added to Section 11 of the CUSC under the <i>'Interactivity Policy'</i> to allow the ESO to give the projects that meet these definitions (Security of Supply, Materially Reduce System/ Network Constraints and Critical to System Operation) the first right to refusal for an advanced connection date.</p> <p>We consider that the definitions proposed are too open to interpretation and recommend that a tighter more granular definition is defined.</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>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>Gate 2 criteria that is not applied to projects that are already able to demonstrate having met connection queue milestone one <i>'submit planning consent'</i> and any of the milestones above, appears to be a very practical solution. This approach could also help to minimise the administration of an effective reordering of the connection queue in a concentrated period of time. This is as long as developers have already received an updated agreement containing their connection queue milestones and are in a position to load the evidence for meeting those milestones on to the Connect Now portal ahead of the approval of this change and in line with the already implemented CMP376.</p> <p>There was some discussion at an ESO Customer Seminar about waiting to apply an agreement to vary (atv) to contracts to introduce connection queue milestones</p>	

<p>until after the reordering of the connection queue. We would be grateful if the ESO could shed some light on the approach being taken?</p> <p>We consider that connection queue milestone one should be retained as calculated backwards from the construction completion date which is more reflective of the development of a project. We have set out a series of reasons for this view below:</p> <p>This forward calculation is not reflective of the development lifecycle of a project in the same way that existing connection queue milestone 1 is when calculated backwards from the construction completion date. The ESOs 2 year proposal conflicts with the length of time required for surveys which for NSIP projects, alone are required to run for two years. A developer is unable to do meaningful work on a cable route design unless they know the cable route which may be up to 50km in length. Developers need to design around the optimal route before contracting for surveys which will need to go around aspects such as environmental areas of interest, housing.... The surveys are seasonal so the developer may have to wait 6 months before they can survey and the lead in time can be longer due to the limited number of specialists that can carry out the survey.</p> <p>We also do not consider that there is any great benefit to be gained from separating out the timescales for the different planning regimes as the time taken will also differ by technology. For example, a solar project is likely to take less time than an offshore wind project. Also Section 36 is the Scottish equivalent of an NSIP/ DCO and we do not understand why a different timeframe of one year is applied to this process and three years to the NSIP process in England and Wales. It would be overly administrative as the timescales proposed would be consistently breached.</p> <p>There is a risk in asking a project to submit and agree planning consent too early in the projects lifecycle that the planning consent is no longer valid for the wind farm the project is finally looking to build. For example, if consent has been given for smaller wind turbines whose technology and size has been surpassed. The wind farm then requires a greater number of wind turbines to be placed on the sea bed than is necessary so there could be greater environmental impacts. This proposal could embed a connection process that causes a less efficient wind farm to be built and the costs for that would likely be passed on to the consumer.</p> <p>We consider the ESOs proposal in this instance to be a misunderstanding of the development life cycle of a project and that the longstop date for compliance would be better served by the deadline being calculated in line with connection queue milestone one.</p>	
<p>Element 13: Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)</p>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>We are supportive of the Gate 2 criteria proposed subject to the initiating planning consent milestone one continuing to be calculated backwards from the construction completion date rather than forward from contract acceptance.</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>For projects with an indicative connection date from a Gate 1 transition offer that are provided with a connection location at Gate 2 that is not suitable for the project, the ESO is proposing to allow the project to adjust its project site location to better align with the new connection location. Our view is that the ESO should aim to provide a connection location that is suitable for the project as an onshore wind project would not be able to change site within a 12 month period, let alone negotiate for the land in that timeframe. We would be uncomfortable with this being considered a standard approach as the siting of an onshore wind project is governed by the speed of the wind and maximising the output of the windfarm farm not by where the substation is located. However, we appreciate the intention of providing flexibility under this proposal but we do not consider it to be practical. It does not change the status quo as a project that has not signed a Gate 2 connection offer will just fall away as part of this process.</p>	
<p>Element 16: Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)</p>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>We are supportive of the development of the CNDM but consider that it should sit under open governance arrangements under the CUSC and not under a transmission licence. Please see our response to Element 1.</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>We have noted the proposed contractual change arrangements.</p>	
<p>Element 20: Cut Over arrangements (See page 28, 47)</p>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>The transition process has been subject to changes in it's proposal over the last few months with contract modification applications no longer being required to go through a separate process following completion of competency checks on/by the 31st of July. We note the process as set out in CMP435 and encourage the ESO to provide a clear indication of the final agreed transition process with Ofgem as soon as possible as it is now already August.</p>	
<p>6</p>	<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>
<p>Click or tap here to enter text.</p>	
<p>7</p>	<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>8</p>	<p>Do you believe any groups of projects should be exempt from the scope of CMP435 or from some elements of the proposed</p>
<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p>	

	<p>solution? If so, please advise on which groups and elements and provide rationale to why.</p>	
	<p>RWE is supportive of speculative projects being removed from the connection queue to allow viable projects to connect to the network more quickly.</p>	
<p>9</p>	<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>	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p>
	<p>If an obligation is not placed on the DNO's to submit Gate 2 applications as soon as a User has demonstrated meeting Gate 2 criteria then embedded connections could be unintentionally discriminated against. Undue discrimination could occur through the NESO designation methodology if the criteria for projects receiving advanced connection dates is not sufficiently defined and how the final CNDM (Gate 1) and Gate 2 methodologies are drafted which are currently proposed to sit outside of the CUSC.</p>	