

## 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>Name</b>	Paul Youngman	
<b>Company name:</b>	Drax	
<b>Email address:</b>	paul.youngman@drax.com	
<b>Phone number:</b>	07738802266	
<b>Which best describes your organisation?</b>	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network <input type="checkbox"/> 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 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 type="checkbox"/>B <input type="checkbox"/>C <input type="checkbox"/>D</p>
<p>We are supportive of changing the connection process to aid the timely connection of projects to meet net zero targets, and we recognise that this proposed modification aims to overcome the current issues faced with the connection queue. However, in our view, the original proposal fails to demonstrate how, as a package of measures, it will better facilitate the Applicable Objectives.</p> <p>This proposal does not demonstrate that it satisfies Applicable Objective (AO) (a) <i>The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence</i>. There has been no assessment to determine the number of projects and MW quantity that will be impacted by these changes. And there is no evidence to illustrate how each of the proposed Elements will impact and interact with existing contracts.</p> <p>Moreover, the proposal does not in-of-itself introduce the necessary CUSC changes to address the defect as the intention is to have the substantive obligations on parties, and changes to the process, enacted outside of the CUSC through methodologies under the Electricity System Operator Licence; these being the Project Designation Methodology, Connections Network Design Methodology, and the Gate Two Criteria Methodology. Therefore, given the proposal does not address the defect itself, it does not satisfy AO (a).</p> <p>We believe that the CUSC is the appropriate document to capture any obligations pertaining to connection to the Transmission System. The proposer has not provided a robust justification for why this should not be the case. We also note that licence and methodology introduction and any associated changes will require consultation and Authority approval. We do not believe that this is an appropriate use of the regulatory arrangements in line with AO (a) <i>The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence</i>, nor the efficient use of the CUSC in line with AO (d) <i>Promoting efficiency in the implementation and administration of the CUSC arrangements</i>.</p> <p>The modification is insufficiently developed to assess if the proposed changes to the CUSC would facilitate effective competition thus not satisfying AO (b) <i>Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and</i></p>		

	<p><i>purchase of electricity</i>. There are instances throughout the proposal where the impact of differential treatment of parties has not been quantified or assessed. There has also been an absence of quantifiable evidence presented in Workgroup meetings as to the impact of the proposal as a whole or the contribution of individual elements on promoting effective competition. Consequently, it is not possible to assess the impact on competition or the extent to which differential treatment is justified and thus whether or not AO (b) is satisfied.</p> <p>More broadly, the stated benefit of delivering quicker connections is contingent on the Connections Network Design Methodology (CNDM), the detail of which has not been shared. It is proposed that this methodology will sit outside of the CUSC and subject to ESO licence conditions. As such, there has been no evaluation of the impact the CNDM may have on competition.</p> <p>As with CMP434, it is unclear whether the proposal set out in CMP435 is effective as an independent modification or whether it is reliant on the proposal set out in CMP434 as a support mechanism. This stands as a question around the extent to which CMP435 is effective and robust in reducing the queue.</p> <p>The proposal of a standardised procedure for managing connection applications and/or the connection queue does satisfy AO (d) in some circumstances. The primary process has the potential to enable effective prioritisation and aims to ensure that projects that are first ready are first to connect, however, there are some fundamental flaws to this proposal that mean AO (d) is not satisfied.</p> <p>For instance, there is little to no obligation on the ESO to conduct timely checks and offer full transparency of projects currently awaiting connection. The proposal set out by the ESO lacks evidence to suggest that the resulting process of connection would be one that is fair and will sufficiently address inefficiencies in the connection procedure.</p> <p>We have noticed a discrepancy in that the assumption has been that developers with advanced milestones should not be within the scope of CMP435 however, this is not explicit in the Workgroup consultation. We ask that this is clarified to ensure completeness and understanding.</p>	
2	<p>Do you support the proposed implementation approach? (See page- 57-58)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>We do not support the proposed implementation approach set out. While the approach documented is clear, it is not comprehensive and avoids considering significant risks through rigorous assessment of the full process.</p>

	<p>The consultation mentions that the implementation of this process is contingent on the implementation of CMP434, which is also dependent on licence changes (subject to associated statutory consultations) and associated development of methodologies. The Workgroup has not had any sight of these related changes in any detail. We ask that the proposer considers sharing these details in support of this proposal.</p> <p>There is also no mitigation of the risk associated with the interdependency between the modifications, and the additional interdependency between the modifications and licence conditions and the potential for legal challenge.</p> <p>The implementation approach at present fails to recognise projects that are classified as 'interim' or 'transitional' projects. Without a clear direction for projects to which this applies to, this proposal cannot move forward.</p> <p>The implementation of this modification is also reliant on the approval of licence derogations on both the ESO and TO.</p> <p>The detail of derogations from existing licences have not been shared with the Workgroup but are intended to be approved by the Authority on the 7<sup>th</sup> August, the day after this Workgroup consultation closes. We ask that the details of these derogations are shared with the Workgroup as soon as possible.</p>	
3	<p>Do you have any other comments?</p> <p>Modification proposals should be supported and informed by sufficient and balanced evidence. There is an absence of evidence from either the RFI (the results of which were not available in time to reflect in the workgroup report) or from any assessment by the proposer on each element of the proposed process. Without data or impact assessment, we are unable to comment in depth on these elements with confidence and with the knowledge that each area of risk and benefit has been fully explored by the proposer.</p>	
4	<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p><input type="checkbox"/> Yes (the request form can be found in the <a href="#">Workgroup Consultation Section</a>)</p> <p><input checked="" type="checkbox"/> No</p> <p>We do not wish to raise an Alternative Request at this time. This position may change depending on any amends to the original proposal following feedback and assessment of the Request for Information results, which we understand may become available shortly.</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>We are not supportive of Element 1 in the way that it is set out in the current, original proposal. Without codification, this Element leaves room for legal uncertainty across the process. Codifying the Methodologies and the CUSC consultation process will ensure that obligations are enforceable through Code on all parties.</p> <p>While it is the proposer's view that having this detail outside of the CUSC - in a Methodology approved by the Authority - allows 'an appropriate balance of flexibility and governance', it is our view that this approach creates scope for:</p> <ul style="list-style-type: none"> <li>- Inconsistency of application across different parties/ cases.</li> <li>- The Methodology to lack insufficient legal weight to support the success of this process in comparison to codified rules. For instance, if the ESO has a licence obligation to produce the Methodology, it is not necessarily the case that the ESO will be obliged to adhere to the methodology itself, nor is it clear how other parties will be obliged to adhere to obligations within the Methodology.</li> <li>- Limited ability to amend if the Methodology has unintended consequences or leads to negative outcomes, whereas the Code modification process can progress self-governance changes and operate under urgency if changes need expediting. The proposal for the Methodology is that it <b>may</b> be updated yearly subject to licence changes and associated lengthy consultation.</li> </ul>		
<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>We support the overall approach of Element 3. We'd note that applicants submitting modification applications for existing connections are likely to have already secured land and relevant planning rights.</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>We believe that there is insufficient justification and evidence to fully understand the benefits that Offshore and Interconnector parties will gain from reserving capacity at Gate 1.</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>It is our view that this Element has four potential flaws preventing it from being effective and achieving its intended outcome.</p> <ol style="list-style-type: none"> <li>1. The longstop date at the proposed point of the process may have little value or impact, as TEC will not have been allocated at this point; the TEC allocated will only be indicative.</li> <li>2. No evidence has been presented as part of the consultation or published by the ESO to demonstrate the impact of a 3- year longstop date removing projects from the queue. Therefore, there is uncertainty on whether setting a 3- year time limit on progress from projects is effective, reasonable and mitigates discrimination against certain projects.</li> <li>3. If the implementation of the longstop date does enable the removal of a significant number of projects, there could be implications on grid planning which may lead to suboptimal use of grid capacity. The proposal does not set out how this would be managed effectively.</li> <li>4. We also note that the proposal does not set out any restrictions on applications repeatedly reapplying after having an application removed.</li> </ol> <p>While we understand that the implementation of a longstop date acts as a step that removes any projects that are not progressing, there is a lack of clarity and evidence on the impact of this Element and how this will be managed to support the aims of the primary process and Applicable Objectives of the CUSC.</p>	
<p><b>Element 9:</b> Project Designation (See pages 14-15, 33-34)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>To enable simple adjustments to be made to the rules governing the use of Project Designation, it is our view that it should codified if taken forward. The impact of this Element will be determined by the way the ESO implements and manages it.</p> <p>We encourage the ESO to maintain transparency in the decision- making process with clear criteria for designation, and appeals. Codifying this element would enable this to be done consistently and give all parties greater confidence and transparency around decision- making.</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>



<p>We are supportive of the detailed outlined in Element 11, although a clear definition is necessary. More specifically, The ESO needs to define the area of generation or demand siting that requires delineation by a boundary plan. Clear definitions in relation to this Element allows for consistency, efficiency, and transparency to ensure that the process is streamlined and promotes the submission of accurate and complete applications at this point.</p> <p>We recognise that different types of sites may require distinct applicable definitions, and these variations should be permissible within the self- certification process. While maintaining consistency, a well- defined criteria would also allow flexibility in accommodating different types of sites and technologies.</p>	
<p><b>Element 13:</b> Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Although we generally agree with the Gate 2 criteria evidence assessment, it is our view that this criterion should be codified in the CUSC rather than a Methodology resulting from an ESO licence condition.</p> <p>The proposal to sample-check an undefined percentage of applications may enable opportunities for stagnant projects to sit at Gate 2. If this is the case, we would be supportive of additional checks but do not believe this is necessary for implementation.</p> <p>In the case of CMP435, there is little detail that sets out the conditions and terms to which a developer would be granted advancement to the current connection date. Should this be embedded as part of Element 13 of CMP435, it can be assumed that many developers would wish to advance to their preferred connection date and therefore result in a queue that branches from the original. Without foresight of the terms and conditions to which a project would be granted advancement, it is unclear as to whether this Element is fair and provides assurance that it is governed effectively.</p>	
<p><b>Element 14:</b> Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>We generally support this Element within the process. There appears to be a degree of flexibility in the event that development details progress and enable adjustments in response to changes initiated by the ESO or TO.</p> <p>Additionally, we believe that this Element places disproportionate emphasis on the developer's responsibilities, rather than those of the ESO and TO's. For instance, there is no obligation on the ESO to provide a justification or any reasoning as to why a location site is changing. In the detailed development and legal text, we believe it will be necessary to ensure complimentary obligations on all parties, including the ESO, to ensure the changes are suitable from both a developer perspective and a connection process perspective.</p>	

	<b>Element 16:</b> Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<p>At present, the proposal is for the CNDM to sit outside of the CUSC as a separate Methodology. With no clarity on the detail of the CNDM, such as the criteria that would be applied or defined triggers for when or how it would be utilised to reallocate capacity, we are unable to support this as an Element.</p> <p>Notwithstanding that, we believe any such details, rules and obligations (placed on the ESO or participants) should be codified within the CUSC.</p>	
	<b>Element 19:</b> Contractual changes (See pages 26-28, 43-46)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>We support these contractual changes being introduced into the CUSC as it will allow for transparency and a linear process for these existing contracts.</p> <p>While we understand that the contractual changes need to be handled in order of project type, it would be beneficial for the proposer to assess whether there could be any impact as a result of the 'natural allocation' process.</p> <p>We are concerned that the timelines for these existing parties in the queue to meet the relevant criteria are not realistic against the timelines that this modification is currently working to. We ask that the ESO assesses whether parties will be disadvantaged by these timelines and provide information on how it plans to communicate these deadlines to those with existing contracts.</p>	
	<b>Element 20:</b> Cut Over arrangements (See page 28, 47)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>We agree with the proposed cut over arrangements in that they allow for a period of time for existing projects to move into the new process.</p>	
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>As per our response to CMP434 and above in questions 1 and 2, we do not support Element 1 as part of this process. It is our firm view that that the contents within Element 1 should be codified to provide robustness and consistency, ensuring that obligations are enforceable through Code on all parties.</p> <p>We do not believe that Element 10 has sufficient evidence to determine that due discrimination on certain projects is justified as a result of Capacity Reservation. This is also true for Element 9. There is a clear absence of an impact assessment around these areas, and they lack the appropriate provisions to ensure that any discrimination that occurs is justified.</p>	
7	<p>In relation to Q6, are there any features which you believe are missing in the proposed CMP435 solution that would more</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



	<p>effectively facilitate implementation of TMO4+ to the existing contracted background.</p> <p>If yes, please provide details and justification.</p> <p>Each Element set out in this proposal lacks evidence to suggest that there will be positive impact on the connection queue and to parties with existing contracts. Without the detail and data to support these Elements, we are unable to identify any features missing in the proposal.</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>We agree that all modification applications for existing connected sites should be out of scope of this process.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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> <p>We agree that the proposals for both CMP435 and CMP434 are likely to be discriminatory in their application to different parties. However, there has been no evidence provided to the Workgroup by the proposer to assess the impact of individual elements, either on parties given preferential treatment (for instance through reservation of capacity at gate one or Project Designation), or on those projects who are not given preferential treatment.</p> <p>Without evidence and analysis, it is not possible to assess if discriminatory treatment is material and / or justified. We ask that a full impact assessment is conducted to identify the degree of discrimination under the proposed process.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No