

CUSC Alternative Form – Non Charging

CMP470 Alternative Request 3:

The Exit Auction mechanism

Overview: The "Exit Auction" Mechanism

Instead of a "punish-to-thin" approach, NESO should facilitate an Exit Auction to reduce over capacity in particular technologies. This would allow for a more efficient reallocation of capacity:

1. Voluntary Exit: Developers could bid a "strike price" to vacate their position.
2. Least Cost to Consumer: By paying developers to exit, NESO ensures that only those who value their connection the least (i.e., the least viable projects) leave the queue first.
3. Preservation of Investment Signal: This treats capacity as a valuable asset and respects the development spend already committed by the industry, maintaining the UK's reputation as a stable environment for energy investment.

Proposer: Lloyd Garvie, Windline (Cairnbeg) Ltd

☒ I/We confirm that this Alternative Request proposes to modify the non - charging section of the CUSC only

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What is the proposed alternative solution?

The "Exit Auction" Mechanism

NESO should facilitate an Exit Auction so that those holding less viable Gate 2 contracts can exit the queue. This would allow for a more efficient reallocation of capacity:

1. Voluntary Exit: Developers who have seen their projects become less viable due to external factors (e.g., supply chain costs) could bid a "strike price" to vacate their position.
2. Least Cost to Consumer: By paying developers to exit, the National Energy System Operator (NESO) ensures that only those who value their connection the least (i.e., the least viable projects) leave the queue first and at least cost.
3. Preservation of Investment Signal: This treats contracted capacity as an asset and respects the development spend already committed by the industry, maintaining the UK's reputation as a stable environment for energy investment.
4. This would avoid the likelihood of judicial review proceeding against the introduction of the CMP470 Original Proposal (OP).

What is the difference between this and the Original Proposal?

This Alternative Request proposal is contractually fair and is specifically targeted at the least viable projects, allowing them to exit without punishing all viable projects with punitive additional financial costs and uncertainty. The OP is unfair, punitive, not aligned with normal commercial contractual norms and should be opposed.

The OP is specifically designed to 'kill' projects. This is very likely to end up being judicially reviewed and could spend years in the courts. If NESO accept the OP, the whole process of reducing the queue could be set back years, meaning the Clean Power 2030 (CP2030) targets are less likely to be met. CMP470 is a delivery risk.

This Alternative Request is voluntary, market based mechanism which does not involve any penal or retrospective clauses - and so would not be open to legal challenge.

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What is the impact of this change?

This change would replace a punitive, untargeted, and contractually unfair proposal with a fair and targeted mechanism to regulate the size of the queue. The OP represents a delivery risk due to legal uncertainty. This Alternative Request proposal does not.

Proposer's assessment against CUSC Non-Charging Objectives	
Relevant Objective	Identified impact
(i) The efficient discharge by the Licensee of the obligations imposed on it by the Act and by this licence*;	<p>Positive</p> <p>The Act, like all other acts of the State, requires procedural fairness and compliance with European Convention on Human Rights (ECHR) Article 1, Protocol 1. The procedural unfairness of introducing retrospective punitive terms to existing contracts, and the continued interference with normal contractual terms is in danger of breaching ECHR rules and normal laws of contract and prohibition of penalty clauses in contracts. The OP is inefficient as it is not solely targeted at unviable projects.</p>
(ii) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent	<p>Positive</p>

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therewith) facilitating such competition in the sale, distribution and purchase of electricity;	An auction buy-back mechanism promotes competition in a far more effective way than a blanket, untargeted, punitive extra-contractual charge.
(iii) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency **; and	<p>Positive</p> <p>ECHR Article 1 of the First Protocol (AIP1) challenges the right of the State to introduce retrospective penalty clauses into contract terms such as the OP.</p> <p>The OP is specifically designed and targeted to kill projects, not by reference to the project's viability but by attacking the ability of the developer to pay penal charges unrelated to project viability. This is very dangerous legal ground for NESO.</p>
(iv) Promoting efficiency in the implementation and administration of the CUSC arrangements.	<p>Positive</p> <p>An auction mechanism promotes the efficient use of capital by making sure the least viable projects exit the queue, rather than a blanket punishment on all</p>

	projects, with the hope of killing many of them.
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* See Electricity System Operator Licence

**The Electricity Regulation referred to in objective (iii) 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.

When will this change take place?

Implementation date: The change to the code could be made as at 1st January 2027. Auctions could commence at any time and could repeat on a 6 monthly basis until the required queue size in any particular geographic area is achieved.

1st January 2027.

Implementation approach:

Timing of auctions can be in line with the OP.

Acronyms, key terms and reference material

Acronym / key term	Meaning
AIP1	Article 1 Protocol 1
CP2030	Clean Power 2030 Action Plan
CUSC	Connection and Use of System Code
ECHR	European Convention on Human Rights
NESO	National Energy System Operator
OP	Original Proposal