

**Workgroup Consultation Response Proforma****CMP376: Inclusion of Queue Management process within the CUSC**

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 **23 December 2022**. 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 [paul.j.mullen@nationalgrideso.com](mailto:paul.j.mullen@nationalgrideso.com) or [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com)

Respondent details	Please enter your details
<b>Respondent name:</b>	James Jackson
<b>Company name:</b>	Ørsted
<b>Email address:</b>	jamjc@orsted.com
<b>Phone number:</b>	07768288836

**I wish my response to be:**

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

*Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.*

**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*
- 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..

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**Please express your views in the right-hand side of the table below, including your rationale.**

Standard Workgroup Consultation questions							
1	Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe each solution better facilitates:</p> <table border="1"> <tr> <td>Original</td> <td><input type="checkbox"/>A</td> <td><input type="checkbox"/>B</td> <td><input type="checkbox"/>C</td> <td><input type="checkbox"/>D</td> </tr> </table> <p>We are unable to provide a yes or no against the applicable objectives based on the proposal in its current form. Although we see some benefits of the proposal, a number of areas need to be addressed further.</p>	Original	<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D
Original	<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D			
2	Do you support the proposed implementation approach?	<p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>We do not have any specific comments on the implementation approach, however, would note that connection agreements and contracts should not be pre-emptively amended prior to modification approval.</p>					
3	Do you have any other comments?	<p>We note that the focus of discussion in the workgroup report is on the termination of agreements if milestones have not been met.</p> <p>However, we can see merit in further exploring an alternative mechanism whereby a project that fails to meet its milestones is instead moved to the back of the grid connection queue. We understand that this was discussed within the workgroup, however, this does not appear to be reflected in the workgroup report and Ørsted would be keen to hear whether a decision was made not to pursue this option, and if so, the reasoning behind it.</p>					
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Click or tap here to enter text.</p>					

Specific Workgroup Consultation questions		
1	Do you agree with the Milestone durations proposed? Please provide the rationale for your response.	<p>As an overarching comment on both the proposal and the milestones, we understand the need case for the modification and appreciate what it is aiming to achieve. However, from the perspective of an offshore wind farm developer, it's important to remember – and acknowledge when developing and deciding on the proposal – that the current timeline for developing an offshore wind farm is at least 8 years from TCE lease award and acceptance of the grid connection agreement to first power.</p>

		<p>In addition, offshore wind farms need to secure their connection agreement as soon as possible to ensure that relevant input is available for the consenting application i.e., the onshore connection point will dictate the export cable route that is to be consented.</p> <p>As a result, the modification (in effect) asks projects to fix their development dates approximately close to a decade ahead. This presents a challenge to Development Consent Order (DCO) scale projects, who will require certainty on their grid connection arrangements to make investment decisions.</p> <p>In Ørsted's view, much of the proposal appears to be better suited to Town and Country Planning Act scale projects, as opposed to those going through the DCO process. In this context, it is worth highlighting that the ENA Queue Management User Guide states that "projects requiring Development Consent Orders (DCO) these timescales would not apply and bespoke timescales would be agreed between the parties on a case-by-case basis". Although we appreciate that the ENA guide was prepared for distribution connected generation, we believe there is merit in maintaining this position for arrangements within the CUSC, in order to avoid perverse outcomes.</p> <p>With regard to specific milestones, our most significant concern relates to Milestones 2 and 3 and the misalignment between Land Rights and Consenting. As the workgroup report states, for Offshore Wind, it may not be possible to secure all land rights prior to consent award – once consent is granted developers are able to pursue Compulsory Purchase Orders in order to fulfil any land right issues that remain outstanding. It is therefore vital that milestones 2 and 3 are better aligned – we would be concerned that a number of nationally significant projects would be at risk otherwise.</p>
2	Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date the Offer is sent to the User; or from the Contracted Completion Date back to the date	<p>Ørsted supports the use of "<i>the Contracted Completion Date back to the date the Offer becomes effective</i>", as the period by which the milestone durations should be benchmarked from.</p> <p>As a point of clarity, we note that this should be from the point that the offer is signed by the User <i>and</i> counter-signed by the ESO, which would align with the existing grid connection queue process. From experience as a</p>

	<p>the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.</p>	<p>User, delays in progressing an offer can sit with any party, and often fall outside of the control of the User.</p> <p>Finally, we disagree with points raised in the proposal, that this approach would require additional administrative work. The timings associated with offer acceptance are set out and would therefore provide a predictable timeframe to work from (3-month window, which can be aligned with).</p>
3	<p>There are differences between the arrangements at Transmission and Distribution. Do you agree with the reasons provided why there is different treatment and that these don't create undue discrimination? Please provide the rationale for your response.</p>	<p>Agree. Different approaches need to be taken depending on whether a transmission or distribution connection is used. For each case, projects are of substantially different scale and pursue different development approaches, as well as timelines. Adopting the same approach would therefore not be appropriate.</p>
4	<p>Do you agree with the evidence requirements proposed? Please provide the rationale for your response.</p>	<p>The requirements as set out broadly make sense, however, Ørsted has concerns regarding land right obligations and agrees with the challenges raised in the workgroup report. The proposed criteria seem to be better aligned to more localised development, such as solar or battery storage. By way of example, an offshore wind development could have 50km+ of cable routing for which multiple land right agreements would be required.</p> <p>Providing the information as outlined in the proposal would be incredibly laborious and potentially may not be feasible for certain projects. We would therefore suggest that some flexibility is offered for DCO-scale projects. To assess this further, it would be beneficial to establish the burden of proof required to demonstrate that a milestone has been achieved i.e., what level of detail would be needed? Further to this, documentation associated with land rights will likely be subject to sensitivities, we would therefore suggest that Users should be allowed to redact commercially sensitive information where necessary.</p> <p>There also seems to be a lack of acknowledgement for easements (unless this falls with point (iv) of the evidence requirements for M3 – in which clarification would be helpful). Although this is flagged in the</p>

		workgroup report, we do not think that the solution can be considered complete without their inclusion.
5	Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.	<p>If a contract is terminated, but a subsequent appeal is successful/unsuccessful then further consideration is needed regarding who bears the associated risk. It is Ørsted's view that User-related works should be continued by the relevant TO to progress until any appeal has been fully defined and concluded.</p> <p>We would also be in support of viewing the suspension of works on a case-by-case basis. In this scenario, as project going through an appeal can request that works associated with the User continues, and liabilities can be used if the appeal is unsuccessful, if applicable. Alternatively, a project could ask that the works be suspended and therefore avoid the liabilities that may come with that, whilst also accepting that there will be delays in the event the appeal is successful.</p>
6	Do you have any views on the most appropriate route for Appeals/Disputes raised by a User whose Construction Agreement has been terminated under CMP376?	No comment.
7	Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response.	<p>In Ørsted's view the list of exceptions should be both as exhaustive and transparent as possible. Explicit exceptions should be applied equally to all Users to whom Queue Management is relevant and should not be decided on a case-by-case basis or be subject to interpretation.</p> <p>In Ørsted's view this element of the proposal requires further exploration, and we suggest the following additional scenarios by which exceptions may be granted:</p> <ul style="list-style-type: none"> <li>• Delays associated with the CfD mechanism that sit outside the control of the User.</li> <li>• Market issues that may delay in lead times due to aspects outside a user's control.</li> </ul>
8	Do you agree that the associated Construction Agreement will be terminated if Milestone	As with other elements of the proposal, we would hope and expect to see some level of flexibility granted – particularly if a project were relatively advanced and had made good progress against prior milestones. A sensible and considered approach needs to be taken

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	Dates (unless covered by the exceptions) are missed and not rectified within the 60-calendar day period? Please provide the rationale for your response.	when determining whether to terminate an agreement, with all considerations accounted for.
9	Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.	<p>Ørsted appreciates the position put forward in the process, as well as the discussion related to ModApps held during workgroup meetings and support a clear position on ModApps to avoid speculative applications. However, we stress that it would be detrimental to follow a black and white process for each project and technology.</p> <p>Pursuing the proposed arrangements will either lead to offshore wind farms failing in their development phase – jeopardising capacity targets as set out in the British Energy Security Strategy – or will stifle innovation and optimisation of project design.</p> <p>If appropriate and useful, we can provide examples of Ørsted offshore wind projects – that have been successfully built and commissioned in recent years and are key to achieving Net Zero targets – that would have had their grid connection agreement terminated if the suggested approach to Mod App changes within the QM proposal were applied.</p> <p>As a potential solution, we would support an outcome whereby flexibility would be granted to projects that ModApp having met previous milestones. In our view, this would still align with the principles of the queue management mechanism, and what it's trying to achieve.</p>
10	Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?	<p>As outlined elsewhere in our response, if the CMP376 proposal were to be approved in its current format we would anticipate a significant impact on both our business as well as the renewables sector.</p> <p>Whilst we understand and appreciate the intention of Queue Management, several elements – namely milestones associated with consent and land rights, as well as inflexibility around ModApps – could lead to nationally significant projects having their agreements terminated and not being realised as a result.</p>