

Annex 3 – CMP376 Original Legal Text
Changes shown in red text
CUSC SECTION 16

QUEUE MANAGEMENT PROCESS

Introduction

16.1 The process set out in this Section 16 will be applied by **The Company** in measuring the progression of a **User's** project (excluding any **OTSDUW**) against the **Completion Date**, or where the **User's Project** is staged, the relevant **Completion Date** in the **Construction Agreement** related to that project. The process identifies a set of milestones as set out below against which progress is measured and if not achieved provides for the termination of the **Construction Agreement**.

16.2 The **Queue Management Process** will not be applied and included in (i) **Construction Agreements** with an **Embedded Power Station** relating to a **Bilateral Embedded Generation Agreement** or (ii) **Construction Agreements** with the owner/operator of a **Distribution System** directly connected to the **National Electricity Transmission System** where the **Construction Agreement** is required because of a connection to that **Distribution System** and the **Distribution Queue Management Process** applies.

16.3 The User Progression Milestones and Evidence

The milestone events/timings against which the progress of a **User's** project will be measured by **The Company** are listed in the table below.

The table also shows the evidence a **User** has to provide to **The Company** to show that a milestone event has been met.

A **User Progression Milestone** must be achieved by the date which represents the end of the milestone period identified for that milestone. Once achieved a **Conditional Progression Milestone** must also continue to be met on an ongoing basis, that is, the statutory consent and planning permission initiated and secured and the land rights achieved to demonstrate compliance with the **Conditional Progression Milestone** must remain in place.

The Company will provide (in the form of Appendix Q) a Table based on the above with each **Construction Agreement**. This will specify the dates of the milestone periods for the **User's** project derived in accordance with this Section 16 and set out in each Appendix Q.

Where a **User's** project is being delivered in discrete "stages" of **Equipment**, or programme for example when the project relates to the installation of different technology types or co-located sites, and they are being progressed discretely a separate Appendix Q will be provided for each "stage" and the Queue Management Process applied to each "stage" separately.

Milestone	Detail	Evidence	Milestone Period
Milestone 1) Initiated Statutory Consents and Planning Permission	Where statutory consents are required for the construction of the User's project, the User must begin the process of seeking statutory consents, including Planning Permission for the project within the timescales and be able to provide the required evidence.	Submission of planning application to the relevant Statutory Authority or, if the User's project does not require a statutory consent, a declaration from the User to that effect.	See table (varies with lead time).
Milestone 2) Secured Statutory Consents and Planning Permission	Where required for the construction of the User's project, the User must have secured statutory consents, including Planning Permission for the project within the timescales and be able to provide the required evidence	The planning decision notice confirms planning permission has been granted and that this permission allows the User to meet the terms included in its Construction Agreement . Compliance with this milestone is ongoing.	See table (varies with lead time)
Milestone 3) Secure Land Rights	The User must have secured the required land rights to enable the construction of the project. The User may be the owner/occupier of the land or has the necessary agreement from the owner/occupier.	The User shall provide documentation to demonstrate that: (i) The User is an owner or tenant of the land on which the proposed site is or will be situated; or (ii) The User has entered into an agreement to lease the land from the owner of the land on which the proposed site is or will be situated; or	See table (varies with lead time)

		<p>(iii) The User has an option to purchase or to lease the land from the owner of the land on which the proposed site is or will be situated; or</p> <p>(iv) The User has entered into an exclusivity agreement in relation to the land with the owner of the land on which the proposed site is or will be situated; or</p> <p>(v) For an offshore site, the User has entered into an agreement for occupation or use of the seabed upon which the User's project (excluding any OTSDUW) is or will be located</p> <p>Nb the obligation is to secure and evidence the land right for the site of the installation e.g. Power Station or demand site so the evidence does not relate to rights e.g. easements associated with that site or OTSDUW.</p> <p>Compliance with this milestone is ongoing.</p>	
Milestone 4) N/A for Transmission	This milestone does not apply for Transmission	Null	Null
Milestone 5) Contestable	This milestone will apply where a User has gone down the	Written confirmation from the Relevant Transmission	See table (varies with lead time)

Design Works Submission	contestable route for connection.	Licensee that design obligations as bilaterally agreed in a User-Self Build agreement have been received.	
Milestone 6) Agree Construction Plan	The User must have agreed a construction plan for the detailed User's Works with The Company which demonstrates how they will be progressing the User's Works to achieve the Completion Date .	The User's construction plan shall demonstrate how the User will be ready for the Commissioning Programme Commencement Date and Completion Date . This must include a detailed programme for the User's Works with a fixed start and end date as agreed with the Relevant Transmission Licensee , and be a programme aligned with the Commissioning Programme Commencement Date and Completion Date .	See table (varies with lead time)
Milestone 7) Project Commitment	This milestone demonstrates that the project has the necessary commitment or backing for it to proceed.	One of the following: <ul style="list-style-type: none"> • Binding contract issued by the User for main plant equipment; or • Capital contribution payments made to The Company in advance of connection; or • A decision paper from a formal, minuted meeting of the User's board of directors evidencing Final Investment Decision (FID); or 	See table (varies with lead time)

		<ul style="list-style-type: none"> • award of a governmental or regulatory subsidy which provides financial support or incentive to the User's project. 	
Milestone 8) Project Construction	Project construction is the project phase ie the period from when a User begins the site works to carry out construction of its project until completion of the User's Works	<p>Commence construction according to the construction plan agreed under Milestone 6.</p> <p>Evidence for meeting this milestone will be a letter from the User's board of directors or equivalent to state construction has commenced.</p>	See table (varies with lead time)

The date by which a **User Progression Milestone** has to be achieved is derived from the following Tables working backwards from the **Completion Date** (or where staged, relevant **Completion Date**) in a **Connection Offer** to the date on which the **Connection Offer** is made by **The Company** to the **User**.

The **User Progression Milestones** are categorised as **Conditional Progression Milestones** and **Construction Progression Milestones**. Different rights and obligations on **The Company** to terminate the **User's Construction Agreement** apply for each of these categories.

As noted above compliance with the **Conditional Progression Milestones** is measured on an ongoing basis.

Conditional Progression Milestones

Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
Milestones:	All durations referenced back from contracted Completion Date				
M1 - Initiate Planning Consent	Bilaterally negotiated	18 months	24 months	36 months	48 months
M2 - Secure Consent		12 months	18 months	24 months	30 months
M3 - Land Rights		21 months	27 months	39 months	51 months

Construction Progression Milestones

Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
Milestones:	All durations referenced back from contracted Completion Date				
M5 - Contestable	Bilaterally negotiated	12 months	15 months	18 months	21 months

Design Works Submission					
M6 - Agree Construction Plan		9 Months	12 months	15 months	18 Months
M7 - Project Commitment		6 Months	9 months	12 months	15 Months
M8 - Initiate Construction		3 months	6 Months	9 months	12 months

Where durations are referred to as being “bilaterally negotiated” this means that **The Company**, the **Relevant Transmission Licensee** and the **User** will aim to agree the durations for the purposes of Appendix Q during the **Offer** preparation period. Where not so agreed by the time the **Offer** is made, Appendix Q will reflect the durations proposed by **The Company** and **Relevant Transmission Licensee** and discussions will continue with a view to agreeing these during the **Offer** acceptance period.

16.4 **Project Milestone Communications**

- 16.4.1 As soon as practicable and in any event by the due date for meeting a **User Progression Milestone**, the **User** shall document and provide the evidence in accordance with the table above of progress on a **User Progression Milestone** to prove to **The Company’s** reasonable satisfaction that that **User Progression Milestone** has been met.
- 16.4.2 The **User** will notify **The Company** and the **Relevant Transmission Licensee**, at the earliest opportunity, as soon as it becomes aware of any issues that could impact on the **User’s** ability to meet any of the **User Progression Milestones** and specifically of any that the **User** believes could fall under 16.5 below. Where the **User** believes that an issue could fall under 16.5 below evidence supporting this shall be provided to **The Company**.
- 16.4.3 **The Company** will upon receipt of evidence provided in accordance with 16.4.1 above, advise the **User** within 10 **Business Days** as to whether it is satisfied that the **User Progression Milestone** has been met and whether the status of the **User’s** project is categorised by **The Company** as “On Track” or “Termination”.
- 16.4.4 If no evidence is provided in accordance with 16.4.1 above, or the evidence provided is considered insufficient to demonstrate that the milestone has been met, and as a consequence the status of the **User’s** project is categorised as “Termination” **The Company** will notify the **User** that the **User’s** project is categorised as “Termination” and that the **Project Milestone Remedy Period** has started.

- 16.4.5 If during the **Project Milestone Remedy Period** the **User's** project progresses such that it achieves the **User Progression Milestone** against which it was categorised as "Termination", the **User's** project shall be re-categorised by **The Company** as being "On Track" by reference to that **User Progression Milestone** and the **User** notified accordingly.
- 16.4.6 Where at the end of the **Project Milestone Remedy Period** for a **Conditional Progression Milestone** the status of the **User's** project is still categorised as "Termination", **The Company** shall terminate the **Construction Agreement**. Where at the end of the **Project Milestone Remedy Period** for a **Construction Progression Milestone** the status of the **User's** project is still categorised as "Termination", **The Company** may terminate the **Construction Agreement**.
- 16.4.7 Whether or not any of the **User Progression Milestones** have been achieved and/or what constitutes progress towards achieving them is a matter for the sole discretion of **The Company**.
- 16.4.8 **The Company**, the **Relevant Transmission Licensee** and the **User** shall constructively engage as required during the **Milestone Remedy Period** to understand whether the relevant **User Progression Milestone** can or is likely to be met and whether the issues in achieving the **User Progression Milestone** fall or are likely to fall under 16.5 below.
- 16.4.9 **Ongoing compliance with the Conditional Progression Milestones**
- 16.4.9.1 Having achieved a **Conditional Progression Milestone** the **User** shall notify **The Company** (or respond to **The Company's** request for confirmation on this point) at the earliest opportunity in the event that it no longer meets or has reason to believe it will not continue to meet the requirements set out for that **Conditional Progression Milestone**.
- 16.4.9.2 In the event that the ongoing requirements of a **Conditional Progression Milestone** are no longer met, **The Company** will notify the **User** that the **User's** project is categorised as "Termination" and the provisions of 16.4.5 to 16.4.8 shall apply.

16.5 **Exceptional Issues on User Progression Milestones**

There may be a small number of exceptional issues outwith the **User's** control which may lead to **User** project delay and a **User** not being able to meet a **User Progression Milestone**.

The Exceptional issues which apply in the context of the **Queue Management Process** are as follows:

- Where the **User** is delayed in carrying out the **User's Works** which entitles the **User** to fix a later date or dates under Clause 3.2 of the

Construction Agreement (Delays and Force Majeure) and that delay is the reason that a **User Progression Milestone** is not met;

- Where the **User** is not able to meet a **User Progression Milestone** due to an event of **Force Majeure**;
- Where delays caused by a party (other than the **User**, **The Company** or a **Relevant Transmission Licensee**) can be demonstrated to have an impact upon the **User** meeting a **User Progression Milestone** and the **User** could not have avoided these delays or their impact by the exercise of **Good Industry Practice**
- Where a **User** is not able to meet a **User Progression Milestone** due to Planning appeals and third-party challenges in relation to the **User's Consents**;
- Any delay in the achievement of a milestone by the **User** which is caused by a **Relevant Transmission Licensee** or **The Company**

Where the **User** believes an exceptional issue applies it shall provide written evidence to this effect supported by confirmation from the **User's** board of directors or equivalent body for **The Company's** consideration.

Where a **User's** project is not able or is considered unlikely to meet a **User Progression Milestone**, as a result of an exceptional issue under the headings here, and providing the **User** notifies **The Company** and the **Relevant Transmission Licensee** of the delay and reasons for the delay at the earliest opportunity and provides reasonable evidence to justify this and satisfies **The Company** that the specific delay falls under this Paragraph 16.5, such delay will not result in the **User's** project being categorised as "termination" in relation to the relevant **User Progression Milestone** or **User Progression Milestones**. In such circumstances **The Company** will consequently issue a new milestone date for the missed milestone.

Whether or not the exceptional issues as listed here apply and the period of any extension, is a matter for the sole discretion of **The Company**.

16.6 Implementation

16.6.1 The **Queue Management Process** will be:

(i) included in any **Construction Agreements** (other than those which fall within Paragraph 16.2 above) offered as part of any new **Connection Offers**; and

(ii) introduced into any **Construction Agreements** (other than those which fall within Paragraph 16.2 above) which do not have the **Queue Management Process** already included within it) when a **Modification Offer** is made

in each case from the **Implementation Date** of **CUSC Modification Proposal 376** (Inclusion of Queue Management Process within the CUSC).

16.6.2 In the case of **Modification Offers**, the **Queue Management Process** will be applied and Appendix Q created by reference to the **Completion Date** in the **Modification Offer** and the date on which the **Modification Offer** is made by **The Company** to the **User**.