

Code Administrator Consultation Response Proforma**CMP414: CMP330/CMP374 Consequential Modification**

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 29 June 2023**. 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 Milly Lewis Milly.Lewis@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details		Please enter your details	
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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 type="checkbox"/> Generator <input type="checkbox"/> Industry body	<input type="checkbox"/> Interconnector <input type="checkbox"/> Storage <input type="checkbox"/> Supplier <input checked="" 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

☐ 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.

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

Standard Code Administrator Consultation questions						
1	<p>Please provide your assessment for the proposed solution(s) against the Applicable Objectives?</p> <p>Mark the Objectives which you believe the proposed solution(s) 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><i>Note, this response relates to CMP414, as well as CMP330 and CMP374.</i></p> <p>In principle, we believe that the modification proposals could give greater scope in very specific circumstances for alternative options to deliver infrastructure assets either quicker or cheaper than the baseline. However, in its current form the modification proposal's benefits (noting the consultation document/workgroup report is limited by a lack of cost-benefit analysis) are outweighed by substantial risk and uncertainty. This response highlights areas of the proposals that we believe require further consideration, as well as what we consider to be the key associated risks.</p> <p>As with our interventions throughout the workgroup process, we hope this response provides insights that can be considered and addressed to give the modification proposal the best chance to be implemented properly, to the benefit of consumers, Users, TOs and the wider energy system.</p> <p><u>a) Efficient discharge of transmission licence obligations - Negative</u></p> <p>1) Cost risk for TO intervention - the CMP414 proposal does not adequately consider scenarios where contestable delivery of infrastructure assets by Users goes wrong or is abandoned, e.g. when the User cannot or does not wish to progress their connection project through to completion.</p> <p>The TOs – and therefore end consumers - are likely to be exposed to rectification costs where we are forced to step in and complete works in this context, which would expose us to adverse performance measures under the current T2 Price Control.</p> <p>2) Strategic network design could become User-focused or piecemeal - whilst the proposal does provide</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		

	<p>some reassurance through the intervention process, there is an underlying risk that approving this modification sets an unreasonable level of expectation for developers that the needs of their individual projects should be prioritised over the TO's more holistic, long-term network design philosophy. The threat of disputes and/or User-led appeals to Ofgem where there is a disagreement on these matters is unnecessarily high in our view.</p> <p>3) Competing regulatory priorities - we believe that regulatory certainty is paramount in the foreseeable future to best enable the transmission licensees to deliver the net zero transition for our customers and end consumers.</p> <p>Currently the network licensees are all fully committed to delivering initiatives such as Connection Reform and the ENA Strategic Connections workstreams (amongst others). The timing of implementation of this modification (if approved) therefore needs to be carefully managed, including consideration of interactions with Ofgem's recent ASTI decisions as well as the next Price Control period.</p> <p>4) Safety concerns - enabling third parties the rights to access our network to install high voltage transmission equipment, without the same levels of regulatory oversight as applied to the TOs, inherently increases the risk to public safety, as well as other Users of the national electricity system and our onsite personnel.</p> <p>The proposal relies excessively (in our view) on User's agreeing to, and continuing to adhere to, the terms of Adoption Agreements to guarantee safety quality standards for asset delivery. We are wary that some Users may prioritise commercial factors over system stability/safety, particularly where cost or timing becomes a driving factor for their project.</p> <p><u>b) Facilitating effective competition – Neutral</u></p> <p>We do not believe that CMP414 and the associated modifications have a significant impact on facilitating competition. Whilst a different party may elect to construct the works, there is no tender process, nor competitive pressure, so it is not clear how the modification can be considered to facilitate competition. We therefore consider the impacts on competition as neutral.</p>
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		<p>We note that the proposal does not seek to mitigate the impact of delayed or failed infrastructure asset delivery via contestable works for future Users (e.g., where Contestable Assets become shared). Where any delays arise due to contestable works, this could result in delays to other Users' connection dates. Whilst the proposal does enable TOs to intervene where works can reasonably be foreseen to be shared, this becomes more complex the further into the asset delivery cycle - with greater likelihood of dispute.</p> <p>We believe greater protections are needed in the proposed solution where there could be adverse impacts on interacting connection timescales for subsequent Users, which ultimately has a bearing on competition and market participation.</p> <p><u>c) Compliance with Electricity Regulation – Neutral/No Impact</u></p> <p><u>d) Promoting efficiency in the implementation and administration of CUSC arrangements – Neutral/Negative</u></p> <p>1) Confusion of roles - the modification legal text places new obligations or limitations on existing obligations for activities defined outside CUSC. Whilst this can typically be resolved through adjustments to the STC (e.g. where TOs are impacted), the proposal in this case creates confusion given the ESO's lack of involvement in these matters.</p> <p>Additionally – the solution imposing limiting standards on commercial activities outside CUSC is not a helpful precedent in our view. It not only stifles innovation but risks code modifications being required every time impacted parties identify and agree to enhancements in working practices, which is clearly inefficient.</p>
2	Do you support the proposed implementation approach?	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Given the wider regulatory challenges for implementing this modification, as highlighted in Q1, we believe that an extended timeline is likely to be required.</p> <p>This will not only enable the TOs and ESO to establish revised ways of working internally, but importantly for us to work with Ofgem to clarify the outstanding matters in relation to licence compliance and the introduction of this new process into the Price Control framework. We do not</p>

		believe it would be appropriate to introduce this modification without the consequential changes to the RIIO framework fully considered and implemented, ensuring protections are in place for consumers and TOs.
3	Do you have any other comments?	<p><i>To give the modification proposal the best chance of success, we recommend further engagement with Ofgem and/or the proposer on the following matters:</i></p> <p>Licence and Price Control adjustments As referred to above in Q2, we remain concerned that the proposed solution does not adequately mitigate the issues arising from a User's failure to deliver the agreed scope of infrastructure asset works and the TO being compelled to intervene (particularly where the assets are needed for other Users).</p> <p>At present there is no route for TOs to recover any incremental/unforeseen costs for intervention – at least without penalty - through the Price Control. We believe adjustments to these arrangements are therefore required to avoid the TOs and end consumers being subject to what could be unreasonable additional costs through no fault of our own.</p> <p>The TOs have initiated contact with Ofgem on this issue during the workgroup phase but were unable to reach concrete positions without the modification being more fully specified. We would appreciate further conversations with Ofgem on this issue with modification reaching the conclusion of the code governance process.</p> <p>Ambiguity of roles Despite our best efforts in the workgroup, the CMP414 solution is still unclear on the full extent of the project management responsibilities Users expect to undertake (or discharge to relevant TOs) when delivering Contestable Assets.</p> <p>In our view, the proposed CUSC solution is too reliant on Adoption Agreements being able to substantiate this, and as a consequence there is not only a risk of inconsistency but disputes where Users and TOs ultimately cannot agree.</p> <p>Our preference would be for project accountabilities to be more explicit from day one if the modification were approved. This ensures there is no doubt, especially for CUSC Parties who have not engaged in this modification</p>

	<p>or who may not currently exist but become emerging market players.</p> <p>As a guide, the areas of enduring TO input we would expect to provide for contestable works – which are by no means certain given the current proposed legal text - include:</p> <ul style="list-style-type: none"> • Overall project management; • Engineering design, assurance and oversight; • Consenting, negotiation of easements and wayleaves, plus associated local stakeholder engagement; • Asset energisation, commissioning and management of associated outages; resolution of any snagging issue. <p>Incentivising Users to adhere to agreed technical standards</p> <p>Without robust assurance around the roles and responsibilities for ensuring asset safety and quality standards (as flagged above), we have concerns over long-term asset health and the impacts that might have on other Users, and costs for our businesses and end consumers.</p> <p>The proposal is limited on safeguards or incentives which ensure that Users prioritise these matters, rather than focus on the needs of their own connection project. In a worst-case scenario, the User could unilaterally prioritise low cost or timeliness, rather than adhering to agreed design and delivery standards with a TO.</p> <p>As mentioned throughout our response, we are concerned that lengthy disputes could also result (potentially followed by appeals for damages etc.) where the User deviates from agreed standards. Not only that, but we believe there are unreasonably burdens on the TOs to make good these situations without any regulatory assurance that they will not be penalised and will be funded for efficiently incurred costs.</p> <p>Interaction with CMP376 Queue Management</p> <p>The workgroup report noted the potential interaction between these contestability changes and the Queue Management (QM) code modification which is currently subject to Ofgem determination.</p>
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	<p>The interactions here could be complex, and further work may be needed should both modifications be approved to reflect better alignment in CUSC.</p> <p>For example, the possible interaction (or not) between the compliance enforcement (e.g., project termination) or allowable exceptions processes under QM are important for contestability outcomes.</p> <p>More generally, we believe the implementation timelines for this modification should consider that Queue Management and wider Connections Reform implementation will be ongoing simultaneously, both of which are of significantly higher immediate priority given the unprecedented volume of transmission connections.</p>
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