

## 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	
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<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 type="checkbox"/> Generator <input checked="" type="checkbox"/> Industry body <input type="checkbox"/> Interconnector	<input type="checkbox"/> Storage <input 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 checked="" type="checkbox"/>A   <input checked="" type="checkbox"/>B   <input checked="" type="checkbox"/>C   <input checked="" type="checkbox"/>D</p> <p>Energy UK agrees that extension of the Gate process to the entire contracted background of connection queue is necessary and, as such, the proposal does better facilitate the Applicable Objectives.</p> <p>Following the recent CFI a significant amount, roughly just under half the connection queue, of projects expect that they could meet Gate 2 requirements by the end of the year. If the proposal is to meet the Applicable Objectives, further steps to manage the connection queue beyond January 2025 must be considered as the network moves towards strategic planning.</p>
2	Do you support the proposed implementation approach? (See page- 57-58)	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>In light of the urgent need to address connections timelines, Energy UK supports the proposed. However, there is some notable concern regarding implementation timescales for those in the queue to be compliant before the cutoff date for land rights on the 31 January 2025. This could lead to legal challenges in worst case scenario. The Royal Academy of Engineering refers to this possibility in their recent paper titled 'Rapid decarbonisation of the GB electricity system'.</p> <p>The potential for legal challenge is real and it may require Government to step in with a more specific programme in order to avoid some potential for legal challenge. It remains uncertain what the options would be for delivery and it is clear there is a need for clarity over the NESO's preferred approach.</p> <p>The overarching connections reform timeline is deemed to have been set back by 6 weeks based on the impacts of the general election and other delays. Timelines previously set out are now expected to be delayed and additional clarification of the impacts these delays and further decisions from the authority regarding any extension of timelines are expected to have on code modification development and implementation is needed. As timelines are getting pushed out, smaller firms especially need fair notice in advance and sufficient time to submit evidence by.</p>

	<p>The whole of industry needs these timescales to be appropriate to enable investment to flow.</p> <p>Technical requirements and financial elements are being brought forward – if part of both CMP 434 and CMP 435 then that would have to be put forward at the next meeting of the working groups in August 2024. If not via that existing method, then the proposal would have to go to CPAG for further views, but CPAG is now not meeting until 12 September. Workgroups would be advanced by that stage so CPAG would not be able to input into that work in quite a significant change area.</p> <p>The ESO needs to urgently provide clarity on the likely go-live date of 1<sup>st</sup> of January 2025 is still achievable and, if not, what is the contingency. This uncertainty persists at a time when the methodologies for the Gate 2 criteria and Connections Network Design Methodology (CNDM) are not yet produced. We appreciate the tight timescales the ESO are working to produce this and so we urge transparency with their design and the degree of codification they will entail.</p>
3	<p>Do you have any other comments?</p> <p>As in response to the CMP 434 consultation, Energy UK members note the following additional comments:</p> <ul style="list-style-type: none"> <li>• Some members question whether, in the long run, if land rights would be a sufficient determining factor in managing the connection queue. While there is some concern from those currently in the connection queue of pursuing the implementation of such requirements in time for the 'go live' date, we would cautiously support the use of some financial commitments, such as a Contracts for Difference (CfD) or Capacity Market (CM) contract, to show intention to connect. However, this must not be used as a stand-in for land rights as qualifying criteria.</li> <li>• The connections queue is now over 700GW and there is some concern that 335 GW of that queue is made up of projects that are confident they could get land rights and other Gate 2 requirements in place by the end of year according to the latest Call for Information. If elements to further restrict or refine the queue come in later on, that would impact investment and could have unintended consequences. There is a need to take further measures to speed up connection times after the 'go live date' given the sheer scale of projects willing and able to meet the Gate 2 criteria.</li> <li>• There is concern that there is too great a reliance on guidance over codification in the CMP 434 and CMP 435 proposals, principally with respect to the Gate 2 criteria, CNDM, Significant Modification Application, Project Designation and Capacity Reallocation. We understand the instinct of the ESO to rely on guidance in order to allow a degree of flexibility for further reform after January 2025 as the system moves towards strategic planning. However, connecting new projects to meet the UK's decarbonisation goals also requires investor certainty and relying on guidance over codification dilutes this much needed confidence to invest in the UK's low carbon energy sector at a time when other countries are also seeking to attract investment.</li> </ul>

4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<input type="checkbox"/> Yes (the request form can be found in the <a href="#">Workgroup Consultation Section</a> ) <input checked="" type="checkbox"/> No
Click or tap here to enter text.		

### 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>	
<b>Element 1:</b> Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Energy UK broadly agrees with the proposed content of the methodologies and guidance.</p> <p>Firm codification of Gate processes is needed more than guidance. Energy UK recognises the need for flexibility given Element 14 regarding Project Site Location ongoing reforms, but investment requires legal certainty, especially given the new 2030 timelines for net zero delivery.</p> <p>Uncertainty remains for connection times until Gate 2 Criteria Methodology and CNDM is approved by Ofgem. There may not be sufficient time between approval and 'go line in January 2025' for industry to input and feedback.</p>		
<b>Element 3:</b> Clarifying which projects go through the Primary Process (See pages 10-11,29-31)		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Energy UK broadly agrees with the outlined scope of which types of projects this aligns to.</p> <p>It should be noted that, as part of the transmission charging reform workstream, it has been proposed that a modification be brought to the Connection Use of System Code (CUSC) committee to allow embedded generators to accede as a</p>		

<p>party and so remove the need for a Bilateral Embedded Generation Agreement (BEGA). The ESO should be aware of how this may affect which projects are in scope of reform.</p>	
<p><b>Element 5:</b> Clarifying any Primary Process differences for customer groups (See pages 11-12,32)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Energy UK broadly agrees with the primary process regarding the primary process coverage for existing background projects.</p> <p>However, we do note the tight timescales for some developers to obtain land rights by the 31 January 2025 deadline, especially for smaller developers with less resources.</p> <p>It is critical to ensure a level playing field for offshore connecting parties that are already in the connection queue, especially in light of the as of yet unspecified proposals for the use of Capacity Reservation for networks coordination, hybrid offshore projects and Competitively Appointed Transmission Owner (CATO) processes.</p>	
<p><b>Element 8:</b> Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>At present, Energy UK is supportive of the use of the longstop date for existing contracted projects.</p> <p>There is a significant risk of legal challenges arising from new arrangements could lead to termination of a developer's connection agreement. Such risk was noted in the recent paper published by the Royal Academy of Engineering in their recent paper titled 'Rapid decarbonisation of Great Britain's (GB) electricity system'.</p> <p>The ESO should investigate the long-term arrangements to avoid legal risk arising from applying the new system to existing contracted background projects.</p>	
<p><b>Element 9:</b> Project Designation (See pages 14-15, 33-34)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>On the basis that Project Designation has the potential to accelerate the connection of essential projects for the energy transition, such as long duration storage, Energy UK cautiously supports this proposal.</p> <p>However, there is some concern about potential misuse of this policy and how it might be used in the future. Therefore, clear codified guidance and a route to recourse is needed to prevent concerns that the ESO will be using this as a mechanism to pick winners in the connection queue over others.</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>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Energy UK recognises the reasoning behind the ESO's decision to only apply CMP434 requirements from the Authority Decision Date to existing contracted projects. Such arrangements are suitable for the time being pending further connection process reform to enable strategic planning of the network.

However, with results from a Call for Input (CFI) on the volume of projects that expect they can meet Gate 2 requirements indicating almost half of the queue would be able to do so, serious consideration is needed as to the legal implications for existing contracted projects of further reform to refine the queue. The risk of legal challenge is very real and could threaten the connections reform process.

Energy UK would support, in principle, the use of financial instruments, as suggested in option (b), to prove intent to connect by showing that the project has a viable path to market. However, this must not be used as a stand-in for land rights as qualifying criteria.

There remains significant uncertainty regarding the application of Gate 2 criteria for those connecting at the distribution level and what information is required.

Energy UK members remain concerned by the preference for much of the Gate 2 criteria to remain uncodified and instead be determined by guidance approved by Ofgem. Energy UK understands the need for flexibility as the Gate process evolves and the network transitions towards more strategic planning. Nonetheless, greater certainty for those investing in projects and trying to connect is required.

Additional clarity surrounding Gate 2 would be welcome, including:

- Clarification of how many connections will be non-firm, and the conditions and requirements surrounding these connections. Gate 2 cannot be used to establish a new normal of all connections being non-firm.
- What actions are being taken to prepare the process for anticipatory investment, harmonisation with other key Government workstreams and strategic planning. Key here will be allowing developers more certainty over expected connection points and dates before negotiating a land option.
- How the proposed requirements will be revised regularly as amendments to land use, capabilities of different technologies, and wider planning and environmental reforms progress.

Overall, the criteria for Gate 2 goes some way to better managing connection applications. More remains to be done and efforts must be made to balance the need to allow the progression of connections reform whilst ensuring investment certainty at this critical time.

On Distribution Forecasted Transmission Capacity (DFTC), Energy UK supports this measure as essential to ensure the new connections process does not discriminate against distribution connecting projects which frequently struggle with delayed connection timelines from DNOs and stricter application criteria.



<p>At the same time, we stress the need to ensure a level playing field and avoid distortions in the market between those connecting at the transmission level and the distribution level. Serious consideration needs to be given to the burden being placed on both connecting customers and the Distribution Network Operator (DNOs) to gather and submit any needed information given the limited resources available and long timescales involved in their interaction.</p>	
<p><b>Element 13:</b> Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Energy UK recognises the resourcing required to assess all the application information sent by connecting customers, and while the subsequent preference to rely on sample checks for applications is understandable, there remains some concern that this approach will lessen the burden to ensure all evidence is correctly submitted.</p> <p>Clear guidance backed by code modifications is required if the ESO are proposing to sample check a proportion of applications.</p> <p>Nonetheless, it is appreciated that the intention is to check 100% of red line boundary land right submissions.</p>	
<p><b>Element 14:</b> Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>This particular measure, as described, is unnecessary and, as long as the change of location should not significantly affect electricity flows on the network, as defined in what constitutes a Significant Modification Application, existing proposals should sufficiently cover project location change requirements.</p> <p>While clear efforts have been made in this proposal to avoid its use to 'game' the connection queue, if implemented, caution is required with regards to the use of the 12-month location change allowance.</p>	
<p><b>Element 16:</b> Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Energy UK supports this mechanism overall as a method to better coordinate network design going forward.</p> <p>We note that there will remain significant uncertainty on investment decisions until the CNDM (in addition to the Gate 2 Criteria Methodology) is created and approved given its importance to information developers of what information they must submit.</p> <p>This mechanism could take various forms as the network moves towards strategic planning and so, if the ESO intends to use this mechanism to better strategically manage connections, there must be clear communication, signalling, and involvement of industry.</p>	

	<p>We also do urge the ESO to codify as much of the CNDM process as possible given there is some potential legal grounds for Ofgem to reject the modification and delay connections reform.</p>	
	<p><b>Element 19:</b> Contractual changes (See pages 26-28, 43-46)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>Energy UK supports, in principle, the contractual changes detailed with respect to the treatment of projects if they have not met Gate 2 requirements by 31 January 2025.</p> <p>Concerns regarding the constant revision of transitional arrangements for existing contracted projects and the uncertainty this creates remain. We ask for greater transparency from the ESO regarding transitional contractual changes going forward and wider industry involvement in its thought process.</p> <p>The arrangements suggested here go some way to clarifying transitional arrangements and we ask that any changes going forward be clearly signalled.</p> <p>Serious concerns remain regarding legitimate securities and liabilities for those projects not able to meet Gate 2 requirements by the 31 January 2025, something that presents is a notable risk that could give rise to legal challenges.</p> <p>Some other members have stressed the need for the inter-trip conditions of a proposed connection to be reassessed when queue positions are rearranged and that the impact of this reassessment on queue position is fair and codified. In some cases, those are hard wired inter-trips requiring significant works and might lead to projects unfairly disconnected when queue positions are rearranged. Achieving this would mean improving transparency of when projects fall out of the queue. We appreciate the ESO intends to review this issue as part of the development of the CNDM.</p>	
	<p><b>Element 20:</b> Cut Over arrangements (See page 28, 47)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>While Energy UK broadly agrees with this proposal, greater clarity on the treatment of securities and liabilities for projects applying during the cut over period is required.</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>)? If yes, please provide supporting justification.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>Element 14 regarding Project Site Location, as described, is unnecessary. If the change of location would not significantly affect electricity flows on the network, as</p>	



	defined under Significant Modification Application, existing proposals should sufficiently cover project location change requirements.	
7	<p>In relation to Q6, are there any features which you believe are missing in the proposed CMP435 solution that would more effectively facilitate implementation of TMO4+ to the existing contracted background.</p> <p>If yes, please provide details and justification.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>Energy UK broadly agrees with the content of the MVP reforms. The proposals for the Gate process criteria, Significant Modification Application, Project Designation, and CNDM may need to be codified rather than based on guidance.</p> <p>Codification will give additional clarity regarding:</p> <ul style="list-style-type: none"> <li>• what constitutes a significant change of location under a Significant Modification Application, and thus a need to go through the Primary Process;</li> <li>• whether significant modification would be processed at a following Gate 1 or Gate 2 window;</li> <li>• criteria for Gate applications between the transmission and distribution level, notably regarding advancing and rights and how interactions between the connecting customer and DNOs would be managed;</li> <li>• how the ESO would consider extensions to the signing periods for Gate 1 if actions from the ESO were delayed or vital queries from the customer not answered in a timely manner;</li> <li>• conditions regarding how Project Designation would be used;</li> <li>• the CNDM process as a whole given there is some potential legal grounds for Ofgem to reject the modification and delay connections reform; and,</li> <li>• the majority of the Gate 2 criteria.</li> </ul> <p>Energy UK recognises the need for flexibility as the two gate process is iterated as the network moves towards strategic design. However, at this critical juncture in the energy transition, investment certainty is needed, and threats of frequent guidance changes in the coming year discourages this much needed certainty.</p> <p>Specifically, regarding CMP 435, given the potential for legal challenge for existing contracted projects in the queue to have their connection dates rearranged, it may be required that the Government step in with a more specific programme in order to avoid some potential for legal challenge. While such an option may</p>	

	sit outside the scope of CMP 435, reference to an intention to explore this should be made.	
8	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.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	All projects in the existing connection queue should be subject to some version of the outlined CMP 435 proposal, with consideration for any unintended consequences and market distortions that this may result in.	
9	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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Under the current arrangements, projects in the existing queue with a genuine intent to connect may risk unjustly being offered later dates than those that apply after the 'go live' date and are able to 'game' the system.	