

CUSC Alternative Form – Non Charging

CMP435 Alternative Request 12: Require NESO to check 100% of Gate 2 Evidence

Overview: Would require NESO to check 100% of Gate 2 Evidence submitted by Users. The Original does not require 100% checks, and the level of checks is proposed to be defined in the Gate 2 Criteria Methodology

Proposer: Grant Rogers, Q-Energy Sustainable Investments Ltd

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

What is the proposed alternative solution?

This alternative would require NESO to check 100% of Gate 2 Evidence submitted by Users.

It is important that Users know that projects can only pass Gate 2 if they have actually met the Gate 2 Criteria. This will remove the incentive for Users to submit misleading declarations in order to enter the queue speculatively and will increase confidence in the proposed reformed connections process.

In the Original, NESO proposes that it would be required to use reasonable endeavours to check all evidence, unless the Gate 2 Criteria Methodology states otherwise. However, there are two problems with the proposed approach:

1. **Reasonable endeavours is a low legal bar, and there is therefore a large risk that NESO would choose not to check all evidence**, for example, because NESO is busy undertaking other activities.
 - a. A recent example of this is the ATVs that NESO is issuing to Users post the implementation of CMP376.
 - b. CUSC Section 16, introduced by CMP376, states that *“The Company shall issue the CMP376 Agreement to Vary to the User. The CMP376 Agreement to Vary shall be issued to the User as soon as practicable after the 6 months or failure to accept.”*
 - c. We are aware of cases where ATVs have not been issued as early as NESO had the right to do so. The impact of this is that some Users are seeing later Milestones inserted into their agreements, per the table in Clause 16.3.
 - d. This failure to issue ATVs at the earliest opportunity has therefore reduced the positive impact of CMP376 in terms of requiring Users to meet Milestones or leave the queue.
2. **Evidence checking is too important to be left to the Gate 2 Criteria Methodology.**
 - a. NESO states that the use of Methodologies *“...would provide a more appropriate balance of flexibility and governance when compared to the current codified CUSC Modification process.”* (i.e. more flexibility but with less onerous governance).
 - b. We believe that the checking of all Gate 2 Evidence is a fundamental requirement to operationalise Connections Reform and to ensure industry confidence in the arrangements.
 - c. Therefore, we believe that it is more appropriate to have an absolute requirement on NESO to check all Gate 2 Evidence, and to ensure that this cannot be overwritten by provisions in one of the proposed Methodology.

Possible implementation in the Legal Text (deletions in red strikethrough; additions in red).

18.10.1 Although an EA Request may be confirmed as Effective prior to the start of the EA Gated Design Process, during and as soon as reasonably practicable within the EA Gated Design Process further detailed checks of the readiness submissions will be undertaken as follows:

18.10.1.1 The Company shall ~~use reasonable endeavours to~~ undertake a more detailed check ~~as set out in the Gate 2 Criteria Methodology~~ on all the Declarations

submitted in respect of Existing Agreements for a Project (other than as they relate to evidence of secured land rights) (and other than where the Readiness Declaration is provided for a Relevant Embedded Small Power Station small or medium Relevant Embedded Power Medium Station Project by the owner/operator of a Distribution System where it is expected that this detailed check will be undertaken by the owner/operator of the Distribution System).

18.10.1.2 The Company shall ~~at its discretion~~ check the evidence provided in all the Readiness Declarations submitted in respect of Existing Agreements for a Project regarding secured land rights for duplications and overlaps against any other Readiness Declarations submitted in respect of Existing Agreements for a Project. Where duplications or overlaps are identified in the Original Red Line Boundaries, The Company will contact the relevant parties concerned. In the event that duplications and/or overlaps are identified and the process relating to this in the Gate 2 Criteria Methodology will be applied to establish whether in those circumstances, a (and which) Project has not met the Gate 2 Criteria.

18.10.1 3. The Project will be assessed against the Gate 2 Criteria.

18.10.1.4 Where The Company identifies that the supporting evidence does not show that the User has met the Gate 2 Criteria, that User will be deemed not to have met the Gate 2 Criteria.

What is the difference between this and the Original Proposal?

The Original does not require 100% checks, and the level of checks is proposed to be defined in the Gate 2 Criteria Methodology.

What is the impact of this change?

Proposer's Assessment against CUSC Non-Charging Objectives	
Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral: N/A
(b) 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;	Positive: Ensures that projects can only pass Gate 2 if they have actually met the Gate 2 Criteria. Increases the likelihood that projects holding Gate 2 Agreements are viable and can compete with each other.

(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Neutral: N/A
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive: Ensures that projects can only pass Gate 2 if they have actually met the Gate 2 Criteria, which is the intention of the proposed CUSC modification.
*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.	

When will this change take place?

Implementation date:

Aligned with the Original Proposal.

Implementation approach:

Aligned with the Original Proposal.