

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 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

Respondent details	Please enter your details	
Respondent name:	Ed Birkett	
Company name:	Low Carbon	
Email address:	ed.birkett@lowcarbon.com	
Phone number:	07356 110 715	
Which best describes your organisation?	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network <input type="checkbox"/> Operator <input checked="" type="checkbox"/> Generator <input 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 type="checkbox"/>C <input type="checkbox"/>D</p> <p>Objective A – Positive: Will help to facilitate competition by ensuring that projects can only remain in the queue if they make serious and sustained progress towards energisation.</p> <p>Objective B – Positive: Same comments as Objective A.</p> <p>Objective C – Neutral.</p> <p>Objective D – Negative: We believe that the proposal is negative on this Objective because the ESO is proposing to implement the new rules without changing the connections contracts of developers/Users. This is unlike the approach for CMP376 (ATV) and has the potential to cause widespread confusion in the industry. Therefore, we believe this Modification would have a negative impact on the efficient implementation and administration of the CUSC arrangements.</p>
2	Do you support the proposed implementation approach? (See page- 57-58)	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Per our response to Question 1, we do not support the ESO's proposal to "deem" that existing contracts have been converted to the Gate 1 Offer. This would materially change the meaning of existing contracts without changing the actual legal content of the contract.</p> <p>We do not believe that this is reasonable. We therefore believe that this approach poses risk of legal challenge, which the ESO should be taking steps to avoid for this important modification.</p>

3	<p>Do you have any other comments?</p> <p>Clarifying the proposed arrangements for Modification Applications submitted as part of the Gate 2 to Whole Queue process.</p> <p>We believe that the ESO needs to clarify what changes should be allowed to existing agreements as part of the Gate 2 to Whole Queue process (e.g. TEC reduction, removing a technology, reassessment of the most efficient Connection Site). Our view is that a Modification Application should be allowed at the point of entry into the Gate 2 to Whole Queue process, in line with the Significant Change and Material Technology Change provisions.</p> <p>We cannot see any argument for restricting changes as part of the Gate 2 to Whole Queue process, and we believe that this could lead to inefficient outcomes if developers have to immediately submit Modification Applications following the acceptance of a Gate 2 Offer in Q4 2025.</p>	
4	<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p><input checked="" type="checkbox"/> Yes (the request form can be found in the Workgroup Consultation Section)</p> <p><input type="checkbox"/> No</p> <p>We have submitted the following Alternative Request:</p> <ul style="list-style-type: none"> - Require the ESO to amend existing contracts using ATVs, following the same approach as CMP376. <p>We are considering, but have not yet raised, the following Alternative Request:</p> <ul style="list-style-type: none"> - Users should be able to seek advancement without paying a fee or submitting a Mod App. If ESO finds/decides that the User is eligible for advancement, only then should the User submit a Mod App and pay a fee.

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 CMP434, 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 CMP434 Proposal. Element 10 is proposed to be codified within the STC through modification CM095.</p> <p>Please provide rationale for your answer and any suggestions for improvement to each element?</p>
---	---

Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)	<input type="checkbox"/> Yes – N/A <input type="checkbox"/> No – N/A
<p>We do not believe that this Element of part of the proposal for CMP435, only for CMP434. We do not believe it would be practical to introduce differences to the level of codification for CMP434 and CMP435.</p>	
Element 3: Clarifying which projects go through the Primary Process (See pages 10-11,29-31)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Agree.</p> <p>For reasons of fairness, we recommend that Embedded Demand is included in the scope of this proposal. However, given that Embedded Demand is out of scope of CMP434, it makes sense that it is out of scope for CMP435.</p>	
Element 5: Clarifying any Primary Process differences for customer groups (See pages 11-12,32)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>We believe that these proposals could create difficulties for interconnector Users, specifically in situations where existing contracted interconnector Users that have not met the Gate 2 Criteria are required to meet the proposed Gate 1 Criteria.</p> <p>Many interconnector Users will not be able to meet the Gate 2 Criteria by the end of the year through no fault of their own - for example because they have only been offered a “holding connection offer” with no confirmation connection point – subject to the entry into and completion of a successor of the Holistic Network Design FUE.</p> <p>The proposed Gate 1 Criteria for interconnectors is a letter from CE/CES. It is not clear whether CE/CES has agreed to provide these letters or what criteria they will apply. We therefore believe that the Gate 1 Criteria should not be applied to existing interconnector Users.</p>	
Element 8: Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Per our response to CMP434, we support this Element.</p>	
Element 9: Project Designation (See pages 14-15, 33-34)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Per our response to CMP434, we do not support this Element being used as part of the Gate 2 to Whole Queue process.	
Element 11: 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)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>We support the proposed difference between CMP434 and CMP435 for this Element (i.e. removing the minimum option length for options signed before a certain date).</p> <p>However, to prevent gaming, we believe that this date should be earlier than the Authority Decision Date, else developers are likely to sign very short option agreements to meet the Gate 2 Criteria and to retain their queue position, which risks undermining this proposal.</p>	
Element 13: Gate 2 Criteria Evidence Assessment (See pages 22-23, 39-40)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>Per our response to CMP434, we agree with that DNOs / transmission-connected IDNOs should assess Gate 2 Evidence on behalf of the ESO.</p> <p>Per our response to CMP434, we believe that ESO should be required to check 100% of submitted evidence, in line with existing arrangements introduced under CMP376.</p> <p>However, we acknowledge that the Gate 2 to Whole Queue process will create a high, one-off administrative burden.</p> <p>We therefore propose the following assessment process for evidence submitted as part of the Gate 2 to Whole Queue process:</p> <ul style="list-style-type: none"> - Developers must submit evidence of secured land rights, a self-declaration letter, and a project Red Line Boundary – as per the proposal. - For determining which contracted offers are accepted into the Network Design Exercise as part of the Gate 2 to Whole Queue process, the ESO will only check the self-declaration letter and the Red Line Boundaries – the ESO will check 100% of these. - While the new offers are being processed, the ESO will check 100% of the underlying documentation. If the evidence is found to be non-compliant, then the contracted offers would be removed from the Network Design Exercise, and would be converted to Gate 1 Offers. <p>We believe that our proposal strikes the right balance between robustness and pragmatism in the face of the one-off administrative burden imposed by CMP435.</p>	

Element 14: Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Per our response to CMP434, we see no merit in this Element.	
Element 16: Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)	<input type="checkbox"/> Yes <input type="checkbox"/> No
N/A – we do not believe that this is part of the CMP435 proposal.	
Element 19: Contractual changes (See pages 26-28, 43-46)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>Group 1: Projects that don't meet submit the Gate 2 Evidence by the cut-off date:</p> <ul style="list-style-type: none"> - Per our response to Question 1, we do not agree with the ESO's proposals to "deem" that the meaning of contracts is changed if developers fail to submit the Gate 2 Criteria Evidence by the cut-off date, or to rely on generic changes to the CUSC. - We not believe that it is reasonable to expect developers/Users to understand that the meaning of their contracts has been changed in such a substantial way without receiving a varied contract. - We also believe that this approach poses legal risks. <p>Group 2: Projects meeting the Gate 2 Criteria / submitting a Self-Declaration letter and <u>not</u> seeking advancement:</p> <ul style="list-style-type: none"> - Agree with the approach of handling via ATV. - Suggest that, for these projects, ESO should still reassess the Outage Conditions (ConsAg Appendix D) and Interruptions (ConsAg Appendix F) to see if these can be made more favourable due to queue attrition. <p>Group 3: Projects meeting the Gate 2 Criteria / submitting a Self-Declaration letter and seeking advancement:</p> <ul style="list-style-type: none"> - We agree with the general approach of handling these changes via a Mod App. - However, we do not agree that <u>all</u> projects seeking advancement should be required to pay a Mod App fee at the point of entry into Gate 2. - Due to uncertain queue attrition, and the uncertain arrangements being introduced regarding capacity reallocation, developers/Users will struggle to know how likely they are to be eligible for acceleration. - We therefore believe it's unreasonable to require Users to pay a full Mod App fee before knowing whether their project is eligible to be offered advancement. - We think a more reasonable approach would be: <ul style="list-style-type: none"> o To ask developers to express interest in advancement via an Expression of Interest (in line with the approach taken as part of the Transmission Works Review). 	

	<p>○ If the ESO believes advancement can be offered to that customer, then the customer would be asked to submit a Mod App and pay the associated fee.</p> <p>Group 4: Projects with a Transitional Offer: No comments.</p>				
	<table border="1"> <tr> <td>Element 20: Cut Over arrangements (See page 28, 47)</td><td> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </td></tr> <tr> <td colspan="2">No comments.</td></tr> </table>	Element 20: Cut Over arrangements (See page 28, 47)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	No comments.	
Element 20: Cut Over arrangements (See page 28, 47)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
No comments.					
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 CMP434)? If yes, please provide supporting justification.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Per our response to Question 5, we believe that the following Elements should be removed:</p> <ul style="list-style-type: none"> • Element 9: Project Designation. • Element 14: Gate 2 Offer and Project Site Location Change. 				
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. If yes, please provide details and justification.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>No.</p>				
8	<p>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.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Per our response to CMP434, we believe that the Secretary of State should have the ability to grant projects time-limited exemptions from each of the requirements in both CMP434 and CMP435. This would avoid unintended consequences in relation to strategic projects such as nuclear and gigafactories. We do not believe that the proposed Project Designation Element is appropriate for this purpose, as the decision to grant these exemptions is inherently political rather than technocratic.</p>				
9	<p>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?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>				

	<p>Per our answer to Question 5 (Element 5), we believe that many contracted interconnectors may struggle to meet the Gate 1 Criteria – if this is applied. This is because it is unclear whether CE/CES has agreed to provide letters, or what criteria they would use to decide whether or not to provide letters.</p>
--	--