

CUSC Alternative Form – Non Charging

CMP435 Alternative Request 2: Making contractual changes following the same process as CMP376 (i.e. Agreements to Vary).

Overview:

This Alternative Request would require the ESO to implement changes to existing agreements via Agreements to Vary, in line with [CMP376](#), rather than legal text changes to the CUSC proposed in Element 19 of the Original.

Proposer: Ed Birkett, Low Carbon

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

What is the proposed alternative solution?

Following the approval of [CMP376](#) (Inclusion of Queue Management process within the CUSC), the ESO is inserting / has inserted Queue Management Milestones into existing agreements by issuing Agreements to Vary (ATVs) to customers, unless that customer had submitted a Modification Application within a defined period.

[Ofgem's Decision Letter on CMP376](#) explains that, by using the ATV mechanism, the ESO would be *"invoking clause 15.2 of the User's Construction Agreement to effect the insertion of Queue Management provisions as required by the amendments to the CUSC"*.

In this proposal (Element 19), the ESO proposes that the meaning of contracts will be changed *"through legal text introduced into the CUSC to amend such agreements rather than, for example, the 'Agreement to Vary' process"* (page 26).

The Proposer states that the different approach in this proposal is because *"under [CMP376](#), the changes were not generic and required that a bespoke Appendix Q had to also be issued to the impacted parties, requiring an Agreement to Vary to introduce this, but do not foresee the need for any bespoke changes to be issued bilaterally under [CMP435](#)."* (page 45).

We do not agree with the ESO's statement that no bespoke changes are needed under [CMP435](#). We believe that [CMP435](#) requires the following bespoke changes:

- Converting the existing connection offer into either a Gate 1 Offer or a Gate 2 Offer (a subset of projects will be converted into each type of offer); and
- Amending the date by which the User must meet the M1 Queue Management Milestone, including making this contingent on the consenting regime that the User opts for.

We believe that the ESO's approach in [CMP435](#) has two downsides:

1. Legal risk posed from challenges by Users who did not realise that the meaning of their contracts had been fundamentally altered by this proposal; and
2. An unwelcome precedent to fundamentally change the meaning of User's connection agreements without changing the wording itself.

This Alternative Request would require the ESO to implement changes to existing agreements via Agreements to Vary.

What is the difference between this and the Original Proposal?

- The Original Proposal would change the meaning of existing contracts by the insertion of new text into the CUSC.
- This Alternative Request would require the ESO to amend existing contracts via Agreements to Vary.
- The Alternative Request would change Element 19 only, with all other Elements of the Original unchanged.

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;	Positive. It is more efficient for Users to be clear about what their contracts do and don't mean.
(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. The investment environment will better if Users are clear about what their contracts do and don't mean. This will be positive for competition.
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	None: N/A
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive: As a matter of efficient administration, we believe it is better than existing contracts are updated to more closely match what will be in newer agreements.
<p>*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.</p>	

When will this change take place?

Implementation date:

Aligned with the original solution.

Implementation approach:

The ESO would need to issue ATVs to all existing Users that do not present evidence that they have met the Gate 2 Criteria by the due date.

For unchanged Elements, there is no change to the implementation approach.

Acronyms, key terms and reference material

Acronym / key term	Meaning
ATV	Agreement to Vary

Reference material:

1. [ESO webpage on CMP376](#)
2. [Ofgem Decision Letter on CMP376](#).