Workgroup Consultation Response Proforma

CMP330: Allowing new Transmission Connected Parties to build Connection Assets greater than 2km in length & CMP374: 'Extending contestability for Transmission Connections.

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 **17 January 2022**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

If you have any queries on the content of this consultation, please contact Ren Walker Lurrentia.Walker@nationalgrideso.com or cusc.team@nationalgrideso.com

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For reference the Applicable CUSC (charging) Objectives are:

a. *That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;*

b. *That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);*

c. *That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;*

d. *Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and*

e. *Promoting efficiency in the implementation and administration of the system charging methodology.*

**Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*

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

Standard Workgroup Consultation questions		
1	Do you believe that the CMP330/CMP374 Original Proposal better facilitates the Applicable Objectives?	Our review of the modification leads us to concluded that both the original and modified proposal do not facilitate the Applicable Objectives, and indeed the lack of any benefit analysis or impact assessment throughout the working group meetings confirms that there is no objective benefit for UK consumers and may lead to unintended negative consequences for parties seeking to connect to the network. *1.Objective A ('facilitates effective competition in the generation and supply of electricity')* – **Does not facilitate** – Not only have no tangible improvements in facilitating competition in generation or supply been presented yet to justify this modification, but there are also increased risks that competition is negatively impacted by the inefficient actions of a first comer building contestable Infrastructure Assets which impedes the Onshore TO's ability to connect subsequent applicants. The proposed 'intervention criteria' would also not provide an adequate remedy where the first comer is in default or later terminates its connection agreement. *2. Objective B ('Results in charges which are cost reflective'*) – **Does not facilitate** – There is an increased risk that Users undertaking a greater scope of contestable asset build for their benefit alone could lead to inefficient or unforeseen costs which will need to be borne by the Onshore TOs and eventually end consumers via TNUoS charges. With differing commercial pressures, and lack of regulatory protection for consumers, a User has less incentive to ensure economic and efficient spend in the same manner as a TO – this is particularly relevant for land

		purchase where land owners are aware of the terms that Users will pay to facilitate their connection. No evidence of balance sheet/procurement advantage has been provided by Users who would be seeking to enter the supply chain for transmission connection assets – specifically labour, balance of plant, project management. *3. Objective C ('Takes account of developments in transmission licensees' businesses')* – **Does not facilitate** – We remain unconvinced, despite the steer and facilitation provided by the ESO the Proposer, that this modification is compatible with the intended direction of Early Competition in Transmission. The scope of the CMP374 proposal does not preclude contestable build by Users of 275kV or 400kV Infrastructure Assets. We therefore believe this modification will circumvent or dilute processes, e.g. licencing; tendering; which are anticipated for the ECIT/CATO regime to be run by Ofgem. We would seek the view of Ofgem on this point. Objective D ('Compliance with relevant regulations) – **Does not facilitate**. The legislative and industry codes are founded on the basis of strict standards for licenced parties to undertake this work as a proxy for the UK consumer. The objectives of the licence are aligned with that. An unregulated party will have differing objectives. *Objective E ('Promotes efficiency in the charging methodology')* – **Does not facilitate** – This modification would lead to excessive codification of existing processes already accommodated as business as usual today. Furthermore it is questionable whether Section 14 is an appropriate location for a lot of the revised legal text the proposer is seeking to add into CUSC. Changes would also be needed to be mirror in STC to have any effect, doubling the overall inefficiency in general code arrangements. This position does not

		also sit consistently with present experience and User requirements for live projects.
2	Do you support the proposed implementation approach?	No bespoke implementation approach has been provided by the proposer. As we expect no interaction with charge setting obligations, if this modification were to be approved (along with the supporting STC changes), we would expect this to be able to be implemented as soon as the licence changes and/or T2 business plan revisions needed to enable to the transmission licensees to discharge the additional obligations brought forth by the proposer's solution are approved by Ofgem. We note this consultation assesses the mod proposal against the CUSC Charging Methodology applicable objectives. We believe that to implement the current proposer's solution other CUSC sections will also be impacted – e.g. Section 2 (Connection), Section 7 (Dispute Resolution) and Section 11 (Definitions) and potential clarifications in Section 15 (User Commitment).
3	Do you have any other comments?	Whilst we can see why Users will believe that this proposal has commercial benefit to them, we have not been presented with any evidence to support this. This proposal is based on a theoretical commercial proposition that has not been substantiated and it is therefore questionable as to the value attached to the proposition. We would expect a CBA to show that this is in the interests of UK consumers and a clear demonstration of cost or time efficiencies – neither has been presented. When it comes to the proposer's view that Users should be able to develop and construct "sole-use" or "non-shared" Infrastructure Assets (a concept which feels contrary to the very nature of these assets), there are two challenges.

		Firstly, we are concerned that there is an implicit suggestion that a User's specific capacity requirements for Infrastructure assets could/should prevail over wider strategic investment for the benefit of all Users. It also has a bias towards the construction of physical assets and may be contrary to more innovative, non build solutions. The Onshore TOs always take into account multiple drivers when developing the transmission system, allowing us to deliver lower cost solutions overall for the benefit of Users and consumers. This is contrary to what is proposed via CMP374 where inefficient piecemeal network design to facilitate individual connections or requests for contestability would prevail. Whilst the provisions for TO intervention seek to avoid this adverse situation, they introduce additional hurdles or obligations for our network development and connection contracting activities which will increase costs and inefficiency. That leads on to the second challenge, whether Users or their contractors will have the necessary access, resources (e.g. consenting, lands rights, and procurement supply chain), or regulatory oversight to protect end consumers (e.g. licensing) to ensure they successfully deliver high voltage Infrastructure works of significant national importance and potentially up to 400kV more economically/efficiently than Onshore TOs; or are penalised if they don't. Our response to the previous CMP330 consultation raised areas of regulatory concern. They largely stem from the loose application of contestability concepts at distribution being transposed onto corresponding transmission processes, without recognition by the proposer of the stark

		differences in the wider commercial regime that this amendment does not change. For example, this proposal seeks to provide users a right to build assets where it is not exposed to the costs of its actions through the charging regime (as with contestability at distribution) or through regulatory oversight.
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	Not at this time.
Modification Specific Workgroup Consultation questions		
5	Do you agree with the proposed solution that one offer with two options (contestable/non-contestable) would represent the best approach?	SPT are strongly opposed to this proposal – it is not efficient and would place an undue burden on the TO's, as well as introducing system design complexity and policy pressures to deal with interactivity. This would lead to significant inefficiency in CUSC and STC arrangements, whilst being potentially more costly for all transmission connection applicants when compared to the baseline. To enable the Onshore TOs to discharge this additional activity we would require one or more of the following changes to our business: 1) An increase in headcount for contracting teams. It is not feasible for the transmission licensees, already seeking to drive significant economic efficiency during the T2 period, to now have to accommodate such a significant workload change. Our contracting teams are already subject to an unprecedented volume of annual connection applications. In particular, SPT is seeing a significant increase in ATOCOs, and dual offers from SHETL and NGET would drive this to an unsustainable number which would introduce operational risk to the TOs. No cognisance of a "race for skills" has also been factored into this as TO's enter the market at the same time for the same employee profile. At

		some point real world economics need to be factored into the theoretical. The proposer's dual-offer solution would need a re-baseline of TO business contracting resources. Whilst this wouldn't be as far as a doubling effect (as we accept the view of the workgroup that a lot of the effort to produce the second offer would be repeatable), we already see that the ESO is struggling with present levels of applications (noting that Ofgem have indeed granted a derogation for a longer period). Should these additional costs be permitted by the Ofgem – and we are yet to see any kind of CBA from the proposer to justify why this particular approach would be better than the baseline – we would have no option but to apply the cost increase to all Application Fees, *regardless* of any User-preference for contestability. It is important that CUSC Parties understand this as a consequence of this aspect of the proposer's solution. 2. The licence timescales are tight enough, given the present complexity of system design. The current deadline for the Onshore TOs to produce a connection offer for the ESO is 2and a half months, with the ESO permitted another two weeks to submit to Users. For the TOs to instead produce two iterations of a connection offer - reflecting both contestable and non-contestable build options would need an extension to these obligations sufficient to de-risk us from penalties under our Timely Connection Offer incentive and/or associated breaches of our licence/the STC + STCPs. We also note that the new Moments that Matter incentive would be placed at further risk here, which is not acceptable or fair to the TOs who

		have structured and trained in a manner consistent with present obligations. A recent Ofgem determination1 permitted the transmission licensees additional time to prepare specific connection offers, was set against the backdrop of unprecedented applications: “On the broader matter of the overall increase in electricity transmission connection applications, we acknowledge the requirement this creates for both Transmission Owners and NGESO to process a significantly greater number of offers than may have been expected in the past. There may be a case to consider a review of aspects of the current connections process and related obligations to ensure they remain fit for the future, and we will continue to liaise with NGESO and the Transmission Owners to better understand their views on the improvements that could be made and how they could be delivered.” What is proposed via CMP374 is directly at odds with the wider context facing the transmission licensees as acknowledged by Ofgem in the publication quoted above. Consequently, given the potential for licence, charging statement and/or code changes to accommodate what we perceive to be a significant inefficiency to existing CUSC/STC arrangements 3. System Access requirements. Given the complexity of access arrangements and outages required for connection/maintenance at present, we question whether or not the ESO would be able to accommodate an additional access requirement (which may become redundant). This is non value add and inefficient – and potentially risks the

		date of other connections who are certain to proceed. 4. Insufficient clarity on status. This proposal has not addressed the status of the offers – are they both to be included in the generation background for system design purposes? Can a User insist on signing both and then terminate one?
6	Should there be a process to allow subsequent applicants to take over the contestable build already negotiated with the TO? If so, should this process have a 'point of no return' where this option is restricted?	Any process should incorporate the TO requirements (as a proxy for the UK consumer and ensuring that overall the network is fit for purpose, safe and effective) as both a starting point and end point. This may extend to the TO being the first option on step in rights (subject to funding, which increases cost risk) and also as a last resort. If this is to be allowed for as described, it will inevitably add time and cost to the process as the interface with the TO and construction party needs to be contractually realigned – the commercial and legal risks here are obvious. In addition, the risk here is that the first comer and Onshore TO have both committed to spend profiles necessary to conform to the first comer's requested connection date. Both parties will have separate legal agreements driving the contestable build and connection - any fundamental amendments to the former risk both party's obligations under the latter. Ultimately if the first comer has not yet committed significant financial outlay in delivering their contestable build to date when a subsequent applicant causes a design change by the TO which represents a better economic and efficient solution that what was agreed with the first comer, then the subsequent applicant should be

		permitted to request contestability as all parties benefit of the subsequent applicant can deliver works more efficiently or economically. From our perspective, the Onshore TO's right to intervene should supersede any requirements of individual Users when it comes to contestability of Infrastructure Assets. This safeguards the UK consumers interests, and the supply chain of the TO (with sufficient notice) should be able to step in and ensure completion – clearly no guarantees can be given on price given tipping point economics and value of scarcity/need, which is a financial risk that needs to be accepted in the deployment of this model.
7	Are the proposed intervention criteria sufficient? Are there any additional criteria that should be considered? Please provide your views.	It is difficult to make such a concrete statement given the hugely theoretical nature of this proposal. As foundation intervention criteria, they do seem appropriate, however it is also important that this criteria can be expanded upon efficiently by the TOs who require sole and absolute discretion given the legal responsibilities for management, operation and compliance of the network. Given the important function that any such project by a third party, who has differing commercial objectives and stakeholder to legally satisfy (shareholders and not the UK consumer), any such party should also be compelled to comply with the following: **Economic and efficient delivery** The intervention criteria should ensure that contestability delivers efficient economic outcomes at no greater cost than what the Onshore TO would have been able to deliver with a non-contestable build. **Design and construction**

		Engineering/technical standards set asset quality; this should supersede cost drivers which are deemed to be most important under CMP374 Against this above context, the Onshore TO needs to retain control in accepting the construction method, specification, as well as ensure adequate oversight of the User during construction, when negotiating an Adoption Agreement/User Self-Build agreement (as per existing process) and not be unreasonably restricted on intervention when contestable construction might not deliver against TO efficiency objectives. **Protecting anticipatory or wider TO investment** As mentioned above in Q2, it is highly likely that the Onshore TO will often optimise the design of infrastructure assets, to take into account other potential users and asset health management, which lowers the cost to consumers overall. Our view is that Users seeking contestability for Infrastructure Assets may find this restrictive when they consider the needs of their project in isolation – a clear limitation of this code modification. The Onshore TO must therefore be able to reserve its right to conduct the construction contrary to the wish of the User in this context. **Compliance with Electricity Act 1989 Sch 9** The duties upon TO's to minimise the impact of infrastructure and mitigate the adverse impact of works is a legal one. Any provider of such infrastructure must commit to the same obligations. This should extend to specific environmental requirements and audit of outcomes and results.

8	Do you agree that no additional safeguards are required for the delivery of non-shared Infrastructure Assets via contestable works? If not, what protections would you wish to see?	There are key regulatory funding concerns for us as a consequence of this modification, which cannot be mitigated via CUSC or STC code modifications alone. The risk identified above is compounded if the User is unable to demonstrate robust control of its contractors particularly in respect of safety as they will be working adjacent to NGET assets which are critical national infrastructure, plus their ability tp manage project risks. To mitigate this TOs may need to increase their oversight of these projects and control of costs, with additional TO overheads which may need to be charged to the User as One- off works.
9	Do you agree with the principles of what needs to be included in the Adoption agreement as set out in Annex 4.	We see that from a commercial and risk perspective, Users would like to be able to price the contract (subject to unforeseen risk which will need to be paid for, which should be prudently added to the cost as an undisclosed sum given the low experience of Users in the construction of these assets). However, we see limited benefit in codifying the principles for 'Adoption Agreements' in CUSC, and actually see it as an inefficiency and a limitation for innovation at the detriment of Users seeking contestability in the future. Existing User-Self Build (USB) agreements struck today between the Onshore TO and Users for contestable works are formed from standard terms for engineering and construction projects. There is further bilateral legal negotiation between both parties until an agreement is reached. Our perspective is that this approach proportionately mitigates the significant financial and engineering risks faced by the Onshore TOs, whilst setting clear obligations on the 3rd parties doing contestable build as a form of proxy for

		the significant obligations in our transmission license governing this activity. The terms of a USB agreement ultimately protect end consumers and other Users. At this time, SPT have received (limited) requests for USB – no mention of codification has been referred to in this process, nor would it be welcomed by these parties as it would introduce a delay to their own commercial interests. These organisations have demonstrated a level of commercial awareness and appreciate for the position of the TO's throughout. We would expect this level of maturity and understanding from an organisation wishing to progress this model, as well as understanding the role of the TO as the proxy for the UK consumer, not simply as an asset owner.
10	A potential alternative solution is that the contestability could be limited to just 132kV in Scotland, which in the Proposer's view is in line with treatment of 132kV in England and Wales. Do you think this is appropriate? Please provide justification for your views.	This may be discriminatory as there would need to be a legitimate reason to exclude large projects. This is proposed as a solution, but we are not clear as to what mischief this CUSC mod is seeking to remedy so again it is difficult to answer.
11	Are there any issues for stakeholders to extend contestability to building assets above 132kV.	Yes, in particular local communities and land-owners and how they will be impacted. How will the User seek to manage these as they cannot be left to the TO (and clearly the separation of identity will be very relevant too in the sense of who is responsible for public management). Users would need to engage with local authorities on a different basis as the footprint of the project would be more extensive than a windfarm for example – is there evidence that this can be done without impairing the future requirements of the TO?
12	Will the CMP330/374 Original Proposal / possible	This introduces unknown risk in the event of a User default scenario. From a

	alternatives impact your business. If so, how?	network perspective, the introduction of third party assets and compatibility with the existing network again introduces risk which will need to be managed via the User accepting the premise that the network is critical national infrastructure and not simply a component part of their own connection. This philosophy will extend to engineering standards to protect UK consumers via compliance with tried and test methodology and standards. Users should note that the approach to this is not about risk transfer for payment as this impact to the function and compliance with licence, statute and code are not matters that can be readily outsourced to third parties nor “bought”.
13	Do you think this change will benefit your organisation, other organisations, or end consumers? Please provide evidence and/or examples to support this.	We have no evidence that this will be of benefit to any party as none has been presented. For the reasons detailed elsewhere, we believe that this introduces risk that is not required and could interfere with the TO’s ability to own and operate an efficient and safe network.
14	Do you believe this proposal brings forward any additional risks of the Onshore TO’s, other than those already identified? Do you think a license change is required to mitigate the risks fully?	We have highlighted the risks of allowing unregulated third parties provide critical national infrastructure. Given these contracts are also caught by the Construction Act requirements, it would mean that adjudication and arbitration proceedings would potentially rank higher than Ofgem proceedings thus introducing additional legal complexity.