

Workgroup Consultation Response Proforma**CMP376: Inclusion of Queue Management process within the CUSC**

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 **23 December 2022**. 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 paul.j.mullen@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
Respondent name:	Zygimantas Rimkus
Company name:	Floating Energy Alliance/Buchan Offshore Wind
Email address:	zygimantas.rimkus@buchanoffshorewind.com
Phone number:	07985 502 575

I wish my response to be:

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

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*
- 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..

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

Standard Workgroup Consultation questions		
1	Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe each 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>Click or tap here to enter text.</p>
		<p>Alternative <input type="checkbox"/>A <input type="checkbox"/>B <input type="checkbox"/>C <input type="checkbox"/>D</p>
		<p>We are extremely concerned about the proposed alternative to retrospectively apply the CMP376 to all currently contracted projects. We believe that this is unfair to existing connection agreement holders, represents a retrospective change which would undermine confidence in the connection agreement process, and is unnecessary for the proposal to meet its objectives as all projects with connection agreements prior to implementation will either be stopped by their shareholders, be built and connect, or require to 'mod app, at which point they will be brought within the auspices of the original proposal.</p>
2	Do you support the proposed implementation approach?	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>Click or tap here to enter text.</p>
3	Do you have any other comments?	<p>Please see our answer to question 7 below. We believe that the addition of an unsuccessful bid to the list of exceptions is essential if the proposal is to strike the correct balance between the benefits of being able to rationalise the transmission connections queue and the need to avoid creating unacceptable levels of risk to developers which do wish to proceed with their projects.</p>
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Click or tap here to enter text.</p>

Specific Workgroup Consultation questions		
1	Do you agree with the Milestone durations proposed? Please provide the rationale for your response.	<p>Yes, as we believe these to be sufficiently aligned to project timelines.</p>

2	<p>Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date the Offer is sent to the User; or from the Contracted Completion Date back to the date the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.</p>	<p>We would support the time period for the milestone durations being from the Contracted Completion Date back to the date the Offer is sent to the User, as this allows the generator to ensure they are confident they can meet the milestones ahead of signing their connection agreement.</p>
3	<p>There are differences between the arrangements at Transmission and Distribution. Do you agree with the reasons provided why there is different treatment and that these don't create undue discrimination? Please provide the rationale for your response.</p>	<p>We would argue that the proposal should confer the <i>right to terminate</i> on the ESO where milestones are missed, rather than termination being the automatic and direct consequence of a missed milestone.</p> <p>The reason for this is that the fundamental objective of the proposal is to ensure that projects which are not being progressed cannot 'sit on' their TEC, thereby delaying or blocking projects which applied at a later point in time; <i>not</i> to ensure that every project adheres to a strict and prescriptive set of timescales.</p> <p>As such, we believe that a degree of discretion should be built into the proposals, just as there has been for distribution-connected projects, given the fact that transmission-connected projects are – by definition – larger and therefore more complex and, therefore, subject to greater risks of delay.</p> <p>This would ensure that the proposal strikes the right balance between the need to allow proper management of the connection queue with the need to avoid new and considerable risks to developers which are committed to the timely delivery of their projects.</p> <p>Where it is clear that any developer is making reasonable endeavours to progress their project as close to project milestones as possible, we would not,</p>

		therefore, expect the ESO to exercise its right to terminate, but that the right to terminate would be exercised where this was clearly not the case.
4	Do you agree with the evidence requirements proposed? Please provide the rationale for your response.	Yes.
5	Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.	No, as a developer whose appeal is successful should not be prejudiced by an incorrect application of the rules, and the construction agreement should be considered to continue to apply until such time as an appeal has been unsuccessful.
6	Do you have any views on the most appropriate route for Appeals/Disputes raised by a User whose Construction Agreement has been terminated under CMP376? Please provide the rationale for your response.	We believe that the most appropriate route for appeals/disputes is Option 1: Use existing CUSC disputes process as set out in CUSC Section 7 as today – essentially escalation and arbitration to Electricity Supply Association; because the CUSC process is the most clearly established from the options presented. Followed by the next best route, Option 2: As Option 1, but arbitration is to somewhere else e.g. London Court of international arbitration;
7	Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response.	<p>We agree with the exceptions listed, but believe that it is imperative that other circumstances are added to this list if the proposals are to strike the correct balance between allowing termination of projects which are not being progressed and a fair balance of risk for projects which are.</p> <p>These include:</p> <ol style="list-style-type: none"> 1. Delays to CfD auctions - or any mechanism which replaces these as a result of BEIS' Review of Electricity Market Arrangements - given the strong possibility that auctions do not take place as frequently as communicated by government, and/or that there are delays to individual allocation rounds.

		<p>2. Project delays as a result of an unsuccessful CfD bid. Given the competitive allocation process, almost by definition, there will be a number of projects which are unable to reach the 'project Commitment' milestone by the prescribed date as a consequence of failing to secure a CfD. We do not believe it is appropriate for all unsuccessful projects in any CfD round to have their connection agreements terminated and be required to make a fresh application.</p> <p>3. Delays to processing of applications for consent, which are outwith the project developer's control. We note that the period between the requirement to have applied for consent and secured consent is no longer than 18 months, and believe that there is a high probability that decisions for offshore wind projects may take longer than this due to:</p> <ul style="list-style-type: none"> a. The volume of offshore wind projects likely to be applying for consent at around the same time; b. The complexity of the decision-making process and quantity of background data required by both the applicant and the planning authority; c. The number of consultees involved <p>4. Legal challenge. We believe there is a strong possibility of legal challenge to future offshore wind consents and that this should be added to the list of exceptions, given the impact of a legal challenge on project timescales.</p> <p>We believe that these are all consistent with the aims of the proposal, and would not prevent the ESO from terminating agreements for projects which are not moving through development milestones, and ensure that projects which are moving ahead are not penalised as a result of delays beyond their control.</p>
8	Do you agree that the associated Construction Agreement will be terminated if Milestone Dates (unless covered by the exceptions) are missed and not rectified within the 60-calendar day period?	As set out in our response to Question 3, we believe that the proposal should be amended to give the ESO the <i>right to terminate</i> where milestone dates are missed, unless covered by the exceptions listed in the consultation and in our response to Question 7.

	Please provide the rationale for your response.	
9	Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.	Yes, for the reasons set out in the consultation.
10	Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?	<p>Yes. As set out in the consultation document, the proposal and the alternatives have the potential to result in the termination of grid connection agreements for a significant level of capacity, and therefore speed up the connection date for our project.</p> <p>However, we recognise that the changes will also result in significant new risk as a result of the potential for the termination of our connection agreement as a result of delays which are outside of our control.</p>