

Draft Final Modification Report		
<h1>CMP376: Inclusion of Queue Management process within the CUSC</h1> <p><b>Overview:</b> This CUSC modification is to implement the queue management process in to CUSC including introducing a right for the Electricity System Operator (ESO) to terminate contracted projects which are not progressing against agreed milestones.</p>	<b>Modification process &amp; timetable</b>	
	1	<b>Proposal Form</b> 22 July 2022
	2	<b>Workgroup Consultation</b> 25 November 2022 - 23 December 2022
	3	<b>Workgroup Report</b> 23 March 2023
	4	<b>Code Administrator Consultation</b> 03 April 2023 - 04 May 2023
	5	<b>Draft Final Modification Report</b> 18 May 2023
	6	<b>Final Modification Report</b> 07 June 2023
	7	<b>Implementation</b> 10 Working days after Authority Decision
<p><b>Have 5 minutes?</b> Read our <a href="#">Executive summary</a></p> <p><b>Have 20 minutes?</b> Read the full <a href="#">Draft Final Modification Report</a></p> <p><b>Have 30 minutes?</b> Read the full Draft Final Modification Report and Annexes.</p>		
<p><b>Status summary:</b> This report has been submitted to the Authority for them to decide whether this change should happen.</p>		
<p><b>Panel recommendation:</b> Panel will meet on 26 May 2023 to carry out their recommendation vote.</p>		
<p><b>This modification is expected to have a: <b>High impact on:</b></b> ESO, Onshore/Offshore Transmission Owners, and all users wanting to utilise or connect to the National Electricity Transmission System (NETS) and Distribution Network Owners.</p>		
<b>Governance route</b>	Standard Governance with a Workgroup	
<b>Who can I talk to about the change?</b>	<b>Proposer:</b> Rein de Loor, ESO <a href="mailto:rein.deloor@nationalgrideso.com">rein.deloor@nationalgrideso.com</a> Phone: 07843804810	<b>Code Administrator Chair:</b> Paul Mullen <a href="mailto:Paul.j.mullen@nationalgrideso.com">Paul.j.mullen@nationalgrideso.com</a> Phone: 07794537028

## Contents

<b>Contents</b> .....	<b>2</b>
<b>Executive summary</b> .....	<b>3</b>
<b>What is the issue?</b> .....	<b>7</b>
Why change? .....	7
<b>What is the solution?</b> .....	<b>8</b>
<b>Workgroup considerations</b> .....	<b>9</b>
<b>Workgroup Consultation summary</b> .....	<b>28</b>
<b>Workgroup Alternatives</b> .....	<b>29</b>
<b>Legal text</b> .....	<b>35</b>
<b>What is the impact of this change?</b> .....	<b>36</b>
<b>Workgroup Vote</b> .....	<b>37</b>
<b>Code Administrator Consultation summary</b> .....	<b>38</b>
<b>Panel recommendation vote</b> .....	<b>39</b>
<b>When will this change take place?</b> .....	<b>44</b>
Implementation date .....	44
Date decision required by .....	44
Implementation approach .....	45
<b>Interactions</b> .....	<b>46</b>
<b>Acronyms, key terms and reference material</b> .....	<b>46</b>
Reference material .....	47
<b>Annexes</b> .....	<b>47</b>

## Executive summary

### What is the issue?

Queue Management describes the process to manage contracted connections (both at Transmission and Distribution) in areas where there is limited network capacity enabling fair and effective use of available network capacity. To date, network companies have managed contracted connections, both generation and demand, on a ‘first to contract’ principle. The ‘first to contract’ principle does not necessarily consider projects that can progress more quickly ahead of a first comer, whose project may delay or stall. There is currently no mechanism in the CUSC to enable network companies to actively manage connection queues to ensure that capacity allocation is optimised for the benefit of all Users and end consumers. Consequently a modification has been raised to apply more explicit Queue Management processes in CUSC.

### What is the solution and when will it come into effect?

#### Proposer’s solution

<p><b>Scope and Implementation</b> – All new applications, new Modification Applications and new Agreements to Vary (ATVs) for parties with a CUSC Construction Agreement (except BEGAs, DNOs associated with Distributed Generation (DG) or demand customer connections; and shared works for non-radial offshore connections and any Offshore Transmission System User Development Works (OTSDUW)).</p>		
<p><b>Milestones</b> – Milestones to be included in the Construction Agreement and will date back from contracted Completion Date (Milestone duration time period is determined from a look-up table based on the period from the offer date of the Agreement to the contracted Completion Date).</p>	<p><b>Evidence to Demonstrate Compliance</b> – For each Milestone set out in the CUSC. Note that this is an ongoing compliance requirement for M1, M2 and M3 (i.e. the Conditional Progression Milestones).</p>	<p><b>Exceptions</b> - Exceptional issues that Users cannot control and which may lead to unforeseen project delay and issues with their compliance to Milestones.</p>
<p><b>Modification Applications</b> – All Milestone dates stay fixed unless Exception provided; in case of 1<sup>st</sup> Modification Application after CMP376 implementation for pre-existing Construction Agreements, Milestones are set based on the Modification Application offer date and the Completion Date in that offer.</p>	<p><b>Terminations</b> – There is a 60 calendar day remedy period to rectify any missed Milestones</p> <p>ESO will terminate for M1, M2 and M3 (i.e. the Conditional Progression Milestones).</p> <p>ESO has the right to terminate for M5, M6, M7 and M8 (i.e. the Construction Progression</p>	<p><b>Appeals</b> – Standard “Other Disputes” process as per CUSC Section 7.4</p>

	Milestones). There will be an internal ESO escalation process before this right is exercised.	
--	---	--

**Implementation date:**

10 working days after Authority decision for CMP376 Original, WACM1, WACM2, WACM3, WACM4, WACM5, WACM6, WACM7 and WACM10

6 months after Authority decision for WACM8, WACM9 and WACM11

**Summary of alternative solution(s) and implementation date(s):**

Other Solutions	How does it differ from Original
<b>WACM1</b>	<i>Milestone M6 to say “Submit” rather than “Agree”</i>
<b>WACM2</b>	<i>As WACM1 but applies as per WACM7</i>
<b>WACM3</b>	<i>Milestone M3 to have a blanket 3 months after offer effective date (rather than counting back from Completion Date) for all columns on the Milestone Duration table where the Land Rights for the User’s project are required from only one landowner. This will be extended to 6 months where the Land Rights for the User’s project are required from two or more landowners</i>
<b>WACM4</b>	<i>As WACM3 but applies as per WACM7</i>
<b>WACM5</b>	<i>Milestones M7 and M8 to be bilaterally negotiated</i>
<b>WACM6</b>	<i>As WACM5 but applies as per WACM7</i>
<b>WACM7<sup>1</sup></b>	<i>Applies to all existing agreements with a contracted Completion Date of 2 years or more, or projects with a Completion Date of less than 2 years which aren’t progressing<sup>2</sup>, from CMP376 implementation</i>
<b>WACM8</b>	<i>Dynamic queue management for Milestones M5 to M8 - ESO’s immediate right of termination is removed for Milestones M5 to M8 and replaced with the permanent reassignment of queue position</i>  <i>Implementation Date – 6 months after Authority Decision</i>
<b>WACM9</b>	<i>As WACM8 but applies as per WACM7</i>
<b>WACM10</b>	<i>Allows Users in their connection application to elect (subject to agreement with the ESO), which column in</i>

<sup>1</sup> WACM7 was raised by the Proposer of the CMP376 Original. The test for Workgroup Alternatives is “Should the majority of the Workgroup OR the Chair believe that the potential alternative solution may better facilitate the CUSC objectives than the Original proposal then the potential alternative will be fully developed by the Workgroup with legal text to form a Workgroup Alternative CUSC modification (WACM)”. Although it may seem odd that the Proposer of the CMP376 Original has raised an alternative rather than include the revised implementation approach in their Original proposal, this is not prohibited by the Governance rules under Section 8 of the CUSC and the Proposer of the CMP376 Original confirmed they would be keen to present both options to Ofgem.

<sup>2</sup> In practice, it is unlikely that a project that is not progressing would not already have submitted a Modification Application to change their Completion Date.

	<p><i>the Milestone Duration table should apply to their project for the purpose of compliance vs Milestones; and confirm their proposed date for Milestone M1.</i></p> <p><i>Where this means the time between Offer sent and User's proposed Completion Date is between columns on the Milestone Duration table, the actual milestone duration is calculated proportionately between the 2 column values.</i></p>
<b>WACM11</b>	<p><i>As per WACM1 and WACM8 and add Exception "Where a milestone is missed due to the User awaiting the award of a governmental or regulatory subsidy which provides financial support or incentive to the User's projects, the User may avoid termination if they can provide evidence that they are actively progressing with such a subsidy".</i></p> <p><i>Implementation Date – 6 months after Authority Decision</i></p>

**Workgroup conclusions:** The Workgroup concluded by majority that all the proposed solutions (except WACM9) better facilitated the Applicable Objectives than the Baseline.

**Panel recommendation:** Panel will meet on 26 May 2023 to carry out their recommendation vote.

### What is the impact if this change is made?

Users applying for transmission connections will have Queue Management mechanisms applied to their agreements, which will be enforced to ensure that allocated network capacity remains utilised, and that transmission investment (funded by end consumers) remains economic and efficient. Users whose projects do not progress in accordance with pre-determined project milestones risk termination. This will ensure that Users progress their projects in a timely manner and in accordance with the Queue Management milestones. Users who fail to meet their milestones may be terminated to free up capacity to provide the opportunity for other Transmission connected projects, which will be, or can be, ready to connect on a given connection date, ahead of those projects that may have applied earlier, but are not ready to connect on their originally contracted Completion Date. This should help meet net zero targets and allow customers to connect to the NETS more quickly. However, in the view of some Workgroup Members, it is possible that the Queue Management process may lead to termination of some more challenging low carbon generator projects or network services projects, which could result in more continuing reliance on fossil fuel-based providers although the reverse could also be true.

The Queue Management process may improve value for money provided by network assets, as it should allow for more effective use of built network capacity.

Having a standard set of codified contractual Milestones, Milestone Durations and evidence requirements, that apply across all transmission connected projects, should provide consistency; however, it is recognised that this will not necessarily suit all projects. Projects that are proceeding (albeit slower than the Milestones set out in the

CUSC) may be terminated if they cannot claim a valid “exception”. Projects may also request later Completion Dates than they reasonably believe they can achieve, to reduce the risk or termination for not complying with the Milestones.

## Interactions

The ESO and the Transmission Owners have been in regular contact about Queue Management and the following STC changes may be required:

- Set out how and when the ESO will coordinate where ESO is seeking to exercise their right to terminate in relation to Milestones M5, M6, M7 and M8, verifying evidence for compliance, and verifying consideration of User’s exceptional circumstances; and
- The process for the ESO and relevant Onshore Transmission Owner to assess a Delayed User’s queue position to consider moving them down the connection queue as a consequence of the Dynamic Queue Management approach. This would require consequential changes to the STC, which will be considered if Ofgem approve either WACM8, WACM9 or WACM11.

The Proposer’s solution is based on some of the core concepts established by the ENA’s Open Networks initiative. The output of this work, following industry consultation, was the publication, of the ENA’s [Queue Management guidance](#) in July 2021. Ensuring consistency, where appropriate, between Transmission and Distribution processes for Queue Management, as envisaged in the ENA guidance, is also a factor in the ongoing development of these changes. Ultimately though, the process for Queue Management at transmission will be dictated by the solution established by CMP376 (if approved).

There are no direct interactions with other Connections related CUSC Modifications that are awaiting Ofgem decision (namely [CMP288](#) “Explicit charging arrangements for customer delays and backfeeds (CMP288) and consequential change (CMP289)”, [CMP298](#) “Updating the Statement of Works process to facilitate aggregated assessment of relevant and collectively relevant embedded generation” and [CMP328](#) “Connections Triggering Distribution Impact Assessment”)

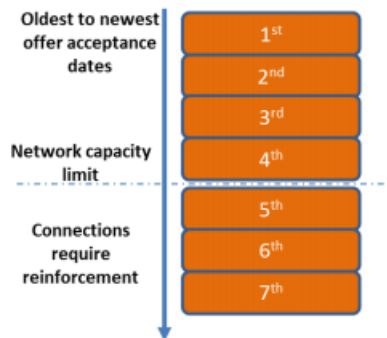
Whilst CMP376 addresses short term challenges for transmission connections, there are planned to be more holistic reforms to deliver enduring solutions for transmission connections including wider connections reform.

This modification has no interactions with EBR Article 18 Terms and Conditions.



## What is the issue?

Queue Management is a process to manage contracted connections (both at Transmission and Distribution level) against finite network capacity to enable fair and effective use of available network capacity. To date, network companies have managed contracted connections, both generation and demand, against limited network capacity and on a 'first to contract principle. This is illustrated below.



In this illustration, Projects 1-7 are placed in a queue based on the date their connection offer is countersigned by the ESO. Once a certain number has been accepted, which is 4 in this example, the network capacity reaches its limit, meaning that Projects 5 -7 cannot connect until the National Electricity Transmission System (NETS) has been reinforced.

Considering the illustration above, in the event of Project 5 progressing quickly with its project and Project 2 delaying, there are currently only limited mechanisms to manage their queue position to reflect this and so optimise the earliest use of available network capacity. CMP376 seeks to address this issue and introduce a Queue Management Process to manage projects against User Progression Milestone dates and allow the ESO to take measures to terminate the contract if Users are not progressing as per their Construction Agreement with the ESO.

## Why change?

Currently there is over 340GW contracted to connect according to the [Transmission Entry Capacity Register](#) and some of these projects have connection dates stretching out beyond 2033.

It is widely accepted that not all these projects will progress to connecting to the NETS, noting the volume of Modification Applications raised by Users seeking to delay their projects today. Therefore, CMP376 seeks to introduce a Queue Management process to better manage projects against User Progression Milestone dates and more explicitly allow the ESO, in coordination with the Relevant Onshore Transmission Owner, to terminate connection agreements where Users are not progressing as per the Milestone dates in their Construction Agreement. In the view of the Proposer, this will ensure:

- Network capacity allocated to Users is fully utilised as quickly as possible, particularly with the transition to net zero in mind;
- Network investment to facilitate User connections remains economic and efficient, minimising the impact of connections investment on end consumer bills; and
- An additional commercial driver is introduced to motivate Users to keep their projects on track.

## What is the solution?

### Proposer's solution

<p><b>Scope and Implementation</b> – All new applications, new Modification Applications and new Agreements to Vary (ATVs) for parties with a CUSC Construction Agreement (except BEGAs, DNOs associated with Distributed Generation (DG) or demand customer connections; and shared works for non-radial offshore connections and any Offshore Transmission System User Development Works (OTSDUW)).</p>		
<p><b>Milestones</b> – Milestones to be included in the Construction Agreement and will date back from contracted Completion Date (Milestone duration time period is determined from a look-up table based on the period from the offer date of the Agreement to the contracted Completion Date).</p>	<p><b>Evidence to Demonstrate Compliance</b> – For each Milestone set out in the CUSC. Note that this is an ongoing compliance requirement for M1, M2 and M3 (i.e. the Conditional Progression Milestones).</p>	<p><b>Exceptions</b> - Exceptional issues that Users cannot control and which may lead to unforeseen project delay and issues with their compliance to Milestones.</p>
<p><b>Modification Applications</b> – All Milestone dates stay fixed unless Exception provided; in case of 1<sup>st</sup> Modification Application after CMP376 implementation for pre-existing Construction Agreements, Milestones are set based on the Modification Application offer date and the Completion Date in that offer.</p>	<p><b>Terminations</b> – There is a 60 calendar day remedy period to rectify any missed Milestones</p> <p>ESO will terminate for M1, M2 and M3 (i.e. the Conditional Progression Milestones).</p> <p>ESO has the right to terminate for M5, M6, M7 and M8 (i.e. the Construction Progression Milestones). There will be an internal ESO escalation process before this right is exercised.</p>	<p><b>Appeals</b> – Standard “Other Disputes” process as per CUSC Section 7.4</p>



## Workgroup considerations

The Workgroup convened 12 times to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Objectives.

### Consideration of the proposer's solution

#### **Milestones - to be included in the Construction Agreement and will be dated by counting back from contracted Completion Date (Milestone duration time periods differ according to the time from the contracted Completion Date to the offer date of the Agreements)**

Milestones are benchmarks agreed or set out contractually between network companies and customers to measure and track project progress towards a contracted connection date. They will be included in the Construction Agreement (Appendix Q) between the ESO and the contracted party.

The CMP376 Original, at the time of Workgroup Consultation being issued, proposed the following set of Milestones:

Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
Milestones:	All durations referenced from contracted Completion Date				
M1 - Initiate Planning Consent		18 months	24 months	36 months	48 months
M2 - Secure Consent	Bilaterally negotiated	12 months	18 months	24 months	30 months
M3 - Land Rights		21 months	30 months	39 months	48 months
M4	N/A for transmission (referenced to provide consistency to distribution)				
M5 - Contestable Design Works Submission		18 Months	24 months	36 months	48 months
M6 - Agree Construction Plan	Bilaterally negotiated	9 Months	12 months	15 months	18 Months
M7 - Project Commitment		6 Months	9 months	12 months	15 Months
M8 - Project Construction		3 months	6 Months	9 months	12 months

The Milestones are in line with those at Distribution; however, Milestone M4, which relates to the transmission requirements for a project connecting to a distribution network are not relevant here and will not be included in the Transmission arrangements as those Milestones will be monitored and if required the project will be terminated at Distribution level. Should an agreement that has a Distribution and a Transmission connection i.e. a BEGA and is terminated at Distribution level, this would then result in a termination at Transmission level as per the clauses in the BEGA.

These had been amended based on previous Workgroup feedback that Milestone durations proposed were not in line with project development at Transmission as e.g., didn't adequately accommodate seasonality and other planning complexities. Some Workgroup Members also suggested they should be based on the contracted Completion Date rather than when the Construction Agreement was signed. Therefore:

- Timescales/Durations were amended to reflect several factors, including the longer lead times, catering for those projects that need an Environmental Impact Assessment and seasonality in relation to planning consents; and
- Milestones are applied back from the contracted Completion Date rather than the Offer acceptance date. This differs from Distribution arrangements, which apply the Milestones from the Offer acceptance date (or the date of resolving Transmission System interactions, if later).

The Workgroup were broadly happy with the Milestones themselves although the following challenges were raised:

- As the CMP376 Original is “agree” rather than “submit” the Construction Plan, there is a need to understand the process and timescales for agreeing a time period from when the User submits a plan to when relevant ESO and the TO provide their agreement, as well as reasons for non-agreement and the process to be agreed by the ESO and the TO and how any disagreements are resolved. Some Workgroup Members argued that Milestone M6 should be “Submit Construction Plan” rather than “Agree Construction Plan”. This relies on discussion, negotiation and acceptance from other parties. This may lead to Users being treated differently with inequitable outcomes. Some Workgroup Members argued that by changing the requirement to “Submit construction programme” and by setting out minimum evidence requirements, the obligation on the User is clear, as is the outcome from meeting Milestone M6. This could also negate need for an approval process and avoid protracted discussions. Despite this challenge, the Proposer’s CMP376 Original will retain Milestone M6 as “Agree Construction Plan”;

Some Workgroup Members argued that due to increased project complexity and the potential for supply chain issues, Users have less control over the success of M7 and M8 and some Workgroup Members also questioned the need for Milestones M7 and M8 as there is limited risk of the project not going ahead at this stage. Some Workgroup Members (including the Proposer) argued the need for these Milestones as there remains the risk that projects could be progressed only to be sold to another User to complete the build. Whilst it was generally accepted that the earlier milestones are primarily the most important for policy enforcement, until a customer is connected there is still a risk of stranded TO investment which might end up being funded in part by end consumers. However, Milestone Durations for M7 and M8 have been amended to mitigate risk of potential delays but the CMP376 Original maintains that Milestones will only be moved if the reason for the delay meets one of the exceptions. Based on this, a Workgroup Member has raised alternatives (now WACM5 and WACM6) to allow M7 and M8 to be bilaterally negotiated for all projects, rather than a fixed duration specified. This is discussed further in the “Workgroup Alternatives” section of this document.

The Workgroup recognised that the Proposer had taken on board their feedback to ensure the Milestones as much as possible were linked to actual project timescales. Conversely, some Workgroup Members argued that the addition of Milestones that suit specific project scales and timeframes may disincentivise technologies that have a shorter development time (e.g. solar) and also reduce the competitive advantages these types of projects have by making them more expensive to develop e.g. if it is acceptable to have secured consent 12 months ahead of connection date for a project that is 2-3 years from now, why is it a

requirement to meet the same milestone 2.5 years ahead for a project that is 5 years away?. Similarly, a Workgroup Member raised the same concern re: small scale pilot projects and argued that the addition of Milestones that suit specific project scales and timeframes could smother innovation. Most Workgroup Members were content that the fact that the Milestones dated back from the contracted Completion Date mitigated the need for technology specific Milestone Duration tables. However, a Workgroup Member raised an Alternative (now WACM10), which would give Users a choice at Application to decide which column in the Milestone Duration table they would wish their compliance vs the Milestones to be assessed against. In the view of the Proposer of WACM10, technologies with a shorter development time that are offered Completion Dates 5+ years in the future could therefore avoid carrying out their construction activities earlier than they would do in their project lifecycle.

Post Workgroup Consultation, further changes were incorporated in the CMP376 Original.

### Conditional Progression Milestones

Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
<b>Milestones:</b>	All durations referenced back from contracted Completion Date				
<b>M1 – Initiate Planning Consent</b>	Bilaterally negotiated	18 months	24 months	36 months	48 months
<b>M2 – Secure Consent</b>		12 months	18 months	24 months	30 months
<b>M3 – Land Rights</b>		21 months	27 months	39 months	51 months

### Construction Progression Milestones

Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
<b>Milestones:</b>	All durations referenced back from contracted Completion Date				
<b>M5 – Contestable Design Works Submission</b>	Bilaterally negotiated	12 months	15 months	18 months	21 months

<b>M6 – Agree Construction Plan</b>		9 Months	12 months	15 months	18 Months
<b>M7 – Project Commitment</b>		6 Months	9 months	12 months	15 Months
<b>M8 – Initiate Construction</b>		3 months	6 Months	9 months	12 months

The Workgroup sought clarity on what is meant by “Bilaterally Negotiated” and the following text has been added to the CMP376 Original to clarify:

*“Where durations are referred to as being “bilaterally negotiated” this means that **The Company**, the **Relevant Transmission Licensee** and the **User** will aim to agree the durations for the purposes of Appendix Q during the **Offer** preparation period. Where not so agreed by the time the **Offer** is made, Appendix Q will reflect the durations proposed by **The Company** and **Relevant Transmission Licensee** and discussions will continue with a view to agreeing these during the **Offer** acceptance period”.*

In summary:

- The Milestones were split into 2 categories (Conditional Progression Milestones and Construction Programme Milestones) with the termination for the Construction Programme Milestones amended from a “will” terminate to a “right to” terminate. This was welcomed by many Workgroup Members and is discussed further in the “Terminations” section of this document;
- M3 Milestones Durations were slightly amended so in practice they are required slightly earlier in the process than first proposed; and
- More time has been provided to meet M5 Milestones following feedback in the Workgroup Consultation that M5 appears too early and should be more in line with the M6 Milestone.

In the CMP376 Original, the date for a Milestone is set according to the time period from the date the Connection offer is made to the offered Completion Date. A Workgroup Member noted that a User typically has three months to sign the Connection offer (and longer where agreed or where the offer is referred to the Authority for a determination). A Workgroup Member therefore argued it would be more prudent for the time period to be measured from either a) the date of acceptance by the User or b) the effective date of the agreements (i.e., when the ESO countersigns them), instead of from the Connection offer date. The Workgroup reviewed the pros and cons of each option, and this is summarised in the table below:

Time period	Pros	Cons	Notes
Offer date to completion date	Simpler to apply as milestone timings are calculated at same time the contract is offered; most transparent and fairest to all	Milestone timings eat into the period in between the offer date and acceptance date;	This is the CMP376 original proposal
Date of acceptance to completion date	Gives user more control of milestones; allows for post-Offer negotiations	Requires more administrative work; prolongs unclarity about when milestones are due	
Effective agreement date to completion	Gives user more control of milestones; allows for post-Offer negotiations and added certainty if also countersigned by ESO	Requires more administrative work; prolongs unclarity about when milestones are due	

Although, in the Workgroup Consultation responses, there was a preference that the time period for the milestone durations should be from Contracted Completion Date back to the date the Offer is accepted by the User, the Proposer maintained their Original (date for a Milestone is set according to the time period from the date the Connection offer is made to the offered Completion Date). An alternative solution (now part of WACM10) is to introduce the concept of proportionate milestones so where the time between the Connection Offer and Completion Date is between columns on the Milestone Duration table, the Milestone timing will be calculated proportionately between the 2 column values and subsequently rounded to the nearest month. Although some Workgroup Members noted that this adds complexity, this could avoid cliff-edges. This is discussed further in the “Workgroup Alternatives” section of this document.

### **Distribution vs Transmission consistency considerations**

Electricity distribution and transmission companies have collaborated in developing a Queue Management Guidance which was published as guidance by the ENA in December 2020 (and updated in July 2021). Distribution Network Operators (DNOs) have now implemented a Queue Management Guidance based on the Energy Network Association (ENA) guidance since July 2021 and these concepts now feature in connection offers made by DNOs to their customers.

However, it was clear from the early CMP376 Workgroups that it is not as simple as applying the distribution arrangements to Transmission. There were fundamental reservations with the proposed milestone durations timings, particularly in initiating and securing planning consents.

The ESO, as Proposer, took this feedback on board and developed an updated proposal in coordination with the Onshore Transmission Owners to make the Queue Management policy more applicable to Transmission schemes. This updated proposal was then shared with industry at a [webinar on 27 July 2022](#). The following table shows the key differences between the Transmission and Distribution arrangements in terms of Milestones and Evidence, which reflect the complexity and different planning arrangements at Transmission and therefore this is not “undue discrimination”. In summary:

- Milestones for Transmission are backdated from the contracted Completion Date, whilst Milestones for Distribution are applied from the Offer acceptance date (or the date of resolving NETS interactions, if later);
- Milestone durations for Transmission allow for the additional planning complexities in the standard timeframes although Distribution projects requiring an Environmental Impact Assessment will have longer durations than Distribution projects not requiring an Environmental Impact Assessment.
- Milestones for Distribution are also bilaterally agreed where a Development Consent Order is required, rather than approval under the Local Planning Authority regime.



Milestone	Distribution Evidence	Transmission Evidence	Distribution Timescale (from acceptance/TSO interface)	Transmission Timescale (4 year example, backdated)
M1 – Initiated Statutory Consents and Planning Permission	Submission of planning application <i>EIA requirements</i>	Submission of planning application to the relevant Statutory Authority	2 months <i>14 months</i>	36 months (12 from offer date)
M2 Secured Statutory Consents and Planning Permission	Planning decision notice issued to applicant <i>EIA requirements</i>	The planning decision notice confirms planning permission has been granted and that this permission allows the User to meet the terms included in its Construction Agreement.	12 months/2 months <i>24 months</i>	24 months (24 from offer date)
M3 – Secure Land Rights	One of: (1) owner or tenant; (2) leasing agreement; (3) option to purchase; (4) exclusivity agreement	One of: (1) owner or tenant; (2) leasing agreement; (3) option to purchase; (4) exclusivity agreement; (5) seabed agreement	2 months	39 months (12 from offer date)
M4 – TSO Interface (Distribution Only)	Only applies where the connection requires TSO to assess transmission impacts	<i>Not a termination milestone</i>	All within timescales of TSO processes and governance	Null
M5 – Contestable Design Works Submission	Complete design submission	Written confirmation from the Relevant Transmission Licensee that design obligations as bilaterally agreed in a User-Self Build agreement have been received	To be agreed with customer, working back from connection date	18 months (30 from offer date)
M6 – Agree Construction Plan	Customer to agree with network operator its programme of works, demonstrating when construction will commence and complete and how project will achieve the connection date	The User's programme of works shall demonstrate how the User will be ready for the Commissioning Programme and Completion Date.  This must include a detailed programme for the User's Works with a fixed start and end date as agreed with the Relevant Transmission Licensee, and be a programme aligned with the Completion Date.	6 months from permission granted	15 months (33 from offer date)
M7 – Project Commitment	One of: (1) Binding contract for main plant equipment; (2) Staged payment made to the network company; (3) Board paper Evidencing Final Investment Decision (FID); (4) Subsidy award	One of: (1) Binding contract for plant equipment; (2) Capital contribution payments to Company; (3) FID; (4) governmental or regulatory subsidy award	Halfway between M6 and M8	12 months (36 from offer date)
M8 – Project Construction	Commencement of substantive works at the customer's project site; Clear progress as per the plan agreed with the network company.	Commence construction according to the Construction Plan	According to M6	9 months (39 from offer date)

As well as the differences on durations and evidence, there are five other key differences as set out in the attached table:

Area	Transmission	Distribution
<b>Queue Management Policy</b>	No concept of tolerances <sup>3</sup> and Cumulative delay <sup>4</sup> following Workgroup feedback that a project could be terminated even if their own programme catches up between milestones. Tolerance periods have been removed with adjustments made to milestone durations. This also removes the need for a cumulative delay process. A 60 calendar day remedy period has also been introduced once a milestone is missed, to allow the user time to remedy the missed milestone before the project is terminated.	Concept of tolerances and Cumulative delay retained.

<sup>3</sup> Recognition that some delays can lead to milestones not being achieved and provides customers with an opportunity to get their project back on track

<sup>4</sup> Delay against the early milestones is accumulated and compared to the relevant tolerance period

<b>Termination Rights</b>	ESO “will terminate” the Construction Agreement if any of Milestones M1 to M3 are missed <sup>5</sup> and the User cannot provide evidence or doesn’t fall within one of the exceptions.	DNOs have a “Right to Terminate” if a milestone is missed
<b>Codified?</b>	To be added to CUSC	Not enshrined in D-Code but is included in the contractual arrangements between the DNO and the User
<b>Timing of Later Milestones (M5 to M8)</b>	Determined at the outset (except, where the offer is made within 2 years of the Completion Date, they will be agreed bilaterally as part of the offer process rather than predetermined in the CUSC)	After User meets Milestone M2 (Planning Consent) they have six months to agree a construction plan with the DNO (M6) which will set out Milestone dates for M5, M7 and M8.
<b>Exceptions</b>	A definitive list of Exceptions is provided	ENA Guidance contains a non-exclusive list of exceptions

The key concern is the difference between termination rights, which could arguably create discrimination between transmission and distribution arrangements. This is explored further in the “Termination” section later in this document.

### **Evidence – For each Milestone set out in the CUSC; Process to submit/validate evidence**

The Proposer originally sought to include the evidence in the Construction Agreement Exhibit. However, CUSC states that the Agreements a User enters into with the ESO needs to be “substantially in the form of” the relevant Agreement (in this case Construction Agreement) set out in the CUSC Exhibits. Some Workgroup Members argued that, adding the evidence to the CUSC Exhibits, presents a risk that evidence requirements could differ from site to site. Additionally, there would be a lack of visibility as the Agreements set out in the CUSC Exhibits are bilaterally agreed between the ESO and User and are not published. Therefore, they argued that the evidence should be set out in the body of the CUSC to ensure consistency and the Proposer agreed to reflect this in their Original.

The Workgroup were also keen to ensure that the evidence requirements and any exceptions (as set out in “Exceptions” section below) are watertight to minimise the risk of grey areas and disputes/appeals, which add time, cost and uncertainty. The Workgroup,

<sup>5</sup> Originally this was a “will” terminate for all Milestones but following feedback from Workgroup and the Workgroup Consultation responses, the “will” terminate only applies to Milestones M1, M2 and M3 and it is a “right to” terminate for all subsequent Milestones



therefore, carefully considered the evidence requirements and the key challenges raised were:

Milestone	Outcome
<p>M1 and M2 – In some instances it may be possible and desirable to develop a project under permitted development rights. Such a project would appear not to be able to meet the Evidence requirements for M1 and M2, as there would be no requirement to formally apply or receive consent for such projects.</p>	<p>Declaration from User confirming that no statutory consent required for the User's project will be added to list of acceptable evidence</p>
<p>M3 - What is included in the definition of Land Rights? Some Workgroup Members argued that if cable routes and easements are included, then this is required too early in the programme. A Workgroup Member added that a standard part of Development Consent Order applications is specifically not to have predetermined the cable routes as this is to be consulted upon. Equally compulsory powers are sometimes required for securing cable route land, and that only comes once consent is awarded. Therefore it is not possible to have cable routes and easements at included in this definition</p>	<p>Cable routes and easements not included Only applies to the land needed for the generation or demand site</p>
<p>M3 - For Offshore wind, do the Milestones cover the Offshore Transmission System Development User Works as well as the generator assets</p>	<p>For both onshore and offshore projects, the Proposer requires evidence of the consents and land rights of the site or seabed upon which the project will be situated only.</p>
<p>M6 – Some Workgroup Members argued that this Milestone would not be able to be met as the User will not have received the TO's Commissioning Programme in time to meet this Milestone. It could be argued that this would in itself constitute an exception (as is a delay from TO) and there would be no termination process itself but durations may need to be considered to ensure M6 can work practically.</p>	<p>CMP376 Original proposes that the User agrees their plan with ESO by the Milestone Date and note that ESO have 10 Working Days to assess the evidence required. A Disputes/Appeals process can be followed; however, the goal is to minimise such disputes/appeals by making the evidence requirements clear.</p>

The CMP376 Original now proposes the following evidence requirements:

Milestone	Detail	Evidence
<b>Milestone 1) Initiated Statutory Consents and Planning Permission</b>	Where statutory consents are required for the construction of the <b>User's</b> project, the <b>User</b> must begin the process of seeking statutory consents, including Planning Permission for the project within the timescales and be able to provide the required evidence.	Submission of planning application to the relevant Statutory Authority or, if the <b>User's</b> project does not require a statutory consent, a declaration from the <b>User</b> to that effect.
<b>Milestone 2) Secured Statutory Consents and Planning Permission</b>	Where required for the construction of the <b>User's</b> project, the <b>User</b> must have secured statutory consents, including Planning Permission for the project within the timescales and be able to provide the required evidence	The planning decision notice confirms planning permission has been granted and that this permission allows the <b>User</b> to meet the terms included in its <b>Construction Agreement</b> .  Compliance with this milestone is ongoing.
<b>Milestone 3) Secure Land Rights</b>	The <b>User</b> must have secured the required land rights to enable the construction of the project. The <b>User</b> may be the owner/occupier of the land or has the necessary agreement from the owner/occupier.	The <b>User</b> shall provide documentation to demonstrate that:  (i) The <b>User</b> is an owner or tenant of the land on which the proposed site is or will be situated; or (ii) The <b>User</b> has entered into an agreement to lease the land from the owner of the land on which the proposed site is or will be situated; or (iii) The <b>User</b> has an option to purchase or to lease the land from the owner of the land on which the proposed site is or will be situated; or (iv) The <b>User</b> has entered into an exclusivity agreement in relation to the land with the owner of the land on which the proposed site is or will be situated; or (v) For an offshore site, the <b>User</b> has entered into an agreement for occupation or use of the seabed upon

		<p>which the <b>User's</b> project (excluding any OTSDUW) is or will be located</p> <p>Nb the obligation is to secure and evidence the land right for the site of the installation e.g. Power Station or demand site so the evidence does not relate to rights e.g. easements associated with that site or OTSDUW.</p> <p>Compliance with this milestone is ongoing.</p>
<b>Milestone 4) N/A for Transmission</b>	This milestone does not apply for Transmission	Null
<b>Milestone 5) Contestable Design Works Submission</b>	This milestone will apply where a <b>User</b> has gone down the contestable route for connection.	Written confirmation from the <b>Relevant Transmission Licensee</b> that design obligations as bilaterally agreed in a User-Self Build agreement have been received.
<b>Milestone 6) Agree Construction Plan</b>	The <b>User</b> must have agreed a construction plan for the detailed <b>User's Works</b> with <b>The Company</b> which demonstrates how they will be progressing the <b>User's Works</b> to achieve the <b>Completion Date</b> .	<p>The <b>User's</b> construction plan shall demonstrate how the <b>User</b> will be ready for the <b>Commissioning Programme Commencement Date</b> and <b>Completion Date</b>.</p> <p>This must include a detailed programme for the <b>User's Works</b> with a fixed start and end date as agreed with the <b>Relevant Transmission Licensee</b>, and be a programme aligned with the <b>Commissioning Programme Commencement Date</b> and <b>Completion Date</b>.</p>

<b>Milestone 7) Project Commitment</b>	This milestone demonstrates that the project has the necessary commitment or backing for it to proceed.	One of the following: <ul style="list-style-type: none"> <li>• Binding contract issued by the <b>User</b> for main plant equipment; or</li> <li>• Capital contribution payments made to <b>The Company</b> in advance of connection; or</li> <li>• A decision paper from a formal, minuted meeting of the <b>User's</b> board of directors evidencing Final Investment Decision (FID); or</li> <li>• award of a governmental or regulatory subsidy which provides financial support or incentive to the <b>User's</b> project.</li> </ul>
<b>Milestone 8) Project Construction</b>	Project construction is the project phase i.e. the period from when a <b>User</b> begins the site works to carry out construction of its project until completion of the <b>User's Works</b>	Commence construction according to the construction plan agreed under Milestone 6.  Evidence for meeting this milestone will be a letter from the <b>User's</b> board of directors or equivalent to state construction has commenced.

Based on feedback from some Workgroup members, the wording for Milestone 6 has clarified what the construction plan is (as it is not a defined term in the CUSC) and what is required in the evidence. The Proposer also confirmed to the Workgroup that any expectations of the construction plan will be made clear to the User as part of an ongoing discussion to agree the plan (as is the requirement for Milestone 6), and over time some detail on this would be added to a Queue Management Guidance Document that the ESO will publish based on which solution is approved (if any).

The Proposer also shared how the process for submitting and verifying evidence works and this is set out below:

- ESO will notify User 60 calendar days and 30 calendar days (if Milestone not already met) before a Milestone is due
- Users need to submit Evidence by no later than the Milestone Date (but note that ESO will require 10 working days to confirm in writing that this meets the Evidence requirements)
- ESO will assess the evidence provided and inform the customer in writing within 10 working days by email if the evidence is sufficient or not

- If the evidence for the Milestone has not been provided to the ESO (or is not agreed by the ESO to be sufficient) by the Milestone Date, the Termination process commences
  - ESO will first issue an “milestone default notice” giving the customer 60 calendar days to rectify the missed milestone (3 respondents to the Workgroup Consultation questioned if 60 calendar days is sufficient and 1 of these proposed 90 days but no solutions propose changing this period);
  - If this is not rectified, the ESO will issue a Termination Notice.

The Workgroup were broadly content with these steps, but the key follow-up concerns were:

- How the Appeals process would work in circumstances where the User disputes the ESO’s decision that the evidence submitted to the ESO has not met the Evidence requirements; and
- Works specifically for that project would be suspended until such time as the Appeal has been determined, which in the event of ESO’s decision being overturned would add further delay to the affected User’s contracted Completion Date.

In general, the evidence requirements are intended to be clear enough to remove any subjectivity and therefore minimise the number of appeals. The expectation is that CMP376 should lead to proactive project management conversations between the User, ESO and Transmission Owners to identify any potential issues in good time. However, in the event that a User is ultimately issued with a Termination Notice, it is reasonable to accept that they would be more inclined to appeal any decision given the impact of such termination. Upon issue of a Termination Notice from the ESO to the User, the Construction Agreement is legally terminated and works specifically for that project would be suspended<sup>6</sup> until such time as the Appeal has been determined. Furthermore, the Workgroup also discussed the possibility, where the User disputes the ESO’s exercising of their right to Terminate, the Transmission Owners suspend all applications for that part of the NETS for a set time period and/or until the Appeal is resolved. This set time period would need to be carefully defined and the User, whose Construction Agreement has been terminated, would need to appeal within a set period. This is because it is potentially discriminatory to another User, who can progress a connection in that area, and arguably not legally permissible to ringfence an area of reinforcement. Therefore, this is not included in any of the proposed solutions.

Therefore, should the original decision be overturned, this invariably will mean that the User’s contracted Completion Date would be delayed; however, some Workgroup Members argued that User’s shouldn’t be disadvantaged in the event of a successful Appeal. A Workgroup Member representing the Onshore TOs flagged their concern over Workgroup expectations that User works may still need to be financed and progressed pending the outcome of an appeal. They were worried this approach could lead to stranded investment and unnecessary additional end consumer and Onshore TO costs. The same Workgroup Member and the Proposer noted that where the appeal ultimately goes in the User’s favour, the ESO and TOs will find a route to remediate them back into the connections pipeline as close to their previously contracted position to avoid excessively

---

<sup>6</sup> Works that are also needed for other Users (Shared User Works) would not be paused; however, they may need to be amended to reflect the new capacity and ensure they are still economic and efficient

disadvantaging the User, but cannot guarantee they would automatically receive the same contracted Completion Date.

The Proposer initially suggested that disputes on whether the evidence submitted to the ESO is sufficient would follow the CUSC disputes process as set out in [Section 7 of the CUSC](#). However, a Workgroup Member identified that disputes on specified items within the Construction Agreement is ordinarily referred to the Independent Engineer (Clause 6 of the Construction Agreement) whereas other disputes are resolved by arbitration under the Dispute Resolution Procedure, unless otherwise set out in the Construction Agreement (Clause 14). The Workgroup queried if an Independent Engineer is appropriate for some of these disputes. Therefore, the Proposer suggested the following options for the Workgroup to consider and for industry to feedback on as part of the Workgroup Consultation:

- Option 1: Use existing CUSC disputes process as set out in CUSC Section 7 as today – essentially escalation and arbitration to Electricity Supply Association.
- Option 2: As Option 1 but arbitration is to somewhere else e.g. London court of international arbitration;
- Option 3: Sent to Ofgem. Ofgem do have Dispute resolution roles but Ofgem confirmed post Workgroup Consultation that they do not have such roles for the types of Dispute envisaged in the Queue Management process ;
- Option 4: Sent to Independent Engineer, then to arbitration; and
- Option 5: A hybrid mechanism, where some Disputes are referred to the Independent Engineer and some are referred to Ofgem based on the subject matter of the Dispute.

Feedback from the Workgroup Consultation was inconclusive and for simplicity the CMP376 Appeals process will follow Option 1 above and the “Other Disputes” process in [CUSC Section 7.4](#) will apply which in summary is:

- In accordance with CUSC 7.4.1<sup>7</sup>, there will be initial discussions between the ESO and the User seeking a resolution ahead of raising and further dispute. If this cannot be resolved, either party may then refer the Other Dispute to the Electricity Arbitration Association.
- Where Milestones M5, M6, M7, M8 have been missed, there will be an additional ESO internal escalation process before any termination process is initiated.
- The ESO will be looking to publish numbers of agreements terminated under CMP376.

There was a clear consensus that Appeals / Disputes should be a last resort mechanism and that the grounds for Appeal must be clear and linked directly to the Milestone evidence

---

<sup>7</sup> CUSC 7.4 – “Where an Other Dispute arises, a representative of The Company and each User concerned who has authority to resolve the dispute shall meet (including by agreement by telephone) within 10 Business Days of a request by either party (or within such longer period as may be agreed, acting reasonably) and seek to resolve it. If the parties to the dispute are unable to resolve it within 10 Business Days of the meeting (or within such longer period as they may agree within that initial 10 Business CUSC v1.4 7-5 v1.4 9 March 2022 Day period, both parties acting reasonably as to the length of the period), then the parties’ obligations under this paragraph to undertake such discussions shall no longer apply in relation to that Other Dispute. Either party may then refer the Other Dispute to arbitration pursuant to the rules of the Electricity Arbitration Association in force from time to time.”



requirements and/or the validity of an Exception (discussed in the “Exceptions” section below).

## **Exceptions**

The CMP376 Original recognises that there may be exceptional issues that Users cannot control and which may lead to project delay and issues with their compliance to Milestones. These exceptions were proposed to be:

- Force Majeure;
- Planning appeals (M2) in relation to the User’s Consents; and
- Any delay experienced by Transmission Licensee or the ESO

Initially the list of exceptions was non-exhaustive, but the Workgroup argued this was too subjective and would create inconsistency in treatment. Therefore, the CMP376 Original list of exceptions is limited to the circumstances listed. The Workgroup asked if the following would qualify under the exceptions:

- Procurement issues such as Long lead item delays, contractor issues but not issues in not placing contracts; and
- Route to market is temporarily removed e.g. if a subsidy such as CfD gets delayed (although a Workgroup Member did not believe that failing to be awarded a CfD in the allocation/auction process was a valid exception as was not a political intervention) and events such as the suspension of the capacity market

The Proposer’s initial view was that the above could fall within “Force Majeure”; however, “Force Majeure”<sup>8</sup> is legally narrow and some Workgroup Members argued that it is better to list specifically what would constitute an exception rather than potentially blur the lines on Force Majeure. A Workgroup Member also thought it prudent to list what wouldn’t constitute an exception. The Proposer confirmed that at this stage they would leave the list of exceptions as originally proposed but would factor in the industry thoughts expressed during the Workgroup Consultation.

A number of Exceptions were proposed during the Workgroup Consultation responses, which broadly fell into the following 3 categories:

- Delays by the TO or ESO;
- 3rd party impacts/uncontrollable delays; or

---

<sup>8</sup> Definition of “Force Majeure in CUSC is “*in relation to any CUSC Party any event or circumstance which is beyond the reasonable control of such CUSC Party and which results in or causes the failure of that CUSC Party to perform any of its obligations under the CUSC including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of Plant and Apparatus (which could not have been prevented by Good Industry Practice), governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under section 32, 33, 34 and 35 of the Act) provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that CUSC Party and provided, for the avoidance of doubt, that weather conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of that CUSC Party”*



- Subsequent delays (If one Milestone is delayed it is likely that subsequent milestones will also be delayed so subsequent milestones should be revised
- accordingly)

These are further set out in “Exceptions” tab of the summary of Workgroup Consultation Responses (Annex 4). Based on this feedback, the Proposer added a new general Exception to address the circumstances where there are delays outside the User’s control and clarified their position on “Force Majeure” given the challenges expressed above. The list of Exceptions in the CMP376 Original is therefore:

- *Where the **User** is delayed in carrying out the **User’s Works** which entitles the **User** to fix a later date or dates under Clause 3.2 of the **Construction Agreement (Delays and Force Majeure)** and that delay is the reason that a **User Progression Milestone** is not met;*
- *Where the **User** is not able to meet a **User Progression Milestone** due to an event of **Force Majeure**;*
- *Where delays caused by a party (other than the **User**, **The Company** or a **Relevant Transmission Licensee**) can be demonstrated to have an impact upon the **User** meeting a **User Progression Milestone** and the **User** could not have avoided these delays or their impact by the exercise of **Good Industry Practice***
- *Where a **User** is not able to meet a **User Progression Milestone** due to **Planning appeals** and **third-party challenges** in relation to the **User’s Consents**; and*
- *Any delay in the achievement of a milestone by the **User** which is caused by a **Relevant Transmission Licensee** or **The Company***

Some Workgroup Members raised concerns that the new Exception was too wide and it was unclear what would and wouldn’t be included. In response, the Proposer undertook to provide examples in guidance that the ESO will develop to support Queue Management and acknowledged that this would need to be kept “live”. The Workgroup were mostly content that the new Exception wording addressed their concern; however, there is one proposed alternative (now WACM11) that allows for an exception to termination in the situation where a project has had an unsuccessful commercial negotiation e.g. a User may have an unsuccessful CfD bid but has plans to enter a subsequent auction.

This proposed new Exception is:

“Where a User is not able to meet milestone M7 (Project Commitment) because it has not yet been awarded the governmental or regulatory subsidy which provides financial support or incentive to the User’s project. A User cannot rely on this exceptional issue more than twice.”

The Proposer of WACM11 argues that otherwise viable projects could be terminated because of the commercial realities of the market that are outside of the User’s control. This is discussed further in the “Workgroup Alternatives” section of this document.

**Termination - If the evidence is not provided within 60 days of the missed milestone, project will be terminated unless meets one of the Exceptions. Projects will not be moved down the queue – they will be terminated**

As set out earlier in this document, If the evidence for the Milestone has not been provided to the ESO (or is not agreed by the ESO to be sufficient) by the Milestone Date, the Termination process commences. In summary:

- ESO will first issue an “milestone default notice” giving the customer 60 calendar days to rectify the missed milestone;
- If this is not rectified, the ESO will issue a Termination Notice.

The key question was on the application of any Termination rights.<sup>9</sup> The Workgroup noted that a concept of a Backstop Date had been introduced into Construction Agreements. This was to allow for User construction delays and if a User delayed beyond the Backstop Date, they could be terminated. This was typically set 2 years after the contracted Completion Date and the aim was that this date would not move back as part of a Modification Application if User initiated delay. ESO had a right to terminate a project that would go beyond Backstop Date; however, concerns were expressed that this right was rarely used. Therefore, there needs to be confidence that the ESO will terminate if the evidence for the Milestone has not been provided to the ESO (or is not agreed by the ESO to be sufficient) by the Milestone Date and is not rectified within 60 calendar days.

The Distribution arrangements provide DNOs with a “Right to Terminate” if a milestone is missed. The proposed Transmission arrangements, at the time the Workgroup Consultation was issued, provided that the ESO “shall terminate” the Construction Agreement if a milestone is missed and there was some concern expressed that this difference between Distribution and Transmission arrangements could be discriminatory. However, it is questionable whether a “Right to Terminate” will act as a sufficient deterrent as previously termination rights have not been exercised. Originally, the CMP376 Original proposal included a “will” terminate for all Milestones but following feedback from Workgroup and the Workgroup Consultation responses, the “will” terminate only applies to Milestones M1, M2 and M3 and it is a “right to” terminate for all subsequent Milestones.

The Proposer clarified that if a User is terminated, the current arrangements that apply for Terminations still apply i.e. the Terminated User would be liable to pay Cancellation Charges, incorporating abortive works unless these can be utilised by another future User(s).

The Proposer clarified that it would be the Construction Agreement that is terminated, and the associated Bilateral Agreement would only be terminated if the works were for a brand-new site; otherwise, the Bilateral Agreement would just be updated to remove the changes associated with the Construction Agreement that is terminated. This would mean that on a site where an existing generation facility is already connected and operating, the termination of a new Construction Agreement would not result in the cancellation of the Bilateral Connection Agreement for the existing TEC and generation facility.

---

<sup>9</sup> Workgroup also noted [CAP150](#), which allows ESO to reduce a User’s TEC where it looks like what is being built isn’t capable of using the contracted TEC. This provision remains in the CUSC but CMP376 is separate and seeks to introduce termination rights.

The Proposer also clarified that co-located sites (Generation sites which comprise multiple technology types within one Power Station) would have a separate Appendix Q for each technology and if they miss a Milestone for one technology that part of the project would be subject to termination.

**Interaction with other provisions in the CUSC, Construction Agreements and Connection Agreements that deal with project delays and termination of agreements (e.g. Quarterly Updates).**

The Workgroup noted there are already provisions within the CUSC connection arrangements to address project delays and termination of agreements. Although CMP376 is adding a right for the ESO to terminate, the Workgroup sought clarity on how this additional right interacts with some of the existing provisions. A specific example was how a change to Appendix J (Construction Programme) would interact with the new Appendix Q e.g. a User can't currently request a delay to the Completion Date that goes beyond the Backstop Date.

Another Workgroup Member added that England and Wales Construction Agreements typically included a clause which allowed the ESO to vary the Construction Programme unilaterally (albeit following e.g. a Notice from the ESO to the User) where they are not satisfied that the User is progressing with its Power Station (in particular with reference to the Milestone Dates detailed in Appendix J of the Construction Agreement) such that it will connect to the National Electricity Transmission System in the specified timescales. As, in their view, CMP376 addresses the same issue, they sought clarity on whether this clause is still needed.

The Proposer recognised that there are a number of different rights to terminate and to delay otherwise provided for in the Construction Agreement and confirmed that these, will remain and are unrelated to the Appendix Q. Changes can still be made to the Appendix J dates; however the Appendix Q dates will remain as per the original Completion Date when the Construction Agreement was signed (unless in some cases when an exception is provided for a Milestone). ESO will not terminate on the basis of a change to Appendix J; however they will terminate or have the right to terminate if an Appendix Q date is not met.

The following table considers some credible scenarios and explains how CMP376 provisions would interact with these.

Scenario	Interaction
<b>Do ESO still have the right to terminate if they miss the Backstop Date so how would ESO manage this in conjunction with Milestones set out in Appendix Q?</b>	If User seeks to delay beyond the Backstop Date, Appendix Q Milestone dates will only be changed if an Exception applies; otherwise only Appendix J Milestone dates can be changed.
<b>Change sought to dates within Appendix J (User or ESO initiated)</b>	Appendix J dates are reviewed for consistency where a change to the Appendix Q dates are proposed; however a change to an Appendix J date does not necessarily lead to a change to the Milestone Dates set out in Appendix Q (generally only when an Exception applies).

**Modification Application - All Milestone dates stay fixed unless exception provided (if milestones are missed prior to Modification Application and CMP376 arrangements were not in place on their agreement then a 60-day calendar notice will be issued alongside the Modification Application acceptance)**

The Workgroup discussed the role of Modification Applications. Previously Modification Applications have been used to alter contracted Completion Dates especially when higher Connection Securities are due. Therefore, the CMP376 Original does not seek to change Milestone Dates unless there is a clear exception provided and seeks to include the Milestones into pre-CMP376 Construction Agreements if and when the User submits a Modification Application.

The Proposer initially confirmed that where a pre-CMP376 Construction Agreement is subject to a Modification Application submitted after the CMP376 Implementation Date, Milestone Dates will be incorporated based on the contractual Completion Date that existed immediately prior to the Modification Application and the duration for the “offer date to Completion Date” will use the date of issuing the Modification Offer to the User. If this means that a CMP376 Milestone is missed (note that Milestones that have passed will be marked as Complete e.g. M2 if the User has obtained their planning consent) and the Modification Offer is accepted by the User, then a notice of Termination will be issued alongside the Modification Application acceptance giving the User 60 calendar days to rectify by providing the evidence required for that Milestone or evidence that this meets one of the exceptions.

Some Workgroup Members believed that the above should only apply to Modification Applications submitted after the CMP376 arrangements had been incorporated into Construction Agreements. They argued that, where a pre-CMP376 Construction Agreement is subject to a Modification Application submitted after the CMP376 Implementation Date, the Milestones should be aligned to the contractual Completion Date included within that Modification Offer rather than the contractual Completion Date that existed immediately prior to the Modification Application. This could lead to the situation whereby a User who signed a pre-CMP376 Construction Agreement is faced with unexpected Milestones and potentially a notice of Termination should they sign the Modification Application. This is because the CMP376 Original intends to include Milestones from the connection date prevailing prior to the Modification Application, and

which was chosen by the User pre-CMP376 with potentially no foresight of this modification, and some Workgroup Members argued that this represented retrospectivity. Another Workgroup Member noted that the Proposer's CMP376 Original would encourage Users to submit Modification Applications before the CMP376 Implementation Date to minimise the risk of them being terminated under CMP376.

After further consideration, the Proposer amended their Original proposal so where a pre-CMP376 Construction Agreement is subject to a Modification Application submitted after the CMP376 Implementation Date, the Milestones should be aligned to the contractual Completion Date included within that Modification Offer rather than the contractual Completion Date that existed immediately prior to the Modification Application and the duration for the "offer date to Completion Date" will use the date of issuing the Modification Offer to the User.

The Workgroup considered these principles against several scenarios (including the one above) and the impact on Milestones is set out in the table below:

Type of modification	Do exceptional circumstances apply?	Does the Completion Date change?	Do the Milestones Change?	Example	Completion date impact	Milestones impact
Non-date Modification Application	No	No	No	Additional TEC	A two-stage offer would be issued with two completion dates for the original and additional TEC	Two sets of milestones would be set based on the different completion dates
				Change of technology	The completion date remains unchanged or two-stage offer	Milestones remain unchanged
Date Modification Application	No	Yes	No	Going from four to five year completion date	The completion date moves back one year	The previously agreed milestone dates, based on four years, remain in place
Modification Application a result of exceptional circumstances (exceptions)	Yes	Possible	Yes	User is required to send Modification Application after an exception	The original completion date remains in place or a new completion date is offered	New milestones will be set for those milestones that haven't been met yet, based on new offer and completion dates.
Pre-Queue Management contract mod app	No	Possible	No*	User makes any Modification Application after CMP376 implementation date	The original completion date remains in place or a new completion date is offered	*Milestones are set based on the Modification Application offer date and the completion date in that offer; after that they cannot be changed unless under exceptions

## Scope and Implementation

The CMP376 Original is seeking to simply provide the ESO with termination rights where Milestones are missed. The CMP376 Original is not seeking to introduce a codified process for how capacity is reallocated in the event of a termination and it is only the solutions that include Dynamic Queue Management (namely WACM8, WACM9 and WACM11) that would lead to promoting Users in the queue - for the Original and other WACMs the "business as usual" process for termination would be applied.

The Workgroup noted that there was a Terms of Reference to "Consider any strategic or regulatory driver behind reallocation of capacity following a termination e.g. Electricity System Restoration Standard" and agreed this was out of scope of CMP376, which does not seek to reallocate capacity and so premature to discuss arrangements to reallocate capacity in a strategic way or following regulatory intervention. Workgroup concluded that this would need to be a different Modification. The Workgroup also noted that the Electricity System Restoration Standard Modifications are still going through the Modification process.



The CMP376 Original proposes that this will apply to all new applications and Modification Applications for parties with a CUSC Construction Agreement (*except Bilateral Embedded Generator Agreements (BEGAs)<sup>10</sup>, DNOs associated with Distributed Generation (DG) or demand customer connections; and shared works for non-radial offshore connections<sup>11</sup> and any Offshore Transmission System User Development Works (OTSDUW)*) after the Implementation Date.

After Workgroup discussion, the CMP376 Original also proposes to include the Agreements to Vary initiated by the ESO as a route for the ESO to include CMP376 Milestones in a User's Construction Agreement. However, for the avoidance of doubt, this does not include Notices issued by the ESO e.g. notice of a updated set of reinforcement works.

The discussion on how the CMP376 arrangements and Modification Applications interact is covered in the above section on "Modification Applications" above.

An alternative implementation approach has been proposed which applies the Queue Management Process and milestones to all signed construction agreements (where the Completion Date is more than two years away on the implementation date), as well, as per the original solution, to any new applications and Modification Applications submitted to the ESO after the implementation date. This feature is included in some of the WACMs and the full details are explored in the "Implementation" section of this document.

## Workgroup Consultation summary

The Workgroup held their Workgroup Consultation between 25 November 2022 and 23 December 2022 and received 31 non-confidential responses and 1 confidential response. A summary of each of the non-confidential responses and the full non-confidential responses can be found in Annexes 4 and 5 respectively. In summary:

- Although there was general agreement with the principle of queue management, the prevailing view was that, whilst recognising the work done to date, aspects of the Original solution needs to be further developed and suggestions were made to Milestone Durations, Evidence and Exceptions.
- Concerns were raised with the one size fits all approach and there were arguments that the durations don't work for some projects (notably Offshore Wind, Solar and Battery Energy Storage).
- Many respondents believed that ESO should have the "right" to terminate on the ESO where milestones are missed, instead of termination being automatic and better to move non- progressing projects down the queue and/or soften the evidence requirements to instead allow evidence of progression and/or widen the exceptions.

<sup>10</sup> User is connected to the Distribution System but also makes use of the Transmission system so needs to have agreements with both the Distribution Network Operator (Distribution Agreement) and the ESO (Transmission Agreement). Distribution rather than the Transmission Milestones will apply.

<sup>11</sup> This is because at this time, the policy arrangements for such circuits (various circuits going to a shared offshore substation) are not yet fully defined and a separate Modification will be raised to cover this.

- General call for flexibility to be applied to the later Milestones with the argument that consented projects that fail to reach the later Milestones should not be terminated if they can demonstrate that the project is actively being progressed. There was some support to only define Milestones M1 to M3 at time of offer (and the later Milestones are defined after the project has planning consent) and terminate projects that do not meet these Milestones (subject to the exceptions) and define the later Milestones after the project has obtained planning consent.
- Appeals process should be clearly defined and timebound in order to minimise the impact to parties in circumstances of a successful appeal and need to understand what role Ofgem will have in this process.
- On the question as to whether Works should continue for a terminated User, there was some preference expressed that the "terminated" User's works continue until the appeals process has been exhausted and/or that the suspension of works should be at the Users' discretion.
- On Implementation, whilst many supported the proposed approach in the Original, there was some support expressed to apply to all existing parties in the queue.

## Workgroup Alternatives

Following review of the Workgroup Consultation responses, the Workgroup assessed the CMP376 Original and any potential solutions brought forward by the Workgroup which built on the CMP376 Original. For completeness, we have shown how these other solutions compare with CMP376 Original:

Other Solutions	How does it differ from Original
<b>WACM1</b>	<i>Milestone M6 to say "Submit" rather than "Agree"</i>
<b>WACM2</b>	<i>As WACM1 but applies as per WACM7</i>
<b>WACM3</b>	<i>Milestone M3 to have a blanket 3 months after offer effective date (rather than counting back from Completion Date) for all columns on the Milestone Duration table where the Land Rights for the User's project are required from only one landowner. This will be extended to 6 months where the Land Rights for the User's project are required from two or more landowners</i>
<b>WACM4</b>	<i>As WACM3 but applies as per WACM7</i>
<b>WACM5</b>	<i>Milestones M7 and M8 to be bilaterally negotiated</i>
<b>WACM6</b>	<i>As WACM5 but applies as per WACM7</i>
<b>WACM7</b>	<i>Applies to all existing agreements with a contracted Completion Date of 2 years or more, or projects with a Completion Date of less than 2 years which aren't progressing<sup>12</sup>, from CMP376 implementation</i>

<sup>12</sup> In practice, it is unlikely that a project that is not progressing would not already have submitted a Modification Application to change their Completion Date.



<b>WACM8</b>	<p><i>Dynamic queue management for Milestones M5 to M8 - ESO's immediate right of termination is removed for Milestones M5 to M8 and replaced with the permanent reassignment of queue position</i></p> <p><i>Implementation Date – 6 months after Authority Decision</i></p>
<b>WACM9</b>	<i>As WACM8 but applies as per WACM7</i>
<b>WACM10</b>	<p><i>Allows Users in their connection application to elect (subject to agreement with the ESO), which column in the Milestone Duration table should apply to their project for the purpose of compliance vs Milestones; and confirm their proposed date for Milestone M1.</i></p> <p><i>Where this means the time between Offer sent and User's proposed Completion Date is between columns on the Milestone Duration table, the actual milestone duration is calculated proportionately between the 2 column values.</i></p>
<b>WACM11</b>	<p><i>As per WACM1 and WACM8 and add Exception "Where a User is not able to meet milestone M7 (Project Commitment) because it has not yet been awarded the governmental or regulatory subsidy which provides financial support or incentive to the User's project. A User cannot rely on this exceptional issue more than twice."</i></p> <p><i>Implementation Date – 6 months after Authority Decision</i></p>

The Workgroup reviewed all of these proposed solutions and following, this review, all of these were voted on and all were taken forward by the Workgroup. The Request for Alternatives 3 and 4 did not receive majority support from the Workgroup. However, the Chair noted that this may better facilitate the CUSC objectives than the Original as could potentially stop speculative projects early on in the process. Chair also noted that some Workgroup Members believed 3 months to get land rights in place was impractical and would simply follow the Exceptions process and therefore not realise what these Requests for Alternative seek to achieve. However, on balance the Chair believed this should be developed further and that that Request for Alternatives 3 and 4 should be progressed as WACM3 and WACM4 respectively.

The Requests for Alternative 5 and 6 also did not receive majority support from the Workgroup. However, the Chair noted some Workgroup Members previous ask on greater flexibility for Milestones M7 and M8, a view which was supported by some respondents to the Workgroup Consultation. Although this may add further process and possible inconsistencies, the Chair believed this may reduce the risk of Appeals further down the line and therefore decided that these Requests for Alternative should be progressed as WACM5 and WACM6 respectively.

The following table shows the justification for and Workgroup comments on each of the WACMs. The full WACMs are in Annex 6.

WACM	Justification (from Proposer(s) of WACMs)	Additional Workgroup Thoughts
<b>WACM1 and WACM2*</b>	<p>Milestone M6 Agree Construction Plan at present does not have a clearly defined process of what is required and under this proposal the evidence required is more clearly detailed for the User. Changing from “Agree” to “Submit” reduces the administrative overhead for both the ESO and the User.</p>	None
<b>WACM3 and WACM4*</b>	<p>Project viability is identified earlier and the opportunity for speculative applications is reduced by encouraging proactive consideration of land requirements prior to application.</p> <p>Onshore TOs have greater reassurance to plan and optimise their network investment and mitigates against risk of inefficient or uneconomic costs, which could end up burdening end consumers and/or the User themselves.</p>	<p>Although agreeing with the principle, a Workgroup Member noted that the current process from a developers perspective is to secure connection to the NETS before committing to land and planning risk and expense and therefore argued that asking developers to commit to having land rights for their project within 3 months of Offer acceptance was infeasible and argued that such projects would instead seek an Exception, which in their view negates the benefit of these WACMs.</p> <p>The proposer of WACM3 and WACM4 took this on board and agreed to allow 6 months where the Land Rights for the User’s project are required from two or more landowners. The Workgroup Member, who previously argued that having land rights for their project within 3 months of Offer acceptance was infeasible, noted that 6 months may be feasible if “agreed Heads of Terms with the Landowner” was allowable evidence to meet this Milestone. However, neither the proposer of WACM3 and WACM4 nor the Proposer of the Original sought to include this on the basis that the existing exclusivity evidence provision was a less onerous requirement for most developers.</p>

<p><b>WACM5 and WACM6*</b></p>	<p>Does not believe the CMP376 Original proposal for M7 (and consequently M8) durations leads to User readiness, where there are significant attributable and enabling works, which equitably aligns to the significant investment decisions being taken by Onshore TOs, risking stranded on uneconomic spend.</p> <p>The proposer of WACM5 and WACM6 also believes the proposed pre-set durations for M7 and M8 may also impose an overly onerous compliance obligation on Users who have minimal works to deliver their transmission connection.</p> <p>In respect of the TO investment risk, the proposer of WACM5 and WACM6 explained that the M7 milestone in particular provides TOs with certainty to place equipment orders with manufacturers, ensure sufficient time to take delivery and transport assets to site, before installing and commissioning them for Users. In their view, the proposed levels in the CMP376 Original would not provide an effective signal to enable opportunities to bulk procure assets to lower costs, or to mitigate existing global supply chain challenges.</p>	<p>A Workgroup Member expressed concern with such a bilateral negotiation as it may be impractical in the time available between issuing an offer and acceptance. Whilst the offer could be declined or referred to Ofgem, in practice the date would be as submitted by the TO rather than being “agreed”.</p> <p>Furthermore, in the event that WACM6 is implemented, Users with a Completion Date more than 2 years from the Implementation Date would be required to move to the new CMP376 arrangements and could be presented with dates that are difficult to achieve and if applying for a Modification Application would not know what dates were proposed until the offer was made.</p> <p>The proposer of WACM5 and WACM6 argued that there would in practice be proactive engagement between the ESO, TO and User, which would (in their view) minimise the above impacts. Supporting guidance would be published (if either of these WACMs was approved) to help manage expectations on the likely duration of the M7 and M8 milestones to help developers plan their projects effectively.</p>
<p><b>WACM7</b></p>	<p>Ensures even treatment between Users and achieves better effectiveness of the policy by ensuring all projects have an obligation to adhere to the Queue Management milestones, given the volume of parties already contracted. The specifics are explored further in the “Implementation” section of this document.</p>	<p>A Workgroup Member previously raised concern that this could be considered as ‘retrospective’ as Users would be required to move onto arrangements that they did not originally sign up to nor are seeking to sign up to when applying all Users with existing Construction Agreements. However, following clarity on the proposed implementation approach, such concerns have been mitigated against.</p>

<p><b>WACM8 and WACM9*</b></p>	<p>Projects that have met milestones M1 to M3 and thus have secured planning consent and land rights are considered to be significantly de-risked and will have incurred substantial financial investment. Therefore, it is considered more appropriate to move Users down the queue, rather than terminate their agreement, if the project is being progressed albeit at a rate slower than defined by milestones M5 to M8.</p>	<p>The key concerns raised were on practicalities of how and where Users would be moved in the queue. Changes to the STC/STCP would also be needed and these changes and the proposer of WACM8 and WACM9 was asked to consider a delayed implementation to allow detailed consideration of the STC/STCP changes in the event that either of these options is approved by Ofgem.</p> <p>These discussions are explored in the “WACM8 and WACM9 Dynamic Queue Management” section below.</p>
<p><b>WACM10</b></p>	<p>Electing at time of application which Milestone timeframe applies allows Users with shorter lead times to carry out construction works in line with their project lifecycle.</p> <p>Additionally, having proportionate milestones, in the view of the proposer of WACM10, prevents an abrupt change in the timescales for evidence reporting requirements for projects that could fall in two different Milestone timeframes.</p>	<p>The proposer of WACM10 clarified that if the offered Completion Date, puts the project in a milestone category that is not suitable for the project’s programme, the ESO (as long as they agree) takes the elected milestone timeframe and the project programme (as provided by the User) in determining where in the Milestone Duration table the User’s compliance vs the Milestones will be measured against.</p> <p>They added that the ESO will then proportionately calculate the Milestones over the timeframe of the project. e.g. if a project is 3.4 years in length then the project milestones will be calculated proportionately between the two column values of 3 and 4 years and rounded to the nearest month. Some Workgroup Members argued that the approach proposed by WACM10 could increase complexity and having Proportionate Milestones accentuates this by increasing administration and the chance of error. A Workgroup Member questioned if there was a need for this proportionate calculation in addition to the election process given the difference between columns is a matter of months; however the proposer of WACM10 wishes to retain this aspect as this would, in their view mitigate the risk of</p>

		<p>cliff-edge timescales in providing evidence of compliance.</p> <p>Application Form (CUSC Exhibit D) will also be updated to clarify the process for Users to make this choice.</p>
<b>WACM11</b>	<p>Without this additional exception viable projects could be terminated because of the commercial realities of the market that are outside of their control</p>	<p>Workgroup discussed how often this Exception should be used and agreed that should only be used where the delay is outside the User's Control.</p> <p>Therefore the proposer of WACM11 clarified that:</p> <ul style="list-style-type: none"> <li>• The Exception can be utilised twice (after which normal dynamic queue management rules apply if you can't meet M7, or ESO can use discretion to allow use of Exception);</li> <li>• Exception will only apply to M7; and</li> <li>• Exception will only cover financial support/incentives outside of User's control, such as Contracts for Difference auctions</li> </ul>

\*Only difference between these WACMs is the Implementation Approach, which is explored in the "Implementation" section of this document.

### WACM8 and WACM9 Dynamic Queue Management

Where a User, who has valid planning consents and land rights, is unable to meet any of Milestones M5, M6, M7 or M8, they can submit a Modification Application (as soon as practicable once it knows that it will miss a Milestone and can confirm its revised Completion Date, and at the latest 60 calendar days after missing the Milestone) to request a revised Completion Date and revised Milestones, triggering a review of its position in the queue but any movement of a Delayed User will not adversely impact any other User. However, Users should not be able to submit a Modification Application indefinitely and therefore this WACM introduces a limit of 3 Modification Applications.

In the event that the Delayed User does not sign the Modification Offer, ESO can exercise their right to terminate (where a User is unable to meet any of Milestones M5, M6, M7 or M8) and the User is not entitled to seek an Exception instead. Some Workgroup Members queried why the Exceptions process is not sufficient here.

The majority of the Workgroup's questions focused on the practicalities. The original intention of WACM8 and WACM9 was that Users would be moved down the queue based on their new Completion Date rather than automatically to the back of the queue. However, there was a question as to why the queue position in this solution is based on Completion Date, when current queue position is determined by when the Connection Offer was signed. 2 options were proposed which were:

Option	More Detail
<b>Option A</b>	Move to back of "queue"
<b>Option B</b>	Moved to the place in the "queue" behind Users that have met the Milestone it has missed (e.g. if the User has submitted a Modification Application because it cannot meet Milestone M6 then it will be moved "down the queue" to be behind the other Users that have completed Milestone M6).

The proposer of WACM8 and WACM9, after discussion with some Workgroup Members, has amended their proposal to reflect Option B.

It was noted that the standard Modification Application process results in the ESO/TO assessing the impact of one User's changes on other Users; however this is not codified and some Workgroup Members noted that the re-assessment process would be complex and Users in the queue could see different obligations on them notably extra non-firm rights on the User being moved. However, the Delayed User moving down the queue may present opportunities for other Users to obtain an earlier Completion Date or improved access / removal of restrictions.

The process of assessing the opportunities for other Users to benefit from the Delayed User moving down the queue would require consequential changes to the STC/STCPs. These changes will be considered if Ofgem approve either WACM8, WACM9 or WACM11 - therefore the implementation of the WACM would be 6 months after Ofgem's decision to allow implementation of the STC/STCPs consequential changes.

Additionally:

- The impact of the delayed User moving down the queue would not adversely impact any other Users; and
- The Delayed User is not permitted to seek an Exception after it has received a Modification Offer. Where the Delayed User considers it is entitled to an Exception, it should apply for the Exception as the first course of action before submitting a Modification Application.

## Legal text

The legal text for the CMP376 Original and WACMs 1-11 inclusive can be found in Annex 3.



## What is the impact of this change?

### Proposer's assessment against Code Objectives

#### 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;	<b>Positive</b> This modification will provide clarity to all parties on the correct process to efficiently manage stalled projects.
(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;	<b>Positive</b> This change will better support effective competition, by making it potentially easier for parties to connect to the NETS swiftly and economically where they are able to progress.
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	<b>Neutral</b>
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	<b>Positive</b> This modification will clarify a consistent process for proactively managing connection offers thereby reducing ambiguity and promoting efficiency in contract management.

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

#### Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories

Stakeholder / consumer benefit categories	Identified impact
Improved safety and reliability of the system	<b>Neutral</b>
Lower bills than would otherwise be the case	<b>Positive</b> Application of the Queue Management principles ensures consistent treatment of Users across the Whole System. A cheaper connection may be offered to users when queue management rules are applied. It should allow Network Owners to give more efficient network



	solutions as they will no longer have a contracted queue/background which may ultimately never materialise. This approach should deliver greater certainty over network requirements and solutions.
Benefits for society as a whole	<b>Positive</b> Queue management always enables the fair and effective use of available network capacity and ensures that those at the front of capacity queues are incentivised to deliver their projects in a timely manner, rather than stifle opportunities for other adjacent schemes to proceed.
Reduced environmental damage	<b>Positive</b> This helps network companies to manage the network capacity effectively by reducing the need for new network reinforcement, supporting transition to net zero.
Improved quality of service	<b>Neutral</b>

## Workgroup Vote

The Workgroup met on 7 March 2023 to carry out their Workgroup Vote. 17 Workgroup Members voted, and the full Workgroup vote can be found in Annex 8.

### CUSC non-charging objectives

- a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
- 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;
- c) 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.

The Workgroup concluded by majority that all the proposed solutions (except WACM9) better facilitated the Applicable Objectives than the Baseline.

The table below provides a summary of how many Workgroup members believed the Original and each of the 11 WACMs were better than the Baseline:

Option	Number of voters that voted this option as better than the Baseline
Original	14
WACM 1	15
WACM 2	10
WACM 3	11
WACM 4	11
WACM 5	14
WACM 6	9
WACM 7	11
WACM 8	12
WACM 9	7
WACM 10	10
WACM 11	12

Note that 9 of the 17 Workgroup Members, who voted, expressed no preference for which of the above options is in their view the “best” option as could see equal merit in one or more of the options.

## Code Administrator Consultation summary

The Code Administrator Consultation was issued on the 3 April 2023 and closed on 4 May 2023 and received 23 non-confidential responses including 1 late response and 1 confidential response. A summary of the 23 non-confidential responses can be found in Annex 9, and the full responses can be found in Annex 10.

In summary the key points were:

- Respondents in general supportive of Queue Management and the key benefit articulated was that this would remove delayed projects from connection queues and allow projects that are ready to connect to get an earlier connection date.
- Options that respondents believe better facilitate the CUSC objectives and/or support are dependent largely on their view on termination rights and whether or not Queue Management arrangements should be applied to all parties in the queue. A couple of respondents argued that some of the options could have been combined; however, that is not possible at this stage in the process.
- Respondents recognised the importance of ESO’s guidance and offered some suggestions on areas to be included. The 2 areas that stood out were:
  - Examples of how the Milestones (Appendix Q of the Construction Agreement) interact with the Construction Programme (Appendix J of the Construction Agreement); and
  - Examples of valid Exceptions with some call for a central “live” list being maintained.
  - Respondents noted the wider context and some respondents called for Queue Management to be reviewed vs the final recommendations for wider Connections Reform and some noted the need to be cognisant of Queue

Management arrangements at Distribution level to ensure no discrimination between transmission and distribution arrangements.

- 1 legal text issue was identified - *“legal text for milestone M3 should be explicit that cable routes and easements are not covered”*. However, the respondent has since confirmed this is clarified within the legal text as it already says *“Nb the obligation is to secure and evidence the land right for the site of the installation e.g. Power Station or demand site so the evidence does not relate to rights e.g. easements associated with that site or OTSDUW”*. Therefore, this is not needed to be flagged to the CUSC Panel.

**Panel recommendation vote**

The Panel will meet on the 26 May 2023 to carry out their recommendation vote

The Panel will assess whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

**Vote 1:** Does the Original and/or WACMs facilitate the objectives better than the Baseline?

Panel Member: **Andrew Enzor**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
<b>Voting Statement</b>					



Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					

Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					



Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					



Panel Member: **Grace March**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					

Panel Member: **Joseph Dunn**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
Voting Statement					





**Panel Member: Karen Thompson – Lilley**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
<b>Voting Statement</b>					

**Panel Member: Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					
WACM7					
WACM8					
WACM9					
WACM10					
WACM11					
<b>Voting Statement</b>					

**Vote 2 – Which option is the best?**

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andrew Enzor		
Andy Pace		
Binoy Dharsi		
Cem Suleyman		
Garth Graham		
Grace March		
Joseph Dunn		
Karen Thompson – Lilley		
Paul Jones		

**Panel conclusion**

To be updated following the Panel recommendation vote on 26 May 2023.

The table below shows how many votes were in favour of the proposed solutions being better than the Baseline.

Proposed Solution	Of the 9 votes, how many said that this option was better than the Baseline
Original	
WACM1	
WACM2	
WACM3	
WACM4	
WACM5	
WACM6	
WACM7	
WACM8	
WACM9	
WACM10	
WACM11	

**When will this change take place?****Implementation date**

10 working days after Authority decision for CMP376 Original, WACM1, WACM2, WACM3, WACM4, WACM5, WACM6, WACM7 and WACM10

6 months after Authority decision for WACM8, WACM9 and WACM11

**Date decision required by**

As soon as possible

## Implementation approach

<p>For CMP376 Original and WACM1, WACM3, WACM5, WACM8, WACM10 and WACM11</p>	<p>Will apply to all new applications, Modification Applications and Agreements to Vary (“ATV”) for parties with a CUSC Construction Agreement (except Bilateral Embedded Generator Agreements (BEGAs)<sup>8</sup>, DNOs associated with Distributed Generation (DG) or demand customer connections;) and shared works for non-radial offshore connections and any Offshore Transmission System User Development Works (OTSDUW)) after the Implementation Date</p>
<p>For WACM2, WACM4, WACM6, WACM7 and WACM9</p>	<p>Customers with a contracted Completion Date of less than 2 years from the CMP376 implementation Date will face no change to their agreements</p> <ul style="list-style-type: none"> <li>• Customers will need to demonstrate active project progression and compliance with existing Construction Agreement (in reference to Construction programme in Appendix J)</li> <li>• If a customer’s project is not progressing<sup>13</sup>, they will be treated as if they have a Completion Date of 2+ years</li> </ul> <p>Customers with a contracted Completion Date of 2 years or more, or projects not progressing with a Completion Date of less than 2 years, from CMP376 implementation, will be given 2 options within 10 Business Days of the CMP376 Implementation Date:</p> <p><u>Option 1:</u></p> <ul style="list-style-type: none"> <li>• User to submit a Modification Application for a new Completion Date <ul style="list-style-type: none"> <li>➢ Queue Management milestones will be added to their agreement, aligned to the new Completion Date in a forward-looking manner</li> <li>➢ Revised Completion Date will be provided by the TO and ESO - there is a risk for the customer that this may be significantly later than their existing contracted Completion Date, and the scope of the works and associated cost may also be subject to change.</li> <li>➢ A standard Modification Application fee would be charged for this option.</li> </ul> </li> </ul> <p><u>Option 2:</u></p>

<sup>13</sup> In practice, it is unlikely that a project that is not progressing would not already have submitted a Modification Application to change their Completion Date.

	<ul style="list-style-type: none"> <li>• ESO to issue an ATV to modify Construction Agreement and add Queue Management milestones aligned to their existing Completion Date. <ul style="list-style-type: none"> <li>➤ Milestones will be added in forward-looking manner (following the timescale columns in CMP376 Original Proposal)</li> </ul> </li> </ul> <p>Users will need to exercise their option within 6 months and TOs and ESO will ensure these changes are managed efficiently. Where the User does not submit a Modification Application within 6 months of the Implementation Date or does not accept the Modification Offer made in response to this, the ESO will issue an ATV as soon as practicable after the 6 months or failure to accept.</p>
--	---

In terms of process, ESO will be engaging with customers throughout the connections process to ensure that impacts and expectations are understood. The ESO will be publishing a Queue Management User Guide to support CMP376 implementation. The proposed supporting guidance will enable CUSC parties to understand in practical terms how the Queue Management policy will work operationally, e.g. explaining the process of submitting and verifying evidence, clarity on the exceptions and appeals process, and how termination and the milestone remedy period work.

The ESO will propose an amendment to the latest ENA Queue Management guidance to make it clear that Transmission projects will henceforth (if CMP376 is implemented) be covered by the CUSC provisions (as the current document applies, in principle, to both Distribution and Transmission). In addition, network companies will collaborate (via the ENA) to ensure appropriate consistency going forward.

## Interactions

- |   |  |  |                                |
|---|--|--|--------------------------------|
| <input type="checkbox"/> Grid Code              | <input type="checkbox"/> BSC                               | <input checked="" type="checkbox"/> STC      | <input type="checkbox"/> SQSS  |
| <input type="checkbox"/> European Network Codes | <input type="checkbox"/> EBR Article 18 T&Cs <sup>14</sup> | <input type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

## Acronyms, key terms and reference material

Acronym / key term	Meaning
ATV	Agreement to Vary
BEGA	Bilateral Embedded Generator Agreement
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal

<sup>14</sup> If the modification has an impact on Article 18 T&Cs, it will need to follow the process set out in Article 18 of the Electricity Balancing Regulation (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.

CUSC	Connection and Use of System Code
DG	Distributed Generation
DNO	Distribution Network Operator
EBR	Electricity Balancing Regulation
ENA	Energy Networks Association
ESO	Electricity System Operator
NETS	National Electricity Transmission System
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
TEC	Transmission Entry Capacity
TO	Transmission Owners

## Reference material

No additional material

## Annexes

Annex	Information
Annex 1	Proposal Form
Annex 2	Terms of Reference
Annex 3	Legal Text
Annex 4	Workgroup Consultation Responses summary
Annex 5	Workgroup Consultation Responses
Annex 6	Workgroup Alternative CUSC Modifications
Annex 7	Summary of Workgroup Alternative CUSC Modifications
Annex 8	Alternative and Workgroup Vote
Annex 9	Code Administrator Consultation Responses summary
Annex 10	Code Administrator Consultation Responses