

**Workgroup Consultation**

# CMP376: Inclusion of Queue Management process within the CUSC

**Overview:** 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.



**Have 5 minutes?** Read our [Executive summary](#)  
**Have 20 minutes?** Read the full [Workgroup Consultation](#)  
**Have 30 minutes?** Read the full Workgroup Consultation and Annexes.

**Status summary:** The Workgroup are seeking your views on the work completed to date to form the final solution(s) to the issue raised.

**This modification is expected to have a: High impact on:** ESO, Onshore/Offshore Transmission Owners, and all users wanting to utilise or connect to the National Electricity Transmission System (NETS) and Distribution Network Owners

<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
<b>How do I respond?</b>	Send your response proforma to <a href="mailto:cusc.team@nationalgrideso.com">cusc.team@nationalgrideso.com</a> by 5pm on 23 December 2022	

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## 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.

### Proposer’s solution:



**Implementation date:** 10 working days after Authority decision

### Summary of potential alternative solution(s) and implementation date(s):

As per Original but including an end date by when all contracted Construction Agreements will be subject to the arrangements being introduced by CMP376.

It is also possible, from Workgroup discussions, that industry parties may seek different Milestone durations to those proposed in the CMP376 Original.

### 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 to ensure that other Transmission connected projects, which will be, or can be, ready to connect on a given connection date,

can do so 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, 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.

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

Having a standard set of 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. There is also a risk that projects that are proceeding (albeit slower than the Milestones set out in the CUSC) will 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 only STC changes currently envisaged are, 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 is discussed further in the “Evidence” section of this document.

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 expected 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.

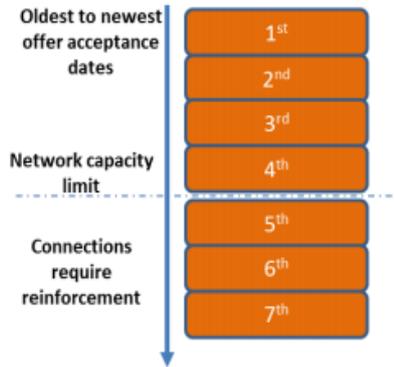
This modification has no interactions with EBR<sup>1</sup> Article 18 Terms and Conditions.

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<sup>1</sup> If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the European Electricity Balancing Guideline (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.

## What is the issue?

Queue Management is a process to manage contracted connections (both at Transmission and Distribution level) against limited 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 they accept their connection offer. 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 320GW contracted to connect according to the [Transmission Entry Capacity Register](#) and some of these projects have connection dates stretching out beyond 2033.

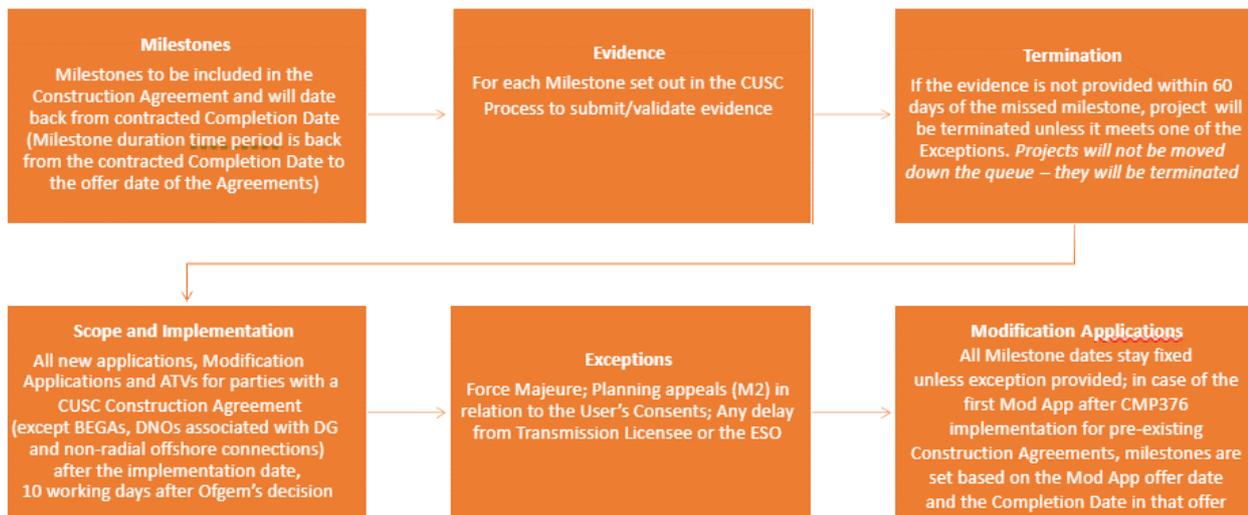
It is widely accepted that not all these projects will progress to connecting to the NETS, noting the volume of Modification Applications raised by Users seeking to delay their projects today. Therefore, CMP376 seeks to introduce a Queue Management process to better manage projects against User Progression 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



## Workgroup considerations

The Workgroup convened 7 times to discuss the proposer's identified issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Code Objectives.

### Consideration of the proposer's solution

**Milestones - to be included in the Construction Agreement and will 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 proposes 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		9 Months	12 months	15 months	18 Months
M7 - Project Commitment	Bilaterally negotiated	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.

The Proposer took on board 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 have been 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 now 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 some Workgroup Members questioned the need for Milestones M7 and M8 as there is limited risk of the project not going ahead; 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.

The key areas of discussion focused on the application of the milestones and the duration. Two alternative thoughts, which may later be raised as formal Workgroup Alternatives were proposed on how the milestones could be applied and these are set out in the table below:

Approach	Workgroup thoughts / Current CMP376 Original
<p>Adopting the Distribution approach (as set out in <a href="#">latest ENA guidance</a>) Whereby only M1 to M3 are set at the offer stage.</p> <p>M6 to establish a Construction Programme for the project is then submitted to the ESO within 6 months of achieving statutory consents (milestone M2). The remaining milestones, M5, M7 and M8 are agreed as part of the Construction Programme.</p>	<p>Although this is consistent with Distribution and may have some merit as provides the User with more control over their Milestones, and tailors the Milestones to the particular project requirements, the 2-stage process could add process complexity.</p>
<p>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. As a result, they have a preference for greater flexibility at those milestones and asked that M7 and M8 would move as part of a Modification Application even if this does not meet one of the exceptions.</p>	<p>Milestone Durations 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.</p>

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. However, 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 that the addition of Milestones that suit specific project scales and timeframes could smother innovation.

**Specific Workgroup consultation question: Do you agree with the Milestone durations proposed? Please provide the rationale for your response.**

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	

**Specific Workgroup consultation question - Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date the Offer is sent to the User; or from the Contracted Completion Date back to the date the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.**

### **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 TOs 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.

### Distribution/Transmission Milestones Comparison

Milestone	Distribution Evidence	Transmission Evidence	Distribution Timescale (from acceptance/TSO interface)	Transmission Timescale (4 year example, backdated)
M1 – Initiate Consent	Submission of planning application <i>EIA requirements</i>	Submission of planning application to authority	2 months <i>14 months</i>	36 months (12 from offer date)
M2 – Secure Consent	Planning decision notice issued to applicant <i>EIA requirements</i>	Planning decision notice grants permission for User to meet terms in the construction agreement	12 months/2 months <i>24 months</i>	24 months (24 from offer date)
M3 – 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	2 months	39 months (9 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	Complete design submission	The User will be required to provide evidence that their design for contestable works has been submitted to the relevant Transmission Owner.	To be agreed with customer, working back from connection date	36 months (12 from offer date)
M6 – 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	User’s programme of works demonstrates how start and completion will be accomplished as agreed with Transmission Licensee	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) 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 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>2</sup> and Cumulative delay <sup>3</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>2</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>3</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 a milestone is missed 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)	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.

**Specific Workgroup consultation question:** There are differences between the arrangements at Transmission and Distribution. Do you agree with the list above and the reasons provided why there is different treatment and that that these don’t create undue discrimination? Please provide the rationale for your response.

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

Milestone	Outcome
<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</p>
<p>M5 - This milestone will apply where a customer has gone down the contestable route for connection. Some Workgroup Members argued that this seems too early and the date for this should be part of the Construction Plan submitted for M6. A Workgroup Member also asked if M5 is consistent with the dates when a TO would develop its own design for the contestable works if they were constructing them?</p>	<p>No changes made as part of CMP376 Original at this stage.</p>
<p>M6 – 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.</p> <p>A possible alternative solution is to change to “submit” the Construction Plan.</p> <p>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</p>	<p>CMP376 Original proposes that the User submits their plan to 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> <p>The Proposer agreed to consider the durations associated with M6 given the challenge that the User will not have received the TO’s Commissioning Programme in time to meet this Milestone.</p>

may need to be considered to ensure M6 can work practically.

The current proposed evidence requirements are set out in the tables below:

Milestone	Detail	Evidence
Milestone 1) Initiated Statutory Consents and Planning Permission	The User 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 correct planning Authority
Milestone 2) Secured Statutory Consents and Planning Permission	The User 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 User to meet the terms included in this Construction Agreement.  Note: The Company shall check progress the User has made against the relevant planning portal for a decision notice.
Milestone 3) Secure Land Rights	The User must have secured the required Land Rights to enable the construction of the project. The User may be the owner/occupier of the land or has the necessary agreement from the owner/occupier.	The User shall provide documentation to demonstrate that:  (i) The User is an owner or tenant of the land on which the proposed site is or will be situated; or  (ii) The User 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 User 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 User 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.
Milestone 4) N/A for Transmission	This milestone is null here, it is included only because there is a milestone number 4 in a comparable queue management process for non-transmission-connected generators, and an aim is alignment of the regimes	Null
Milestone	Detail	Evidence
Milestone 5) Contestable Design Works Submission	This milestone will apply where a User has gone down the contestable route for connection. The User will be required to provide evidence that their design for contestable works has been submitted to the Transmission Owner.	The User will be required to provide evidence that their design for contestable works has been submitted to the relevant Transmission Owner.
Milestone 6) Agree Construction Plan	The User must agree a programme for the detailed User's Works with The Company which demonstrates how they will be progressing the User's Works to achieve the agreed completion 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 aligned with the Completion Date for Project Construction (Milestone 8).
Milestone 7) Project Commitment	This milestone demonstrates that the project has the necessary commitment or backing which is for it to proceed.	One of the following:  • Binding contract issued by the User for main plant equipment; or  • Capital contribution payments made to The Company in advance of connection; or  • A decision paper from a formal, <u>minuted</u> meeting of the User's board of directors evidencing Final Investment Decision (FID); or  • award of a subsidy.
Milestone 8 Project Construction	Project construction is the project phase i.e. the period from when a User begins the site works to carry out construction of its project until completion of the User's Works	Commence construction according to Construction Plan

**Specific Workgroup consultation question:** Do you agree with the evidence requirements proposed? Please provide the rationale for your response.

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

- ESO 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;
  - 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>4</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, 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.

**Specific Workgroup consultation question:** Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.

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<sup>4</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

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 there is an outstanding question about where they will be involved in appeals/disputes under the CMP376 arrangements;
- 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.

Although, at this stage, no option was identified as the one to carry forward into the CMP376 arrangements, 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 requirements and/or the validity of an Exception (discussed in the “Exceptions” section below).

**Specific Workgroup consultation question:** Do you have any views on the most appropriate route for Appeals/Disputes raised by a User whose Construction Agreement has been terminated under CMP376? Please provide the rationale for your response.

## **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 are 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>5</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.

**Specific Workgroup consultation question - Do you agree with the circumstances when Milestone Dates will be changed – the "exceptions"? Please provide the rationale for your response.**

**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. 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.

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<sup>5</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"

The Distribution arrangements provide DNOs with a “Right to Terminate” if a milestone is missed. The proposed Transmission arrangements provide 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.

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.

**Specific Workgroup consultation question - Do you agree that the associated Construction Agreement will be terminated if Milestone Dates (unless covered by the exceptions) are missed and not rectified within the 60-calendar day period? Please provide the rationale for your response.**

**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. The Workgroup Member is considering a Workgroup Alternative on this basis. 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

**Specific Workgroup consultation question – Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.**

## **Scope and Implementation**

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>6</sup>, DNOs associated with Distributed Generation (“DG”) and non-radial offshore connections<sup>7</sup>) after the Implementation Date, which is 10 working days after Ofgem’s decision.

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.

A Workgroup Member identified a potential alternative to ensure that implementation is not open-ended and leads to Users having different contractual treatment for an unspecified, but likely lengthy period of time in their view. They observed that the Proposer’s Original appears to be solely reliant on the motivation of Users to initiate a Modification Application to enable the Queue Management process to apply to their Construction Agreement. They recommended having an explicit ‘implement by date’ after the Authority’s determination to, in their view, ensure that all Users were being treated consistently as soon as possible, and that the benefits cited by the Proposer can be more quickly realised by all industry stakeholders. Their initial proposal is that all current contracted Construction Agreements are moved to the CMP376 arrangements by no later than 9 months after Implementation Date, though this duration will be explored further should the potential alternative be formally raised.

Another Workgroup Member expressed 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. A Workgroup Member also noted that existing Construction Agreements have a provision in Appendix J (Construction Programme) that dates may be amended by agreement of both parties.

## **Draft legal text**

The draft legal text for this change can be found in Annex 3.

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<sup>6</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>7</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. A separate Modification will be raised to cover Queue Management arrangement for such circuits.

## 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>

**Standard Workgroup consultation question:** Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?

**Specific Workgroup consultation question -** Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?

## When will this change take place?

### Implementation date

10 working days after Authority decision

### Date decision required by

As soon as possible

### Implementation approach

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”) and non-radial offshore connections<sup>9</sup>) after the Implementation Date.

Under this proposed current approach, it is possible that a party with a currently contracted Construction Agreement will not submit a Modification Application and no Milestones will be added to their Construction Agreement. Therefore, a Workgroup Member has identified a potential alternative to add an end date by which all currently contracted Construction Agreements will be moved to the CMP376 arrangements. This is discussed further above in the “Termination” section above.

Ahead of implementation, the ESO have invited all parties with connection agreements listed on the TEC register to confirm whether they would be willing to either reduce their TEC or terminate their Construction agreement at minimal or no cost. The window for customers to express an interest in this TEC amnesty is open until 30 November 2022.

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 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).

**Standard Workgroup consultation question: Do you support the implementation approach?**

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<sup>8</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>9</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. A separate Modification will be raised to cover Queue Management arrangement for such circuits.

## 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>10</sup> | <input type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

## How to respond

### **Standard Workgroup consultation questions**

1. Do you believe that the Original Proposal or any of the potential alternative solutions better facilitates the Applicable Objectives?
2. Do you support the proposed implementation approach?
3. Do you have any other comments?
4. Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?

### **Specific Workgroup consultation questions**

5. Do you agree with the Milestone durations proposed? Please provide the rationale for your response.
6. Do you agree that the time period for the milestone durations should be from the contracted Completion Date back to the date the Offer is sent to the User; or from the Contracted Completion Date back to the date the Offer is accepted by the User; or from the Contracted Completion Date back to the date the Offer becomes effective; or do you have an alternative approach? Please provide the rationale for your response.
7. There are differences between the arrangements at Transmission and Distribution. Do you agree with the reasons provided why there is different treatment and that these don't create undue discrimination? Please provide the rationale for your response.
8. Do you agree with the evidence requirements proposed? Please provide the rationale for your response.
9. Do you agree that works specifically for a User, whose Construction Agreement has been terminated under CMP376, should be suspended until the outcome of the Appeal/Dispute. Please provide the rationale for your response.
10. Do you have any views on the most appropriate route for Appeals/Disputes raised by a User whose Construction Agreement has been terminated under CMP376? Please provide the rationale for your response.
11. Do you agree with the circumstances when Milestone Dates will be changed – the “exceptions”? Please provide the rationale for your response
12. Do you agree that the associated Construction Agreement will be terminated if Milestone Dates (unless covered by the exceptions) are missed and not rectified within the 60 calendar day period? Please provide the rationale for your response.
13. Do you agree with the proposed impacts on Milestones for different types of Modification Applications? Please provide the rationale for your response.

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<sup>10</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.

14. Does the CMP376 Original proposal or any of the potential alternative solutions impact your business and/or end consumers. If so, how?

The Workgroup is seeking the views of CUSC Users and other interested parties in relation to the issues noted in this document and specifically in response to the questions above.

Please send your response to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com) using the response proforma which can be found on the [CMP376 modification page](#).

In accordance with Governance Rules if you wish to raise a Workgroup Consultation Alternative Request, please fill in the form which you can find at the above link.

*If you wish to submit a confidential response, mark the relevant box on your consultation proforma. Confidential responses will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel, Workgroup or the industry and may therefore not influence the debate to the same extent as a non-confidential response.*

## 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
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	Draft legal text