

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

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm on 17 January 2022**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

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

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For reference the Applicable CUSC (charging) Objectives are:

- a. *That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;*
- b. *That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);*
- c. *That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;*
- d. *Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and*
- e. *Promoting efficiency in the implementation and administration of the system charging methodology.*

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

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

Standard Workgroup Consultation questions		
1	Do you believe that the CMP330/CMP374 Original Proposal better facilitates the Applicable Objectives?	<p>Based on our assessment of the modification against the applicable objectives and the CUSC baseline, we believe the proposal as presented in this consultation is detrimental for industry stakeholders:</p> <p><i>Objective A ('facilitates effective competition in the generation and supply of electricity') – Negative</i> – No benefits in facilitating competition have been presented to justify the significant volume of regulatory change needed to implement this modification.</p> <p>Furthermore we believe that competition will actually be negatively impacted, due to potentially inefficient actions of a first comer building contestable Infrastructure Assets impeding the Onshore TO's ability to connect subsequent applicants economically/efficiently.</p> <p><i>Objective B ('Results in charges which are cost reflective') – Negative</i> – The proposal does not mitigate the risk of unforeseen User-driven costs for contestable build of Infrastructure Assets needing to be borne by the TO and then recovered via TNUoS – including in the event of User default or termination. Unlike with Connection Asset contestable build, the User is not incentivised to act economically as there is no direct charging signal.</p> <p>The Proposer is also yet to substantiate in their original proposal whether Users undertaking contestable build for Infrastructure Assets would do so under a Fixed Price arrangement. This was mooted during the workgroup discussion and might provide some moderate level of cost recovery protection – albeit not from the User default or termination risk.</p> <p><i>Objective C ('Takes account of developments in transmission licensees' businesses') – Negative</i> – We remain unconvinced, despite the steer provided by the ESO, that this modification is compatible with the intended direction of Early Competition in Transmission.</p> <p>The scope of the CMP374 proposal opens up contestable build by CUSC parties of 275kV or 400kV Infrastructure Assets - without the regulatory protection of licencing arrangements and price control – all likely to be part of the eventual ECIT/CATO regime. We strongly</p>

		<p>recommend Ofgem look into this aspect of the CMP374 proposal as soon as possible to verify this.</p> <p>Objective D ('Compliance with relevant regulations) – Neutral (or N/A).</p> <p>Objective E ('Promotes efficiency in the charging methodology') – Negative – The proposer is seeking to codify aspects of our business as usual (as per the baseline) into code governance. This would not only present barriers to innovation and efficiency, but potentially limit the Onshore TO's ability to act swiftly in the best interests of wider industry/end consumers.</p> <p>Furthermore it is questionable whether Section 14 is an appropriate location for the majority of the legal text the proposer would require to implement CMP374. We believe that amendments to CUSC Sections 2, 7, 11, plus potential clarifications in Section 15, may be needed.</p> <p>Finally, we expect numerous Sections, Schedules and Procedures of the STC to also need modification, potentially extensively, to help facilitate the proposer's solution.</p>
2	<p>Do you support the proposed implementation approach?</p>	<p>As we will highlight later in our response, we expect licence changes and/or T2 business plan revisions to be needed to enable the transmission licensees to undertake some of the new obligations in the proposer's solution. These aspects must be resolved before any CUSC mod is implemented.</p> <p>Also as highlighted in Q1, significant parts of the STC will also require modification to facilitate the implementation of CMP374 and this will take time.</p>
3	<p>Do you have any other comments?</p>	<p>We will always support initiatives seeking to make User connections to transmission more timely, economic, and efficient.</p> <p>In the context of CMP330/374 however, it is extremely doubtful whether addressing the proposer's underlying defect, or implementing their original solution, will actually lead to demonstrable benefits for Users or end consumers in comparison to the baseline.</p> <p>It is important to flag that contestability is already a User right at transmission today, allowing developers to take control of the delivery of their sole-use Connection Assets. From our perspective, the proposer's solution offers no improvement on this existing contestability right for customers in England & Wales. The mod proposal actually introduces inefficiency to the baseline,</p>

e.g. limitations for adoption agreement/User Self-Build (USB) agreement terms.

Consequently our response almost entirely focuses on the many adverse impacts that result from the proposer's extension of contestability rights to include Infrastructure Assets with no limitation on voltage (subject to the potential WACM).

The contradictory concept established by this mod proposal is that Infrastructure Assets can be considered 'sole use' or 'non-shared', thus enabling them to be contestably built by a User. As an Onshore TO we are wary of the inference here that a User's own requirements for Infrastructure Assets could prevail over wider strategic purpose of these assets.

Such a philosophy would inevitably lead to sub-optimal system design outcomes and be more costly over time. The Onshore TOs continually seek to accommodate multiple evolving drivers when developing the transmission system. This allows us to deliver lower cost solutions for the overall benefit of Users and end consumers. CMP374 will introduce the opposite – a situation where network design becomes piecemeal and short-term focused.

The proposer may cite the mooted TO 'intervention rights' in their proposal – sadly not fully developed at the time of consultation - as a route to avoid this potentially adverse situation. From our perspective we anticipate that enforcing the TO's right to intervene under this proposal will likely be undermined by other aspects of the CMP374 solution, e.g. a revised or parallel Ofgem dispute escalation process as compared to our standard USB terms (where a 3rd party engineering provides expert arbitration).

As already mentioned, Infrastructure Asset cost recovery is via TNUoS charges. Existing contestability provisions for Connection Assets benefit from the alignment of asset build cost and eventual Connection Charge liability. This provides a clear commercial signal to drive the optimum outcomes by both Users and TOs.

This modification does not replicate that commercial imperative for 'contestable Infrastructure'. Users are insulated from the full extent of any failure on their part to deliver contestable works courtesy of the Onshore TO and TNUoS payers. In the worst circumstances, all this modification would do is introduce the concept of a

middleman who has minimal commercial incentive to act in the wider interest.

The proposer's solution also does not address the risk of a User's termination of their connection agreement or potential credit default. In that event the Onshore TO would have no option but to intervene, with the inevitable additional costs to do so subject to price control performance, and then socialised via TNUoS. Consequently, there is a higher probability of inefficient investment and higher end consumer costs via this proposal than with the baseline.

We also remain concerned that the proposer may underestimate the level of undertaking to design, project manage and construct Infrastructure Assets up to and including 400kV.

The proposer's solution is silent on whether Users will do the full scope of project development under contestable build for Infrastructure Assets, or only construction. Our response therefore assumes the User will take on the full project development role as a TO would.

This immediately leads to significant concerns over a User's ability to effectively manage concerns such as land rights, local community engagement, supply chain and outage coordination. Our ability to do this, and our driver to do so effectively, as a regulated entity is not (and likely cannot) be replicated in CUSC for Users doing contestable Infrastructure Asset build. This also presents an increased risk both to end consumers and to us.

The core regulatory concerns we highlighted in our CMP330 consultation response sadly remain unaddressed under CMP374. Contestability concepts at distribution cannot easily be transposed on to corresponding transmission processes without significant regulatory and commercial upheaval.

As mentioned, we expect a significant volume of change to the STC to accommodate CMP374, but also foresee licence changes and T2 business plan amendments needed to deliver what the proposer is seeking to achieve. Is this effort really in the best interests of the wider industry, without an - as yet - clearly evidenced benefits case?

The remainder of our response draws out these concerns more specifically in the context of the consultation questions. We hope Ofgem will more

		directly engage with the CMP374 and CM079 workgroups to address the regulatory concerns we highlight, particularly in Q5, Q8, Q11 and Q14.
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No.
Modification Specific Workgroup Consultation questions		
5	Do you agree with the proposed solution that one offer with two options (contestable/non-contestable) would represent the best approach?	<p>No. This would represent an inefficiency in CUSC and STC arrangements as compared to the baseline, leading to likely increases in Application Fees.</p> <p>Most critically, we would likely require a licence change to extend the time period permitted for the transmission licensees to produce a connection offer, thus avoiding any penalties under our Timely Connections Incentive. Consequential CUSC and STC changes would also be required to align with this licence change.</p> <p>We also have doubts whether the existing capacity levels in our Connections teams would be sufficient if potentially all connection offers were to require Contestable vs. Non Contestable options.</p> <p>We have already sought to drive significant efficiency in our operations for the T2 period. To have to accommodate an increased workload without a clearly stated benefit would represent a backwards step compared to the direction of travel for T2. As already stated, any cost increases permitted by Ofgem to enable us to deliver the proposer's solution would be passed on via Application Fees.</p> <p>Ofgem acknowledged the unprecedented volume of connection applications as a challenge for the transmission licensees in a recent determination¹ to selectively extend dates for certain connection offers in England & Wales:</p> <p><i>“On the broader matter of the overall increase in electricity transmission connection applications, we acknowledge the requirement this creates for both Transmission Owners and NGENSO to process a significantly greater number of offers than may have been expected in the past. There may be a case to consider a review of aspects of the current connections process and related obligations to ensure they remain fit</i></p>

¹ <https://www.ofgem.gov.uk/publications/consent-extension-timescales-issuing-connection-offers>

		<p><i>for the future, and we will continue to liaise with NGESO and the Transmission Owners to better understand their views on the improvements that could be made and how they could be delivered.”</i></p> <p>What is proposed via CMP374 is directly at odds with needing to evolve connection offer process so it remains fit for purpose.</p> <p>There is a much more pragmatic route already debated by the workgroup. It only obligates the Onshore TO act with ‘reasonable endeavours’ to incorporate contestability into the existing offer process. More substantive discussions on contestability can then occur during post-offer negotiations, prior to an Adoption Agreement/USB agreement being agreed. This avoids unnecessary additional burdens on the TOs and the risk of increased App Fee costs.</p>
6	<p>Should there be a process to allow subsequent applicants to take over the contestable build already negotiated with the TO? If so, should this process have a ‘point of no return’ where this option is restricted?</p>	<p>Whilst we acknowledge the potential merit of considering flexibility on this aspect of the proposer’s solution, our view is that a ‘point of no return’ would indeed be needed. It would likely be so early in the project lifecycle as to make this provision completely impracticable.</p> <p>The problem here is that the first comer and Onshore TO will both commit to project spend necessary to conform to the first comer’s requested connection date and proceed with development work ASAP. There is also the likely risk, if the User is undertaking the entire project development as contestable works, that they will be identified as the legal entity for land rights and consenting. These are extremely difficult to novate/transfer to a second comer.</p> <p>If a subsequent applicant applies prior to the finalisation of an Adoption Agreement/USB agreement between the first comer and the Onshore TO then potentially works takeover may be possible. However it is more likely at this stage that the TO will intervene to take on the works as the Infrastructure Assets would be shared.</p>
7	<p>Are the proposed intervention criteria sufficient? Are there any additional criteria that should be considered? Please provide your views.</p>	<p>The intervention criteria presented in the consultation document is clearly still a work in progress, but at least sets out some core principles we agree with.</p> <p>However, we believe the Onshore TOs should most strongly influence any final intervention criteria, rather than Users who have a vested interest to keep them ‘light touch’.</p> <p>The intervention criteria and their potential codification into CUSC should also not be used a backdoor route to</p>

		<p>limit the Onshore TOs ability to take legitimate actions with wider strategic concerns in mind. As highlighted earlier, CMP374 appears to promote the commercial interests of a User seeking contestability over wider stakeholder needs. This cannot be permitted in the context of TO intervention.</p> <p>From our perspective, any criteria should seek to do the following:</p> <ol style="list-style-type: none"> 1. Impose appropriate levels of scrutiny on Users to ensure economic and efficient delivery of transmission assets, particularly Infrastructure Assets which lack cost management signals under this proposal; 2. Ensure that any transmission assets built contestably strictly conform to appropriate engineering and technical design standards to avoid enduring operational or asset health issues (leading to increased maintenance costs); 3. Ensure that any transmission assets are not underspecified as to suit the needs of a single User seeking to undertake contestability (i.e. reduced capacity/redundancy requirements to enable the User's contestable solution to artificially appear favourable when compared to the Onshore TO's design). <p>Above all, Onshore TOs must be able to intervene to limit contestability when there is any risk to on-going anticipatory and/or wider TO investment in the network. This should also extend to consideration of DNO developments of the adjacent downstream distribution system too.</p> <p>Our suspicion is that the proposer may find these requirements restrictive or even unreasonable. This however demonstrates the clear limitation of this code modification when it comes to Infrastructure Assets. The Onshore TO must have the right to prevent or intervene on contestability for Infrastructure Assets when the interests of wider stakeholders are put at risk by the commercial motivations of a User. Placing hurdles for TO intervention in the CUSC, such as enhanced dispute rights, is also not appropriate in this context.</p>
8	<p>Do you agree that no additional safeguards are required for the delivery of non-shared Infrastructure Assets via contestable works? If not, what</p>	<p>As mentioned earlier in our response, we do not believe the proposer's solution is explicit enough on the extent of contestable activities for Users delivering Infrastructure Assets. Nor how any unforeseen costs arising will be managed - i.e. are these works always Fixed Price? Until then we cannot fully answer this question.</p>

	<p>protections would you wish to see?</p>	<p>The workgroup discussion has not yet acknowledged the public safety consequences of the User or their contractors working on 275kV or 400kV assets, which constitute critical national infrastructure.</p> <p>Consequently, we believe it is not unreasonable for the Onshore TOs to impose increased project management oversight on the User or their contractors. This would likely be enabled through bilaterally negotiated terms in the Adoption Agreement/USB agreement.</p> <p>Any additional TO overheads to help oversee User-build of Infrastructure Assets would also be charged to the User – either netted off any adoption payment(s) or potentially levied via One-Off Works charges, ensuring these costs are not socialised via TNUoS.</p>
<p>9</p>	<p>Do you agree with the principles of what needs to be included in the Adoption agreement as set out in Annex 4.</p>	<p>We see no benefit in codifying the principles for 'Adoption Agreements' in CUSC. Instead it represents an inefficiency - a limitation of innovation and a potential risk to our ability to effectively project manage transmission projects.</p> <p>In considering this question, we would like to understand the factors behind the proposer including this aspect in their solution. What concerns or risks do they believe they are mitigating to justify adding new legal text into CUSC (and consequently STC), which is at odds with applicable objective (e)?</p> <p>If the proposer is concerned by a potential for regional inconsistency between the TOs, then the STC could have a minor amendment to require the Onshore TOs to:</p> <ul style="list-style-type: none"> a) publicise the key sections of their USB agreements; b) collaborate to ensure consistency (where possible) if differing key provisions do exist c) communicate with industry in advance when any significant amendments are made to the form of USB agreements in future. <p>Our current USB agreements are derived from industry standards for large-scale engineering and construction projects. Contract negotiation is accommodated between developers and Onshore TOs until an agreement is reached, taking into account project-specific issues for the benefit of both parties.</p>

		<p>We believe that codifying Adoption Agreement principles in CUSC could limit our ability to agree these project-specific requirements. This could force us to limit the scope for contestability for Infrastructure assets if legitimate project-specific risks cannot be accommodated in USB agreements.</p> <p>Whilst our perspective is that the baseline approach for contracting contestable works should persist, the incorporation of Infrastructure Asset build will, as mentioned above, require more extensive terms given the broader and more significant undertaking as compared to Connection Assets.</p> <p>In particular we would need to find ways to back off the significant regulatory enforcement risk through our licence due to any failure by a User to deliver Infrastructure Assets on our behalf. This level of risk transfer may unfortunately make contestability infeasible for some smaller parties.</p>
10	<p>A potential alternative solution is that the contestability could be limited to just 132kV in Scotland, which in the Proposer's view is in line with treatment of 132kV in England and Wales. Do you think this is appropriate? Please provide justification for your views.</p>	<p>We believe our Scottish TO colleagues are best placed to consider this potential alternative solution, as there are specifics for managing contestability in their regions which differ from England & Wales.</p> <p>Ultimately the benefits of extending contestability rights for User-build of Infrastructure Assets in all TO regions, particularly at 275kV or 400kV voltages, still has not been adequately justified by the proposer – either in the form of a clear defect in the CUSC, or the associated solution having a clear and evidenced net benefit for industry.</p>
11	<p>Are there any issues for stakeholders to extend contestability to building assets above 132kV.</p>	<p>As already mentioned, the proposer's solution is silent on the scope of development work expected to be undertaken by Users for Infrastructure Asset build.</p> <p>Earlier in our response we mentioned the work the Onshore TOs put into forming enduring relationships with local communities, local authorities, and land-owners. We would be concerned if these relationships might be negatively impacted by this proposal by a User failing to act appropriately with these stakeholder groups.</p> <p>As well as the regulatory and commercial risks we've raised earlier in our response, there may also be a reputational risk which could have long-lasting</p>

		<p>consequences for future Onshore TO projects beyond the User and their request for one-off contestable build.</p> <p>We also have doubts whether a User would be adequately able to manage a situation where a fellow CUSC party developer – likely a competitor – has rights to land that the User requires for development on our behalf. The Onshore TO’s status as a regulated entity with no generation/supply interest enables us to enter into negotiations without the risk of vested interest impacting successful outcomes. A User-led negotiation may be more drawn out and potentially more costly without additional oversight being provided by the TO or Ofgem.</p>
12	<p>Will the CMP330/374 Original Proposal / possible alternatives impact your business. If so, how?</p>	<p>From a network design perspective, the increased frequency of TO and third party constructed assets having to interface introduces additional asset integrity risks which we will need to manage.</p> <p>Users will need to accept that the transmission system is critical national infrastructure; these assets are not simply a component part of their own connection. Consequently, we will likely impose stringent engineering design and product standards to protect our onsite personnel, adjacent Users and the general public.</p> <p>We cannot make contestability more convenient to Users at the detriment of our own compliance with applicable engineering regulations, licence conditions, and code framework technical specifications.</p>
13	<p>Do you think this change will benefit your organisation, other organisations, or end consumers? Please provide evidence and/or examples to support this.</p>	<p>This modification has not been proposed with any demonstrable benefit, and will likely be detrimental to our organisation, CUSC Parties and end consumers. This is due to the increased risk (as compared to the baseline) of inefficient Infrastructure Asset delivery costs being socialised via TNUoS, as well as increased asset integrity risks. The introduction of inefficient contracting provisions and additional dispute processes into CUSC/STC will erode our ability to swiftly manage these risks and to innovate processes.</p>
14	<p>Do you believe this proposal brings forward any additional risks of the Onshore TO’s, other than those already identified? Do you think a license change is required to</p>	<p>We reiterate the potentially material risks associated with permitting unregulated commercial entities to interact with high voltage assets which form critical national infrastructure. These risks are exacerbated by the proposer incorporating code governance limitations on the Onshore TOs to be able to intervene reasonably and swiftly to protect themselves and industry stakeholders.</p>

	mitigate the risks fully?	<p>We anticipate multiple licence interactions will need to be clarified by Ofgem in considering this modification proposal. We cannot currently quantify the full extent of the risk exposure in a worst case scenario should a User fail to undertake Infrastructure Asset build in accordance with USB agreement terms, but it is likely to be material for our organisation.</p>
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