



Making a positive difference  
for energy consumers

Trisha McAuley OBE  
CUSC Panel Chair  
c/o National Grid ESO  
Faraday House  
Gallows Hill  
Warwick CV34 6DA

Telephone: 020 7901 7000

Email: [Andrew.Malley@ofgem.gov.uk](mailto:Andrew.Malley@ofgem.gov.uk)

cc. [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

Date: 20 December 2021

Dear Trisha,

**Decision on CUSC Modification Panel's recommendation for CMP381 'Defer exceptionally high Winter 2021/22 BSUoS costs to 2022/2023' to be treated as an Urgent CUSC Modification Proposal**

On 16 December 2021, EDF Energy (the 'Proposer') raised Connection and Use of System Code (CUSC) Modification Proposal CMP381.<sup>1</sup> This proposal seeks to set a temporary cap on Balancing Services Use of System (BSUoS) charges, deferring charges that exceed that cap. The Proposer requested that CMP381 be treated as an Urgent CUSC Modification Proposal.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 17 December 2021. On the same day, the Panel wrote to inform us of its unanimous view that CMP381 should be treated as urgent because they considered there could be a significant commercial impact on parties, consumers or other stakeholder(s) if the proposal is not treated as urgent.

We have considered both the Panel's and the Proposer's arguments and have decided that CMP381 should be progressed on an urgent basis. We have set out our reasoning below.

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<sup>1</sup> <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc-old/modifications/cmp381-defer>

## Background

BSUoS charges are the means by which National Grid Electricity System Operator (NGESO) recovers the costs associated with balancing the electricity transmission system. BSUoS charges are recovered from demand customers and large generators (either Transmission connected generators, or distribution connected generators above 100MW capacity), based on the amount of energy imported or exported onto the network (£/MWh) within each half-hour period. The value varies in each half-hourly settlement period, reflecting the different costs incurred by NGESO in each period.

During early 2020, the reduced demand associated with COVID-19 led to increases in the cost of balancing the electricity transmission system, and higher ESO forecasts for BSUoS charges. On 23 June 2020, we approved Workgroup Alternative CUSC Modification 2 of CMP345, which applied a cap of £15/MWh to supplier and generator BSUoS charges until 31 August 2020<sup>2</sup>. The deferred charges from the application of this cap have been scheduled to be recovered in 2021/22, through an increase in BSUoS charges in all periods. On 13 August 2020, we approved Workgroup Alternative CUSC Modification 6 of CMP350, which further reduced the cap to £10/MWh and extended it until 25 October 2020, introducing a limit of £100m for the amount of deferred BSUoS charges<sup>3</sup>.

The unprecedented and unexpected rise in gas and electricity prices over recent months<sup>4</sup> has led to significantly higher costs associated with balancing the electricity transmission system. As a result of the market conditions and the deferred charges from 2020, BSUoS charges have considerably exceeded the ESO forecasts so far this winter, with the outturn being £625m higher for the period August 2021 – November 2021.

## The proposal

The Proposer argues that as a result of exceptional market conditions, BSUoS costs are significantly higher than ESO forecasts so far this winter. It suggests that consumers and industry parties could not have reasonably expected or budgeted for these higher costs.

The Proposer suggests a BSUoS cap, similar to the mechanism approved under CMP345 and CMP350, be introduced. The cap of £10/MWh would apply during the period from 1

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<sup>2</sup> [CMP345: Defer the additional COVID-19 BSUoS costs | Ofgem](#)

<sup>3</sup> [CMP350: Changes to the BSUoS Covid Support Scheme | Ofgem](#)

<sup>4</sup> [Rising wholesale energy prices and implications for the regulatory framework | Ofgem](#)

January 2022 – 31 March 2022.<sup>5</sup> Any BSUoS charges above this cap would be deferred to the 2022/23 charging year. The deferred BSUoS costs would be capped at £300m. In the event that deferred costs reached this limit, the deferral scheme would end.

### **Panel discussion - urgency**

The CUSC Panel considered the request for urgency by reference to Ofgem's Guidance on Code Modification Urgency Criteria.<sup>6</sup> The Panel's unanimous view was that CMP381 does meet Ofgem's criteria for urgency. One of the criteria for urgency that was agreed by the Panel members was (a) *a significant commercial impact on parties, consumers or other stakeholders*. Panel members suggested that there is the potential for significant commercial impacts if parties and consumers do not receive clarity quickly on whether the change would be approved.

Some panel members argued that it met another criteria, (b) *a significant impact on the safety and security of the electricity and/or gas systems*. These panel members suggested that sudden and substantial additional costs could lead to companies ceasing to trade.

### **Our views**

We have considered the proposal and the Panel's views on urgency. We have assessed the request against the urgency criteria set out in our published guidance. We are satisfied that the progression of this modification proposal is related to a current issue that if not urgently addressed may cause a significant commercial impact on parties, consumers, or other stakeholders(s), noting that the actual extent of that impact is still uncertain.

We think that this proposal has identified a current issue regarding the differences between forecasted BSUoS costs and outturn costs, and recognise that these differences may impact market participants. We recognise that there is a case that these costs are exceptional and/or reasonably unforeseeable compared to the levels previously forecasted. Whilst we are satisfied of this to the extent that we will grant urgency, we believe the modification will need to form a view on whether BSUoS costs of these levels are exceptional or otherwise part of enduring market conditions.

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<sup>5</sup> The proposal seeks to be implemented from 1 January 2022, although the timeline notes 17 January 2022 as the implementation date. Retrospectivity is not requested, and the proposer says they will not seek retrospectivity. Any alternatives including elements of retrospectivity brought forward by the work group would need to be assessed on their merits against the CUSC objectives and our duties.

<sup>6</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/02/urgency\\_criteria.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/02/urgency_criteria.pdf)

If this proposal was reviewed on a non-urgent timescale, it is likely that this modification process would be concluded in the next charging year, which is after the period with which this modification is concerned.

We therefore agree that the modification should follow the urgent timetable as set out in the Panel's letter. However, we recognise that this timeline – and in particular the window for consultation – is very short and over a period where many people may not be available to fully participate. All possible efforts will have to be made to ensure that the workgroup time is constructive and efficient, and that stakeholders who might otherwise experience difficulty engaging in the consultation are proactively approached. In particular, we would like end-user impacts to be considered and represented.

For the sake of completeness, we note that the Panel members' rationale for requesting urgency is that affected parties will be 'significantly commercially impacted if they don't receive clarity quickly on whether this change will be approved or not'. As set out above, we have granted urgency on the basis that significant commercial impacts may arise if the current issue (of exceptional BSUoS charges against forecast levels) is not addressed rather than resulting from the timing of our decision itself.

For the avoidance of doubt, in granting this request for urgency, we have made no assessment of the merits of the proposal and nothing in this letter in any way fetters our discretion in respect of this proposal. We will evaluate the proposal on a holistic basis and would expect any analysis undertaken by the workgroup to take into account the potential impact on consumers, as well as different categories of market participants. This will likely form an important part of our assessment of the modification against (i) the relevant Code Objectives<sup>7</sup> and (ii) our Principal Objective<sup>8</sup> of protecting the interests of existing and future energy consumers.

Yours sincerely,

**Andrew Malley**

**Head of Electricity Network Charging**

Duly authorised on behalf of the Authority

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<sup>7</sup> Applicable Charging Objectives are defined in paragraph 5 of SLC C5 of NGESO's Transmission Licence.

<sup>8</sup> As set out in Section 3A of the Electricity Act 1989.