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Dear Rob,

CMP384: 'Apply adjustments for inflation to manifest error thresholds using Indexation' – decision on urgency

On 8 February 2022, Scottish Power Renewables ('the Proposer') raised Connection and Use of System Code (CUSC) Modification Proposal CMP384¹ ('the Proposal'). The Proposal concerns the manifest error thresholds within the CUSC which were set after a decision on GB ECM-05² charging modification in 2006. In summary, the manifest error threshold in the CUSC is a fixed value over which errors in the calculation of Users' annual Transmission Network Use of System (TNUoS) tariffs will be rectified: its current threshold is +/- £250,000. CMP384 seeks to update the fixed manifest error thresholds according to inflation so they are, in the Proposer's view, better aligned with the current Transmission Network Use of System (TNUoS) tariffs to which they relate. The Proposer requested that CMP384 be treated as an Urgent CUSC Modification Proposal.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 9 February 2022. The majority of the Panel agreed that CMP384 does meet the Ofgem Code Modification Urgency Criteria³ and recommend that CMP384 should be treated

¹ [download \(nationalgrideso.com\)](https://nationalgrideso.com/download)

² [Decision in relation to use of system charging methodology modification proposal GB ECM-05: Manifest data errors in the calculation of TNUoS](#)

³ [Ofgem Guidance on Code Modification Urgency Criteria | Ofgem](#)

as an Urgent CUSC Modification Proposal. Following the Panel meeting, we received a letter from the Panel confirming its recommendation that CMP384 be treated as an Urgent CUSC Modification Proposal⁴.

We have considered both the Panel and the Proposer's arguments. We have decided that CMP384 should not be progressed on an urgent basis. We have set out our reasons below.

Background

National Grid Electricity System Operator ('NGESO') is required under its licence to maintain and operate the CUSC. The CUSC constitutes the contractual framework for connection to, and use of, the electricity transmission network in GB, the 'NETS'. The CUSC contains provisions as regards transmission charges.

Generators and demand users pay for the ongoing costs of the transmission network via TNUoS charges. For generators, TNUoS charges are payable by Transmission-connected Generators and Large Distributed Generators⁵.

In the event that a manifest error, or multiple errors in the calculation of TNUoS tariffs, results in a material discrepancy in Users' TNUoS tariffs, Users' charges may be reconciled by the ESO. Currently, a manifest error is considered "material" if it has an impact of the lesser of either: a) an error in a User's TNUoS tariff of at least +/-£0.50/kW; or b) an error in a User's TNUoS tariff which results in an error in the annual TNUoS charge of a User in excess of +/-£250,000. This is enshrined in CUSC Section 14.17.32-14.17.34. If the value of any manifest error within the calculation of the TNUoS tariff(s) fall below these values, Users' charges are not reconciled. In practice, where a TNUoS charging error is identified which does not meet the reconciliation threshold set out in the CUSC, the error remains uncorrected. This means that some Users do not face the full TNUoS charge to which they would otherwise have been exposed, and some pay more than they would have without the erroneous tariff(s).

At the Transmission Charging Methodology Forum (TCMF) on 4 February 2022, NGESO confirmed that for the current charging year (2021/22), an error in TNUoS charges (identified by NGESO during its 2022/23 tariff-setting process) met the thresholds in CUSC 14.17.34 and that three generators' charges were to be reconciled as a result. On 8 February 2022, CMP384 was raised. The Proposer considers it appropriate to update the

⁴ References to the "Authority", "Ofgem", "we", and "our" are used interchangeable in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

⁵ TNUoS-liable Distributed Generators who are party to a Bilateral Embedded Generation Agreement and are licensable.

materiality thresholds contained in CUSC 14.17.34 since, when they were initially set some 16 years ago, TNUoS revenue was much lower than where it stands today at c.£3.5bn.

The Proposal

The Proposer seeks to introduce an indexation approach to the manifest error thresholds, which would mean the threshold increases from +/-£0.50/kW to from +/-£0.74/kW, and +/-£250,000 to +/-£370,384. This change will not be applied retrospectively to years prior to the current charging year (April 2021 to March 2022) but will apply to users in the current charging year and onwards. In the Proposer's view, this would ensure Users are not disproportionately impacted.

In its urgency request, the Proposer explained why it was requesting urgency, highlighting one of the three urgency criteria: *a) a significant commercial impact on parties, consumers or other stakeholder(s)*. The Proposer considers that this issue affects the generators involved in the charging error which has occurred in the current charging year as they will have been unable to reflect these additional costs in their prices for the following charging year. The Proposer considers the current threshold to be outdated and inappropriate as a basis of judging materiality.

Panel view

The Panel considered the request for urgency with reference to Ofgem's Guidance on Code Modification Urgency. At the Panel meeting on 9 February 2022, the majority of Panel members agreed to recommend to Ofgem that CMP384 should be progressed as an Urgent CUSC Modification Proposal. The arguments for and against urgent treatment are set out in the letter from the Panel⁶.

The Panel members in support of urgency were of the view that this is an imminent issue that if not urgently addressed may cause a *significant commercial impact on parties and consumers or other stakeholders* and therefore meets Ofgem's Urgency criteria (a). In their reasoning, they noted the material impact on stakeholders affected by the error in the current charging year as the manifest error threshold has been exceeded. However, it was noted that three Panels members, who were supportive of urgency, also recognised that this is a finely balanced decision for a request for urgency.

One of the Panel members who did not support the request for urgency agreed that the thresholds should be assessed as part of a more considered process. They questioned the

⁶ The letter written by Panel following the CUSC Panel meeting on 9 February 2022

need for urgency noting that the threshold had not been changed since its implementation in 2006.

The Panel agreed to propose both an appropriate urgent timetable and standard timetable for CMP384, with an implementation date of 31 March 2022 if granted urgency. This implementation date is proposed to avoid impacts on those Users affected by the current charging error where the discrepancy in charges is below the proposed threshold value of +/-£370,384.

Our decision

In reaching our decision on urgency, we have considered the details within the Proposal, the justification for requesting urgency, and the views of the Panel. We have assessed the request against each of the urgency criteria set out in our published guidance, and in particular, whether the Proposal is linked to an imminent or current issue that, if not urgently addressed, may cause a significant commercial impact on Users.

We disagree with the Proposer that the issue to which this Proposal relates, if not urgently addressed, may cause a significant commercial impact. We understand that there will be a commercial impact but we consider that this arises from the error in the calculation of tariffs, rather than the manifest error threshold, which is a longstanding provision of the CUSC. As such, we consider that this Proposal does not address an unforeseeable event, but rather seeks to amend an accepted and understood threshold for how that unforeseeable event will be managed. As such, we do not consider there to be sufficient evidence that there are issues related to the Proposal which would be mitigated through urgency.

Furthermore, we have concerns that an urgent modification process would not allow small parties, for whom £250,000 (or £370,384) could constitute a substantial proportion of their total TNUoS liability, to participate in what would be significantly expedited proceedings. We consider that if this threshold is to be reviewed, it should be in the context of the current market structure and the now legally-separate NGESO, and should be conducted in a manner which engages stakeholders from across the market, including those smaller organisations materially affected by the Proposal. This is particularly the case given the impacts which could potentially arise from these provisions in the future. In our view, consideration of this issue is therefore better achieved via a standard timeline.

We therefore do not accept the modification proposal being treated as urgent and disagree with the Panel that the modification should follow the urgent, rather than the standard

timetable set out in the Panel's letter. We would note that this Proposal potentially engages with elements of retrospectivity, and we would take this opportunity to remind parties that retrospective modifications should generally be avoided, unless accompanied by justification, which is likely to involve exceptional circumstances.

For the avoidance of doubt, in rejecting the 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 the Proposal.

If you have any comments or questions about this letter, please contact Shannon Murray at shannon.murray@ofgem.gov.uk.

Yours sincerely,

Andrew Malley

Head of Electricity Network Charging

Duly authorised on behalf of the Authority