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Date: 14 February 2023

Dear Trisha,

Authority decision to send back Connection and Use of System Code (CUSC) Modification Proposal CMP328 'Connections triggering Distribution Impact Assessment'

We are sending back the CMP328 ("the Proposal") Final Modification Report (FMR)¹ and direct the CUSC Panel to revise and resubmit the FMR. We have decided that we cannot form an opinion on CMP328 based on the submitted FMR and are therefore sending it back for further work.

Context

The FMR for CMP328 came to us ("the Authority"²) for a decision on 10 November 2021³. We note that the Proposal is intended to introduce a new Distribution Impact Assessment (DIA) process into the CUSC for Transmission Connections triggering an impact upon the Distribution System, requiring works to be undertaken by the affected Distribution Network Operator (DNO). A key aspect of the new DIA process set out in the Proposal was new bilateral contractual arrangements between i) the Electricity System Operator (ESO) and

¹ [CMP328 Final Modification Report | National Grid ESO](#) and [CMP328 Final Modification Report Annexes | National Grid ESO](#)

² References to the "Authority", "Ofgem", "we" and "our" are used interchangeably 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.

³ We appreciate that the timescales for this decision have been longer than are typical, as a result of other critical priorities across our work on electricity connections and charging.

the Transmission User, and ii) the ESO and the affected DNO(s). The reason we have decided to send back the Proposal is due to a lack of clarity and inoperable legal text surrounding such contractual arrangements. Our reasons are set out in more detail below.

Reasons for send back

The submitted FMR, specifically the legal text for each of the Original Proposal and WACMs 1 and 2, has the deficiencies outlined below, which means we are unable to form an opinion as to the respective merits of each option under this CUSC Modification Proposal.

In respect of the Original Proposal, and WACM2:

1. The request for a Distribution Impact Assessment (Exhibit Z) contains typographical errors as well as terms which are not defined within Section 11 of CUSC;
2. The Distribution Impact Assessment is proposed to be defined as, *"A contract in the form or substantially in the form set out in Exhibit AA to the CUSC produced by a Distribution System Owner detailing the effect of potential connection to the NETS on the Distribution System Owner's Distribution System."* It is, however unclear to us that Exhibit AA is in contract form, as it appears to be a list of provisions that (under this Proposal) a contract issued by the DNO should include;
3. The contract that the DNO issues on receipt of a request from NGENSO should be pre-signed by the relevant DNO. It is unclear to us who the counterparty to that DNO contract is intended to be, and:
 - a. If it is intended for NGENSO to be the counterparty to that contract, we are currently unclear as to how NGENSO's liability for the costs of any DNO works is established, and where (or whether) a liability to reimburse NGENSO for such costs is conferred to the connecting User; and
 - b. If it is intended for the connecting User to be the counterparty to that contract, we are unclear on whether the intention is also to establish that User's liability for any DNO costs through that contract. If it is, we believe that further information is required in the FMR as to the extent to which it is appropriate to enshrine within CUSC (rather than a distribution-based code such as the DCUSA), matters relating to DNO costs payable by parties to DNO contracts.
4. Exhibit AA requests that the DNO return a contract setting out inter alia, details of Construction Works and a Construction Programme. These terms carry a transmission-specific definition under Section 11 of CUSC, and those definitions are not proposed to be amended under this CMP328. It is unclear to us whether a DNO can set out 'Construction Works' if the definition of 'Construction Works' relates solely to development of the transmission system.

In respect of WACM1:

1. The definition of "Third Party Works" proposed stipulates that such works are, "required" by NGENSO. It is unclear to us in what circumstances NGENSO itself would require that the distribution network is reinforced or otherwise developed prior to energising a transmission-connected site.

Direction

In view of these deficiencies in the FMR and associated annexes, we cannot properly form an opinion on this Proposal. We require the revised FMR to very clearly set out how the contractual arrangements and flow of money surrounding the proposed DIA process will work across all parties involved, addressing the deficiencies set out above. After addressing these issues and revising the FMR accordingly, the CUSC Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely,

Harriet Harmon

Electricity Network Charging & Connections, Energy Systems Management & Security

Duly authorised on behalf of the Authority