



Making a positive difference
for energy consumers

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Dear Deborah,

Authority decision to 'send back' System Operator Transmission Owner Code (STC) Modification Proposal CM079: 'Consideration of STC/STCP changes in relation to CMP330/374' (CM079)

On 11 December 2023, the Final Modification Report (FMR)¹ for STC Modification Proposal CM079 ('the Proposal') was submitted to the Authority² for decision.

It is our decision that we are unable to properly form an opinion on CM079 based on the FMR as submitted to us. We are therefore sending the proposal back to the STC Panel for further consideration.

1. Background

The status quo allows for Contestability³ in the provision or construction of Connection Assets, the financing of Connection Assets and the ongoing maintenance of those assets. Connection Assets are defined as, among other criteria, single user assets which are

¹ CM079: Consideration of STC/STCP changes in relation to CMP330/374 | ESO (nationalgrideso.com)

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 Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

³ CUSC Section 14.7.1 "Some connection activities may be undertaken by the User. The activities are the provision, or construction, of connection assets, the financing of connection assets and the ongoing maintenance of those assets. While some Users have been keen to see contestability wherever possible, contestability should not prejudice system integrity, security and safety. These concerns have shaped the terms that are offered for contestability in construction and maintenance"

equal to or less than 2km in length.⁴ Therefore, it is possible for Users, subject to agreement from the relevant Transmission Owner (TO), to provide their own Connection Assets which are limited to 2km, or less, in length.

CM079: 'consideration of STC/STCP changes in relation to CMP330/374' (CM079) ('the Proposal') was raised by National Grid Electricity Transmission (NGET).

The key aspects of CM079 are as follows:

- To make the identified changes in the STC to align with the proposed CUSC changes of CMP330/374 and CMP414.
- It proposes to do this by updating Schedules 5 and 6, and Sections D (pt 2), H and J.
- It proposes to create a new term 'Contestable Asset'⁵ to include Transmission Connection Assets and infrastructure assets.
- It proposes that Contestable Assets (as newly defined) can be procured and/or constructed by a User. It seeks to codify the definition and details of an 'Adoption Agreement'⁶, which is a contract between the TO and the User that provides for the TO to take ownership of the asset. It also proposes specifics about what should be covered in this contract.
- It also seeks to codify 'Intervention Criteria' which set out under what circumstances the TO can reject or halt the User from utilising Contestability.
- Under the proposal the User would be liable for the asset until transferred to the TO as per the Adoption Agreement, at which point the TO would pay the User a pre-determined fixed cost price for the asset.
- The overarching intent of the Proposal is to allow new connectees to construct transmission assets to facilitate their connection to the wider transmission network.

In summary we have decided to send back the FMR due to a lack of clarity of the analysis and impacts of the proposal. We are also sending the CMP414 proposal back to the CUSC panel via a separate letter for similar reasons.

Our reasons are set out in more detail below.

⁴ CUSC Section 14.2.6 (download nationalgrideso.com)

⁵ Proposed STC change to Section J, paragraph 3 – "as defined in Section D, Part Two, paragraph 2.1; as defined in the CUSC; Plant and Apparatus, which may include Transmission Connection Assets or infrastructure assets that are intended for sole use at the time of application that will be procured and/or constructed by a User where the ownership of said Plant and Apparatus will be transferred to a Relevant Transmission Licensee via an Adoption Agreement"

⁶ Proposed STC change to Section J, paragraph 3 – "an agreement in the form set out in Schedule One whereby a Party Applicant accedes to the Framework Agreement; an agreement between a User and relevant Transmission Licensee setting out the full terms and conditions required for a User or their contractor to construct Contestable Assets before legal adoption on completion by the relevant Transmission Licensee"

1. **Reasons for our decision**

We have identified the following deficiencies in the FMR which prevent us from being able to come to a decision:

- Lack of clarity on potential and proposed benefits, in particular as to:
 - Financial benefits; and
 - Time saving benefits.
- Lack of clarity of potential risks, as to:
 - Sub-standard assets;
 - Lack of analysis around anticipatory investment;
 - Lack of analysis around incentives; and
 - Misalignment of the STC and CUSC.

Lack of clarity on potential and proposed benefits

While we agree in principle that increased competition can improve outcomes, there is insufficient evidence of the scale and likelihood of benefits to time and cost savings that this modification would facilitate.

Lack of clarity on potential risks

We do not consider that the risks of the Proposal have been sufficiently considered, nor, if indeed there are any, the mitigations made clear.

Sub-Standard Assets

We do not consider that the FMR appropriately considers the risks associated with the provision of sub-standard assets, particularly in circumstances where Contestable Assets become shared. Similarly, we do not consider that the costs and risks associated with the necessary monitoring and potential intervention of assets by TOs have been adequately considered. Further, we do not consider that the risk of sub-standard assets being stranded in the event that the TO decides to not adopt them have been adequately considered. If such risks were material we would expect to see suitable mitigations in place.

We would like to see some further elaboration around the reimbursement clauses in the proposed legal text. Finally, to the extent the Workgroup consider that the feasibility of this aspect of the Proposal is dependent on changes to other parts of the regulatory

regime, eg the Price Control or licences, we would expect the Workgroup to make clear what those interactions are.

Anticipatory Investment

We consider there to be missing analysis of the risks the Proposal poses to anticipatory investment. While we recognise the Proposal provides the ability for TOs to be able to intervene if the contestable delivery of the asset may 'have a negative impact on the planning and delivery of wider network investment', it is unclear if Users' ability to build just what is needed for their own connection will pose a risk to the TO's ability to invest in anticipation of future use of the asset.

Misalignment of STC and CUSC

It is difficult to understand the true intent of the Proposal given various instances of misalignment between CMP414's desired CUSC changes and the Proposal's desired STC changes. For example, regarding an intervention, the Proposal sets out that the User is not to be unreasonably financially disadvantaged. However, the proposed CMP414 legal text states that the Users are not to be financially disadvantaged and then implies that this is limited to reimbursements of reasonable costs incurred. Due to this discrepancy, it is unclear how material the risk of increased costs incurred by the TOs is, which also has charging implications. It is also unclear whether this misalignment presents a risk of increasing incidences of disputes and challenges to the dispute resolution process.

Incentives

We require clear analysis of the difference between TO and contractor/User incentives in terms of the quality of build. For example, TOs are currently incentivised through the Price Control framework to build quality assets on time or risk financial penalty. It must be explored whether Users face a similar incentive, or whether the Proposal, if approved, could impact upon asset build quality and timeliness.

For these reasons we cannot properly assess the Proposal against the relevant objectives and ascertain if it represents a net benefit or cost. We are therefore unable to properly form an opinion.

2. Direction

We therefore direct that additional steps are undertaken to address these deficiencies. A revised FMR should provide a fully quantitative and qualitative analysis on the above issues, as well as robust consideration of the risks identified and the inclusion of

mitigations where appropriate, ideally in the form of an Impact Assessment. It is possible that in this analysis further risks and benefits are uncovered, and we would expect these to be accounted for.

Deficiencies should be addressed as soon as appropriate taking into account the complexity, importance and urgency of the Modification Proposal. After addressing these issues, and revising the FMR in the manner outlined above, the STC Panel should, if appropriate, re-submit the Proposal to us for decision as soon as practicable.

Future modification proposals should ensure the CUSC and STC are developed in parallel to ensure full alignment between the two codes.

Finally, we do not consider that this send-back in anyway impacts our ability to take any future decision in relation to this modification and we reserve the right to take whatever decision we feel is correct at that time.

Yours sincerely,

Alasdair MacMillan

Connections Lead

Signed on behalf of the Authority and authorised for that purpose