

Modification proposal:	Connection and Use of System Code (CUSC) CMP240: Amending the Cancellation Charge liability within a CMP213 Judicial Review Period		
Decision:	The Authority ¹ directs that the CMP240 modification ² be made ³		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	26 February 2015	Implementation Date:	10 working days after Authority decision

Background to the modification proposal

A generator that wishes to either reduce its Transmission Entry Capacity (TEC)⁴ or disconnect for a financial year must provide notice to NGET a minimum of a year and five days before the start of that year, otherwise it will receive a Cancellation Charge. Cancellation Charges are described in section 15 of the CUSC. Generators usually factor in a forecast of their future costs, including transmission charges, when making the commercial decision whether to reduce TEC or disconnect.

Modification proposal CMP213 'Project TransmiT TNUoS Developments' was approved by the Authority on 25 July 2014.⁵ CMP213 amends the way that Transmission Network Use of System (TNUoS) charges are calculated and has an implementation date of 1 April 2016. Generators will therefore face changes to their TNUoS charges from this date. However, the Authority decision to approve CMP213 is currently subject to a judicial review challenge. The outcome of this challenge is not expected before the end of the minimum notice period for generators to give notice to NGET to reduce TEC or disconnect for the year commencing 1 April 2016. If generators wish to reduce or cancel their TEC after this date, they will face a Cancellation Charge.

Section 15 of the CUSC assumes that generators have a reasonable idea of their future charges when deciding whether to reduce TEC or to disconnect. However, the judicial review creates uncertainty as to the charges that will apply from 1 April 2016. If the judicial review finds against the Authority, the status of the decision and therefore the changes to the charging methodology could be put on hold or unwound. This uncertainty makes it difficult for users to accurately factor future costs into their decision whether to reduce TEC or to disconnect in time to avoid a Cancellation Charge.

The modification proposal

National Grid Electricity Transmission (NGET) raised modification proposal CMP240 in November 2014. CMP240 seeks to allow parties up to twenty business days (inclusive) following the conclusion of the judicial review of the CMP213 decision (including the exhaustion of any appeals) to reduce their TEC levels or to submit a Notice of Disconnection to NGET for the year commencing 1 April 2016. Generators would not face

¹ 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.

² 'Change' and 'modification' are used interchangeably in this document.

³ This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

⁴ The TEC value is the volume of electricity that a generator wishes to export onto the electricity transmission system.

⁵ Our CMP213 decision is here: <https://www.ofgem.gov.uk/publications-and-updates/project-transmit-decision-proposals-change-electricity-transmission-charging-methodology>

a Cancellation Charge if they notified NGET of a reduction to TEC or disconnection within this twenty day period.

Some CUSC Panel members considered that the proposal should be sent to a Workgroup to develop and allow alternatives to be considered. However, the Panel agreed by majority (5 out of 9 members) that CMP240 should instead proceed directly to Code Administrator Consultation for an extended period of 22 Working Days prior to a Panel recommendation vote in January 2015.

Code Administrator consultation

NGET received seven responses to the Code Administrator consultation. These are published on its website.⁶

CUSC Panel⁷ recommendation

The CUSC Panel considered its recommendation on CMP240 at its meeting on 31 January 2015. The Panel voted by a majority (6:3) that CMP240 does better facilitate the applicable objectives of the CUSC compared with the current arrangements. The Panel members' views are shown in full in the Final Modification Report (FMR) dated 10 February 2015.

Our decision

We have considered the issues raised by the modification proposal and the FMR. We have considered and taken into account the responses to the Code Administrator consultation on the modification proposal which are attached to the FMR.⁸ We have concluded that:

- CMP240 better facilitates the achievement of the applicable objectives of the CUSC⁹; and
- Directing that the modification be made is consistent with our principal objective and statutory duties.¹⁰

Reasons for our decision

We agree with the views of the majority of Panel members that CMP240 better facilitates the applicable CUSC objectives. In our view, the proposal better facilitates objectives (a) and (b) and is neutral with respect to objective (c). The proposal provides certainty around future charging provisions and allows CMP213 to be implemented as planned subject to the outcome of the judicial review. The proposal will also reduce market uncertainty, leading to more efficient generator decisions. We consider that due to these benefits the proposal is also consistent with our principal objective to protect the interests of current and future consumers.

⁶ <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP240/>

⁷ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

⁸ The CMP240 modification proposals, modification reports and representations can be viewed on NGET's website at: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP240/>

⁹ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹⁰ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

Objective (a) 'The efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence'

The implementation of CMP240 allows generators to make decisions on TEC reduction when there is greater certainty around the future charging regime. If CMP240 is not implemented, the signals that TEC reductions and plant closures should provide to NGET about the need to plan and develop the system may be distorted as the uncertainty about charges from 1 April 2016 leads to inefficient decisions by generators in the short term. The increased certainty around TEC reductions and plant closure should therefore help NGET to better fulfil its system operation and planning role.

We note that some respondents to the Code Administrator Consultation highlighted that the proposal may increase the risk of inefficient network investment. However, if the outcome of the judicial review is different from what they expect, some generators may wish to reverse their decisions on plant closure. Without the window provided by CMP240 in which to inform NGET of these decisions (without the potential risk of being subject to a Cancellation Charge), we consider that there would be some uncertainty for NGET in how it plans and operates the transmission system.

We also consider that CMP240 facilitates the implementation of CMP213 by the implementation date (subject to the outcome of the judicial review). One respondent to the Consultation noted that the Authority should delay the implementation of CMP213 rather than approve this modification proposal. While we note that this could be a potential option, we consider that our decision on when to implement CMP213 was taken after extensive consultation with industry. The full reasoning for our decision to implement from 1 April 2016 can be found in the CMP213 decision document.¹¹ In that decision, we noted that the April 2016 implementation date would allow industry to respond to the CMP213 change by adjusting TEC without incurring a penalty under the enduring user commitment arrangements. We therefore provided the market with a clear signal about when the new charging arrangements would begin. Any change to the implementation date may increase the perception of regulatory risk, which as noted in our CMP213 decision letter, plays an important part in our decision-making.

We also note the view of one respondent that CMP240 would allow all users to reduce TEC irrespective of whether the outcome of the CMP213 judicial review drives their decisions. This could be an unintended consequence of CMP240. The impact could be that the number of TEC reductions or notices of closure in the twenty day period are higher than expected. Decisions that NGET had made about planning and developing the system from 1 April 2016 could therefore be inefficient because they were made using incorrect assumptions about the level of generation capacity. Given that CMP240 only applies to a specific circumstance (the outcome of the CMP213 judicial review) and is only relevant to the 2015/16 financial year, we consider the risk of unintended consequences on NGET's long term system planning considerations to be low. We therefore consider that the overall benefits from the additional certainty CMP240 would bring for generators who are affected by changes that result from CMP213 from 1 April 2016 are greater than the risk of more generators making use of the new notice period window than expected.

¹¹ See footnote 5 for a link to our CMP213 decision.

Objective (b) 'Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity'

CMP240 allows generators to make decisions about the future of their plant only when there is clarity over the levels of charges for 1 April 2016. This leads to increased clarity within the market, reduces risk to market participants and therefore improves competition.

One of the respondents to the Code Administrator Consultation noted that the proposal may in fact increase regulatory risk and therefore have a negative impact on effective competition in the generation and supply of electricity. In our view, without the implementation of CMP240, generators may feel compelled by the current CUSC arrangements to commit to close a plant or reduce TEC based on a 'worst-case scenario' so as to avoid the Cancellation Charge for short-notice closure. This, in our view, is an undesirable outcome with a negative impact on security of supply, constraint costs, and the balancing market.

We acknowledge the concern raised by some respondents about whether the proposed twenty business day period in which generators are to make their decisions about whether to reduce TEC or disconnect is adequate. However, we agree with the majority of respondents that this timeframe is sufficient. All CUSC Users should be aware of the CMP213 judicial review and can prepare, in the period prior to a court determination, the necessary internal approvals that may be required based on the potential outcomes of the judicial review.

The Authority's principal objective and statutory duties

We consider that implementing CMP240 better meets our principal objective and wider statutory duties and is in the interests of consumers. The proposal allows generators to make informed decisions regarding the future of their assets only when there is greater certainty about the transmission charging regime. Should the outcome of the judicial review allow CMP213 to be implemented as planned, there would be increased clarity for market participants leading to more efficient generator decisions. In turn, there could be more effective competition. This reduces the risk that the uncertainty about the charges from 1 April 2016 increases costs to consumers.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority hereby directs that CUSC modification proposal CMP240 '*Amending the Cancellation Charge within a CMP213 Judicial Review Period*' be made.

Kersti Berge

Partner, Electricity Transmission

Signed on behalf of the Authority and authorised for that purpose