

Final Self – Governance Modification Report

CMP342: Clarification of VAT for Securities in the CUSC

Overview: This modification seeks to clarify, and confirm the position that National Grid ESO (NGESO) has always applied, that when calculating the amount Users are required to secure under the CUSC, the amount of applicable Value Added Tax (VAT) is to be included.

Modification process & timetable



Have 5 minutes? Read our Executive summary

Have 15 minutes? Read the full Final Self-Governance Modification report

Have 20 minutes? Read the full Final Self-Governance Modification report and annexes

Status summary: The CUSC Panel have, by majority, determined that this should be implemented.

This modification is expected to have a: **Low impact** on all Users.

Governance route¹	This modification has proceeded straight to Code Administrator Consultation and the Panel has made the decision on whether it should be implemented.	
Who can I talk to about the change?	Proposer: Nick George, National Grid ESO Nick.George@nationalgrideso.com	Code Administrator: Paul Mullen paul.j.mullen@nationalgrideso.com 07794 537 028

¹ The CUSC Panel in May 2020 had unanimously agreed that CMP342 should follow the self-governance route and proceed to Code Administrator Consultation. At July 2020 Panel, the Code Administrator shared that there had been a challenge on material impacts of the proposed change from a respondent to the Code Administrator Consultation. Therefore, the Panel agreed to defer decision on the appropriate governance route to the August 2020 Panel. At the August 2020 Panel, Panel agreed by majority to maintain their decision that CMP342 should follow the self-governance route.

Appeals window	If you want to appeal this decision, please send your appeals form and relevant documentary evidence to industrycodes@ofgem.gov.uk by 5pm on 2 October 2020 and ensure you copy in cusc.team@nationalgrideso.com
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Executive Summary

CMP342 intends to clarify the position on VAT and securities, confirming the approach that NGENSO has always taken when calculating the amount to be secured.

This will ensure that there is no ambiguity when interpreting the CUSC and that the amount Users are required to secure, will include Value Added Tax (VAT).

What is the issue?

The CUSC includes requirements for Users to provide security for certain charges. NGENSO includes the applicable VAT when calculating the amount to be secured, as the amount payable by a User to NGENSO includes payment of VAT. A User has queried NGENSO's right to request security for the VAT element of the charges.

What is the solution and when will it come into effect?

Proposer's solution:

Amend the relevant sections of the CUSC to clarify that the security calculation is based on the relevant charge including the applicable VAT.

Implementation date:

9 October 2020 (5 working days after the appeals window closes) providing no appeals are received by 5pm on 2 October 2020.

Panel recommendation:

The CUSC Panel have, by majority, determined that this should be implemented.

What is the impact if this change is made?

Who will it impact?

This modification may have a low impact on all Users.

Interactions

None.

Final Self – Governance Modification Report

This document is the CMP342 **Final Self–Governance Modification Report**. This document outlines:

- **What is the issue?**
- **What is the solution?**
 - Proposer’s solution
 - Legal text
- **What is the impact of this change?**
- Code Administrator Consultation Summary
- Panel Determination Vote
- **When will the change taken place?**
- Acronym table and reference material

What is the issue?

What is the issue?

The CUSC includes requirements for Users to provide security for certain charges. The intention and practise is that NGESO includes the applicable VAT when calculating the amount to be secured, as the amount payable by a User to NGESO includes payment of VAT. A User has queried NGESO’s right to request security for the VAT element of the charges. To ensure current and future parties fully understand their obligations, NGESO believe a modification to the code to clarify this provision is appropriate.

The relevant provisions of code that need amending are:

- Section 2, Part III - security for Terminations Amounts, relating to Connection Charges
- Section 3, Part III – security for BSUOS and TNUOS Demand Charges
- Section 15, Part Three – security for Cancellation Charges for generators terminating pre-connection
- Schedule 2, Exhibit 3 – security for Final Sums for demand customers terminating pre-connection

Why is it an issue?

The security requirements provide financial security from Users for all or a proportion of charges, reducing the financial risk on all other Users from a User defaulting on payment obligations. In the event of a User defaulting, the VAT must still be paid to HMRC, and therefore it is important when calculating the amount that a Customer secures that it includes the applicable VAT. This has always been NGESO’s practice (for the avoidance of doubt, including its predecessor, National Grid Electricity Transmission plc).

What is the solution?

Proposer's solution:

The changes set out in the Final Legal Text below, are made to clarify that the amounts Users are required to secure shall include the applicable VAT.

Final Legal text

The final legal text for this change can be found below:

- In CUSC paragraph 2.21.2(a), insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “in respect of **Termination Amounts**”
- In CUSC paragraph 3.23.2, insert a new sub-paragraph (e):
“(e) any applicable **Value Added Tax** that would be due on the amounts referred to in this Paragraph 3.23.2”
- In CUSC Section 15, Part Three, insert new paragraph 3.4:
“3.4 The **Cancellation Charge Secured Amount** shall be calculated using the **Cancellation Charge** inclusive of any applicable **Value Added Tax** that would be due.”
- In CUSC Schedule 2 Exhibit 3, Part 2:
 - In Clause 9A.1.4, insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “The security to be provided shall be in an amount not greater than such sums payable on termination”
 - In Clause 9B.2.1, insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement**”

What is the impact of this change?

Who will it impact?

This modification may have a low impact on all Users.

What are the positive impacts?

This modification confirms the current position on securities, which are in place to ultimately protect consumers.

The Proposer's view is that this modification will have a positive impact on the CUSC applicable objectives A, B and D. This is because the modification clarifies the position on securities, allowing NGENSO to efficiently administer the securities processes and

ensure all Users secure on a consistent basis, protecting other Users, and ultimately consumers.

Impact of the modification on the Code objectives:	
Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive
(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;	Positive
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	None
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive
*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).	

Code Administrator Consultation Summary

The Code Administrator Consultation was issued on the 19 June 2020 and closed on 10 July 2020. One response was received, and a summary can be found in the table below, the full response can be found in Annex 2.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP342 Original Proposal better facilitates the Applicable CUSC Objectives?	No The CUSC and CMP 192 do not provide for the levying of VAT on top of the Cancellation Charge Secured Amounts. Increasing Cancellation Charge Secured Amounts by 20% will have a detrimental effect on consumers costs and have a distortive effect on developer competition.
Do you support the proposed implementation approach?	No This modification should have been progressed via a standard governance route rather than Self-Governance route

	<p>The Criteria for self-governance is not met due to the material effect on existing and future electricity consumers, competition and commercial activities in generation and the impact increased costs has on sustainable development.</p> <p>This change will merely increase the costs to Users of providing financial security on a more cost-reflective basis, undermining the key objectives of CMP192 and, in respect of cash deposits, result in a positive cashflow advantage to NGESO by levying a provisional amount for VAT which may never become due without any resultant benefit such as reduced TNUoS charges.</p>
Do you have any other comments?	No
Legal text issues raised in the Consultation	
No legal text issues raised in the Consultation.	

Panel Determination Vote

The CUSC Panel met on the 28 August 2020 to carry out their determination vote.

The CUSC Panel in May 2020 had unanimously agreed that CMP342 should follow the self-governance route and proceed to Code Administrator Consultation. At July 2020 Panel, the Code Administrator shared that there had been a challenge on material impacts of the proposed change from a respondent to the Code Administrator Consultation. Therefore, the Panel agreed to defer decision on the appropriate governance route to the August 2020 Panel. At the August 2020 Panel, Panel agreed by majority to maintain their decision that CMP342 should follow the self-governance route.

August 2020 Panel then assessed whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the code objectives. The full vote can be found below.

CUSC non-charging objectives

- (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
- (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;
- (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
- (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.

*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

CMP342 Vote

Vote 1: Does the Original facilitate the objectives better than the Baseline (the current CUSC arrangements)?

Panel Member: Andy Pace

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
<p>This modification clarifies the application of VAT when calculating the amount to be secured by a User. There is no impact to CUSC parties that result from this change other than making the current long-standing process clearer within the CUSC. We therefore consider that this mod better meets standard CUSC objectives (a) and (d). We are voting in favour of this modification as it clarifies existing processes. However, we expect the ESO to continue to engage with stakeholders to ensure any issues with how VAT is applied are addressed.</p>					

Panel Member: Cem Suleyman

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	N/A (Abstained)				
Voting Statement					
N/A (Abstained)					

Panel Member: Garth Graham

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
<p>Having reviewed the Draft Final Modification Report along with the response to the Code Administrator consultation and taking into account the helpful discussions held at the July and the two August Panel meetings (including with the party who has raised an important matter worthy of due consideration) I have concluded that based on the ESO's statements in the documentation and</p>					

to the Panel that CMP342 does better facilitate, in particular, Applicable Objectives (a) and (d); whilst being, in my view, neutral with respect to (b) and (c); for the reasoning set out in the proposal form.

Panel Member: Grace March

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
This Modification clarified existing arrangements in the CUSC, ensuring all Users are treated on a consistent basis and can understand the process fully.					

Panel Member: Jon Wisdom

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
Voting Statement					
<p>The proposal clarifies and formalises existing practice on the treatment of VAT in respect of User Commitment requirements as per CUSC Section 15.</p> <p>As such it is positive against Applicable CUSC Objectives A, B and D for the following reasons;</p> <p>1) this clarification allows NGENSO and generators to be more confident in the treatment of VAT and so account for this in processes, internal decision making and for this ultimately to be reflected in lower risk associated with new generation connections.</p> <p>2) Any shortfall in the amount recovered at termination (for example, non-payment of termination amounts by a terminating generator) will be recovered from other generators and consumers. By not including VAT in the value secured, this will increase the amount that will need to be recovered from other parties (by 20%). As such this modification promotes effective competition by ensuring costs caused by a party are recovered from that party as per the relevant methodology rather than being socialised.</p> <p>3) The trigger for termination amounts (and so the applicability of VAT) is outside of the control of all parties except the terminating generator. Therefore there is no other efficient mechanism (which avoids the risk identified in point 2) of ensuring VAT is recovered from the appropriate party than recovering the VAT before termination. As the VAT amount due changes through the lifetime of the</p>					

project (in accordance with the User Commitment methodology in CUSC Section 15) it is prudent that the amount of security held (in the event of termination), including the applicable rate of VAT, is also reviewed periodically and increased or decreased as appropriate.

There is no interaction between CMP342 and European Regulation 2009/714/EC and so CMP342 is neutral against Applicable CUSC Objective C.

Panel Member: Joseph Dunn

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
My voting aligns with the proposer's justification for ACOs (A), (C) and (D) but I consider the proposal to be neutral to ACO (B) as it does not change how the inclusion of VAT currently operates within the various areas considered and therefore does not change the facilitation of competition.					

Panel Member: Mark Duffield

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
By clarifying the CUSC to accurately reflect the legal framework surrounding the payment of VAT with respect to Cancellation Charges this better facilitates the applicable CUSC objectives. The fact that the VAT payable in connection with Cancellation Charges has always been included by NGESO / NGET when calculating securities for such amounts means that the existing practice is being clarified rather than there being a material change. While the VAT does not become payable until such time as a cancellation charge is levied, it is clear to me that the VAT will become automatically due at that time. Therefore in order to provide credit for the total amount due it is appropriate to include VAT when calculating the Cancellation Charge Secured Amount.					

Panel Member: Paul Jones

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
Clarification of process with respect to VAT helps improve efficiency of the arrangements.					

Panel Member: Paul Mott

	Better facilitates ACO (a)?	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	No	No	Neutral	Neutral	No
Voting Statement					
The question to ask ourselves to help think about this is, if the security is called, who is liable to pay the 20% - ESO, or the party that defaults ? The latter is the answer. In that case we are increasing the security for the benefit of the ESO under the current approach – the ESO doesn't need this protection as it doesn't pay the VAT; we are making parties over-secure; it seems not to be logical. We shouldn't be securitising via ESO for HMRC that they will be paid, as their payment comes from the party, not from ESO.					

Vote 2 – Which option is the best?

Panel Member	BEST Option?
Andy Pace	Original
Cem Suleyman	n/a - Abstained
Garth Graham	Original
Grace March	Original
Jon Wisdom	Original
Joseph Dunn	Original

Mark Duffield	Original
Paul Jones	Original
Paul Mott	Baseline

Panel conclusion

The CUSC Panel, by majority, determined that the Original better facilitated the CUSC Objectives than the Baseline and should be implemented.

When will this change take place?

Implementation date:

9 October 2020 (5 working days after the appeals window closes) providing no appeals are received by 5pm on 2 October 2020.

Implementation approach:

NGESO seeks implementation of the modification as soon as possible, to ensure that there is no ambiguity possible when interpreting the CUSC and it can take prompt action where a User defaults in providing the required security amount, including for any applicable VAT.

It is proposed that the CMP342 is implemented 5 working days after the appeals window closes, providing no objections have been raised.

Acronym table and reference material

Acronym	Meaning
NGESO	National Grid Electricity System Operator
VAT	Value Added Tax

Reference material:

None

Annexes

Annex	Information
Annex 1	CMP342 Self-Governance Statement
Annex 2	CMP342 Code Administrator Consultation Response

VAT Impact on Securities - Example 1

Year	Security %	Secured Cancellation Charge (Excluding VAT)	Secured Cancellation Charge (Including VAT)	Security Increase due to VAT
1	100	£23,500,000	£28,200,000	£4,700,000
2	100	£29,100,000	£34,920,000	£5,820,000
3	100	£37,700,000	£45,240,000	£7,540,000
4	42	£35,800,000	£42,960,000	£7,160,000
5	42	£82,700,000	£99,240,000	£16,540,000
6	42	£135,200,000	£162,240,000	£27,040,000
7	10	£32,900,000	£39,480,000	£6,580,000

[REDACTED]

From: [REDACTED]@hmrc.gov.uk
Sent: 12 March 2020 08:27
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]@hmrc.gov.uk; contactus.largebusinesswestmidlands@hmrc.gov.uk
Subject: EXT || RE: National Grid Electricity Transmission plc (547 8630 11) - VAT treatment of security deposits

Good morning [REDACTED]

Thank you for your initial email of 3 January 2020 requesting our review of the current VAT treatment of security deposits paid to National Grid Electricity Transmission Plc in the circumstances described. Thank you also for your subsequent email of 20 January 2020 providing further information.

Based on the information provided it is agreed that the treatment of security deposits taken to reduce the risk of non-payment of Cancellation Charges that become payable if electricity generators fail to connect to the electricity transmission network, as described in your correspondence, can be treated as outside the scope of VAT.

This decision is based on the facts and context of the arrangements that you provided in your emails related to this matter. We may review the VAT consequences of the arrangements where it becomes apparent that the activities as described were carried out in a materially different way/form to that set out in your correspondence.

This response applies to you, as the applicant, and to the specific transaction on which you asked for advice. If you have any further information that you wish to be considered, please forward this to us.

Kind regards
[REDACTED]



[REDACTED]
Large Business Midlands
SO987
Newcastle, NE98 1ZZ
Tel [REDACTED]
Email: [REDACTED]@hmrc.gsi.gov.uk

If you receive a suspicious email, please forward to phishing@hmrc.gsi.gov.uk or refer to the GOV.UK site [Avoid and report internet scams and phishing - GOV.UK](#) for further information.

From: [REDACTED] <[REDACTED]@nationalgrid.com>
Sent: 20 January 2020 14:34
To: [REDACTED] (LB Midlands) <[REDACTED]@hmrc.gov.uk>
Cc: [REDACTED] <[REDACTED]@nationalgrid.com>; [REDACTED] (LB) <[REDACTED]@hmrc.gov.uk>; Large Business West Midlands, Contact Us (LB) <contactus.largebusinesswestmidlands@hmrc.gov.uk>
Subject: RE: EXT || RE: National Grid Electricity Transmission plc (547 8630 11) - VAT treatment of security deposits

Hi [REDACTED]

Further to your email, we have received the additional information from our ESO team. Please find responses (in blue) to the questions you raised, in turn, below.

Should you have any further questions, please let us know.

Kind regards

[REDACTED]

[REDACTED]
[REDACTED]

Taxation

nationalgrid

[REDACTED]

[REDACTED]@nationalgrid.com

National Grid House, (Floor C3), Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA

nationalgrid.com

From: [REDACTED]@hmrc.gov.uk <[REDACTED]@hmrc.gov.uk>

Sent: 14 January 2020 11:59

To: [REDACTED] <[REDACTED]@nationalgrid.com>

Cc: [REDACTED] <[REDACTED]@nationalgrid.com>; contactus.largebusinesswestmidlands@hmrc.gov.uk; [REDACTED]@hmrc.gov.uk

Subject: EXT || RE: National Grid Electricity Transmission plc (547 8630 11) - VAT treatment of security deposits

Good morning [REDACTED]

Thank you again for your email below, which I have considered. In order to provide you with a decision I would be grateful if you could please provide the following information to help my understanding of the arrangements further:

- It was not completely clear from the information provided as to which categories of payments are currently treated as outside the scope of VAT. Please clarify my understanding that NGET currently treats the following as outside the scope of VAT:
 - The initial receipt of the amounts referred to as 'Security', in whatever form of payment (the cash amounts being paid into Escrow) – ESO currently treats the initial receipt of the Security (in whatever form) as outside the scope of VAT on the grounds that this does not constitute consideration for a supply (as it is not known at the time the Security is placed whether the Cancellation Charge to which the Security relates will become payable). As previously mentioned, we consider this treatment to be in line with HMRC's guidance at [VATSC06120](#) on security deposits. *and also*;
 - In cases where the User terminates or partially terminates and the 'Security' is used to settle the Cancellation Charges due, NGET also treats the amounts when the security is taken to settle the Cancellation Charges as outside the scope of VAT at that time, i.e. no VAT is accounted for on the Cancellation Charges when 'Security' payments are used to settle the Cancellation Charges due. Alternatively, I was uncertain whether VAT is accounted for in these circumstances. ESO accounts for VAT (at the standard rate) on the Cancellation Charge on an invoice basis. If and when the Cancellation Charge becomes payable, ESO will raise a VAT invoice with 14-day payment terms. Where the invoice goes overdue, ESO would then call the Security (e.g. cash or letter of

credit). If the User is not 100% secured (see details below), ESO would still need to pursue the User for the balance of payment.

- Please provide a sample copy of a relevant agreement (or the relevant extracts from the CUSC if this is the applicable agreement) referring to the terms and conditions under which the ‘Security’ and ‘Cancellation Charges’ are payable and the method of calculation of the Security amounts. The terms and conditions under which the Security and Cancellation Charge are payable can found in [Section 15](#) of the CUSC. Details of the method of calculating the Security are outlined as follows:
 - The calculation of the % the customer must secure is:
 - Where the customer is pre-trigger date, it is 100%
 - Where the customer is post-trigger date, the % rates are:

	Without Planning Consent	With Planning Consent
Direct Transmission Connection	█%	█%
Embedded Distribution Connection	█%	█%

- The trigger date is calculated by going back three years from the connection date, and it is the 1 April before that (i.e. it can be between three and four years before the connection date). The trigger date is also dealt with in [Section 15](#) of the CUSC.
- Do all Users have to provide Security against future possible Cancellation Charges or do Security payments apply only to certain categories of User or projects? If the User (being the contracting entity itself, not a parent company) meets the minimum credit rating in the CUSC, it does not need to provide Security. For most Users, the requirement is for an ‘A’ (S&P) or ‘A3’ (Moody’s) credit rating. If the User is a licensed distribution network operator, it will be the rating that is in its licence.

- What was the balance of Security amounts held for future possible Cancellation Charges at 31/12/2019 and what was the total value of Security amounts used against Cancellation charges in the VAT period ended 31/12/19? █. █

Between the different forms of Security, this breaks down as follows:

- Escrow (Cash): █
- Insurance Bond: █
- Own Credit Rating: █
- Letter of Credit: █
- Parent Company Guarantee (where parent company meets credit rating): █

In 2019, the amount of Security claimed by ESO where the User failed to pay the Cancellation Charge invoice was approximately █, of which █ was claiming on Letter of Credits and █ was from escrow.

- How long has the Security income stream been received by NGET? The requirement for Users to provide Security against Cancellation Charges has been in place for over 20 years. To clarify, the Security is not treated as an income stream, it is merely a means of settling unpaid Cancellation Charge invoices.
- What are the separate roles of NGET and ESO in these arrangements? ESO is the contractual party to the User agreements, and administers the Security arrangements. ESO has separate contractual arrangements with the three onshore transmission owners in Great Britain. NGET is the transmission owner in England and Wales. In Scotland there are two different transmission owners, neither of which are part of the National Grid group.

Kind regards

█



HM Revenue
& Customs

Large Business Midlands
SO987

Newcastle, NE98 1ZZ

Tel

Email: [\[REDACTED\]@hmrc.gsi.gov.uk](mailto: [REDACTED]@hmrc.gsi.gov.uk)

If you receive a suspicious email, please forward to phishing@hmrc.gsi.gov.uk or refer to the GOV.UK site [Avoid and report internet scams and phishing - GOV.UK](#) for further information.

From: [REDACTED] [[mailto:\[REDACTED\]@nationalgrid.com](mailto:[REDACTED]@nationalgrid.com)]

Sent: 03 January 2020 12:03

To: [REDACTED] (LB Midlands) <[\[REDACTED\]@hmrc.gov.uk](mailto:[REDACTED]@hmrc.gov.uk)>

Cc: [REDACTED] <[\[REDACTED\]@nationalgrid.com](mailto:[REDACTED]@nationalgrid.com)>; Large Business West Midlands, Contact Us (LB) <contactus.largebusinesswestmidlands@hmrc.gov.uk>

Subject: National Grid Electricity Transmission plc (547 8630 11) - VAT treatment of security deposits

Hi [REDACTED]

Happy New Year.

We have a query concerning electricity connections, specifically the VAT treatment of security deposits taken in respect of cancellation charges that become payable if electricity generators fail to connect to the electricity transmission network. We have set out below some further background and our analysis of the VAT position, but seek confirmation from HMRC that the current treatment applied is correct.

The Facts

- The three Transmission Owners (TOs) in Great Britain, including National Grid Electricity Transmission Plc (NGET), undertake works for those 'Users' (e.g. electricity generators) expected to connect in the future to the electricity transmission network. National Grid Electricity System Operator Limited (ESO) is responsible for administering the contracts with those Users.
- The commercial arrangements for connecting to and using the transmission network are set out in the CUSC (the industry-agreed Connection and Use of System Code).
- If a User decides to terminate its project or reduce its capacity (partial termination) after the associated works have already begun to connect to the network, it will be liable to pay a 'Cancellation Charge' - this would be treated as VATable, at the standard rate.
- To reduce the risk of non-payment by the User of the Cancellation Charge (the risk of which would pass to all consumers), Users have to provide 'Security' in the event they terminate and the Cancellation Charge becomes payable.
- There are number of factors taken into account when calculating the percentage of the Security initially required however, this can be up to 100% of the Cancellation Charge. As the associated works progress and the likelihood of completion increases, the level of the Security (percentage of the Cancellation Charge that has to be secured) reduces.
- Users can provide the Security in a number of forms, one of which is cash (other forms include performance bonds, letters of credit or guarantees, e.g. a parent company guarantee). Where cash is provided as the Security against the Cancellation Charge, it is held in an escrow account (as defined in the CUSC) and remains the sole property and entitlement of the User together with any interest that accrues on the deposited amount. Importantly, neither party can access the funds until the liability is discharged. Where there is a reduction in the level of the Security required and the Security is in the form of a cash deposit, this can result in amounts being returned to the User.

- If the connection agreement is terminated and the Cancellation Charge becomes payable, ESO can exercise its right to set off against the User's cash deposit. It should be noted that if the connection completes, a different set of charging arrangements apply, and the cash secured cannot be used as part payment towards the connection charge and would therefore be returned to the User.
- Security, provided in any form, is currently treated as outside the scope of VAT.

VAT Analysis

We are of the view that the Security, provided as a cash deposit (or any other form), is outside the scope of VAT on the basis that it does not constitute consideration for a supply. Therefore, any 'payment' made by the User would not create a tax point for VAT purposes. We consider this treatment to be consistent with HMRC's guidance on security deposits at [VATSC06120](#). To treat the Security provided in the form of cash any differently from a VAT perspective would have a distortive effect.

When the User provides the Security, its intention is to connect to the electricity transmission network and provided it does so, at the capacity levels agreed, the Cancellation Charge will not become payable. Where the Security has been provided as cash, it would be fully refundable. This is a key indicator of a security deposit. Should circumstances change and the User has to terminate or reduce its transmission capacity, the Cancellation Charge (either in full or in part) would become payable. The Security cannot be treated as an advance payment of the Cancellation Charge as it is not certain, at say the time the cash is deposited, that this will become payable.

Where the User opts to make a cash deposit, the funds are held in an escrow account. Whilst ESO is the named account holder, it cannot access the funds as, under the terms of the CUSC, these remain the sole property and entitlement of the User until the liability is discharged or the decision is taken to offset the cash against the Cancellation Charge (whilst the right for ESO to set off exists, the cash is not always used in this way and typically requires the agreement of both parties). Furthermore, the User remains entitled to any interest that accrues on the amounts deposited. As the associated works progress and the likelihood of completion increases, the Security level required may reduce and cash would therefore be released to the User. These factors, in our view, are not indicative of an advance deposit or similar, particularly given the uncertainty that the Cancellation Charge will arise.

We trust the above information is sufficient for you to review the current treatment applied. However, should you require any further information or clarification, please do not hesitate to contact us.

Many thanks

█

█
█

Taxation
nationalgrid

█
[@nationalgrid.com](mailto:█@nationalgrid.com)

National Grid House, (Floor C3), Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA
nationalgrid.com

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Minutes from CUSC panel Meeting

29/05/20

[REDACTED]

**Draft
modification -
Clarification of
VAT for
Securities in the
CUSC**

**Nick George -
NGESO**



nationalgridESO

Clarification of VAT for Securities in the CUSC

Current Position

- CUSC includes requirements for Users to provide security for certain charges:
 - Terminations Amounts, relating to Connection Charges (Section 2, Part III)
 - BSUOS and TNUOS Demand Charges (Section 3, Part III)
 - Cancellation Charges for generators terminating pre-connection (Section 15, Part Three)
 - Final Sums for demand customers terminating pre-connection (Schedule 2, Exhibit 3)
- The security requirements provide some financial security from Users for certain charges, reducing the financial risk on all other Users from a User defaulting on payment obligations.
- If a User defaults, VAT must still be paid to HMRC, and therefore it is important when calculating the amount a customer secures that it includes the applicable VAT

All Users carry financial risk of a User defaulting

12

nationalgridESO



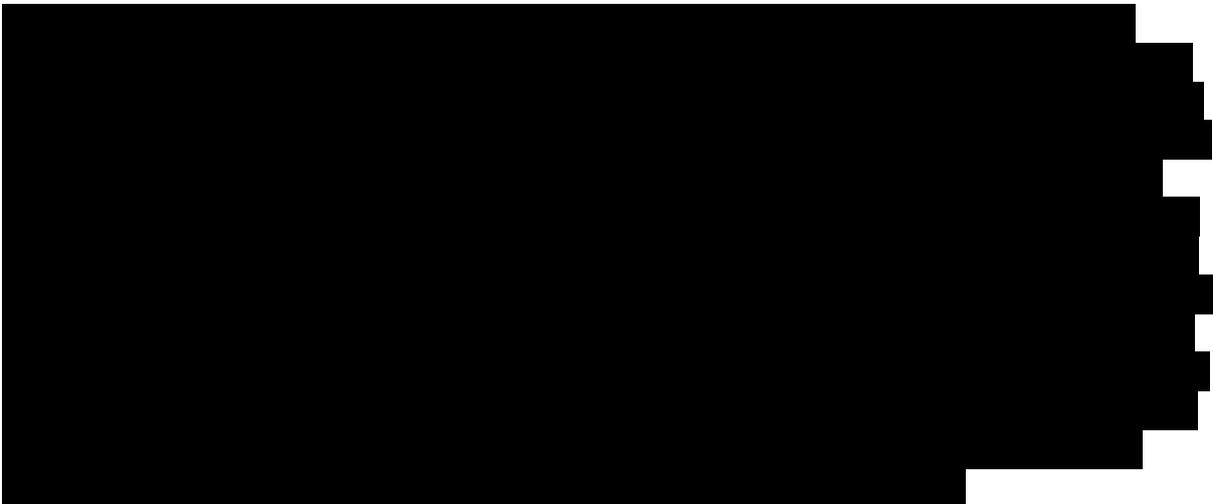
CMP342 - Clarification of VAT for Securities in the CUSC

Modification Proposed

- A User has queried NGESO's right to request security for the VAT element of the charges
- To ensure current and future parties fully understand their obligations, modification to be raised at May CUSC Panel
- Minor wording changes to sections identified on previous slide, to clarify that the secured amounts are inclusive of applicable VAT
- The modification clarifies the position on securities, allowing NGESO to efficiently administer the securities processes and ensure all Users secure on a consistent basis, protecting other Users, and ultimately consumers
- Modification is just clarifying current practise, so is proposed to be Self-Governance

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[REDACTED]

Proposer Recommended Governance Route

The Proposer recommends that this modification follows the standard governance route and proceed to Code Administrator Consultation.

Recommended Timeline

Code Administrator Consultation	5 to 26 June 2020
Draft Final Modification Report issued to Panel	23 July 2020
Draft Final Modification Report presented to Panel	31 July 2020
Final Modification Report issued to Panel to check votes have been recorded correctly (5 Working Days)	4 August 2020
Appeals Window (15 working days)	12 August 2020 to 3 September 2020
Decision implemented in CUSC	4 September 2020

nationalgridESO

Panel Decision

Does the Panel agree that:

- This is a self governance modification; and
- This modification should proceed to Code Administrator Consultation

[Redacted]

[Redacted]

[Redacted]

CUSC Code Administrator Consultation Response Proforma**CMP342: Clarification of VAT for Securities in the CUSC**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm on 10 July 2020**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Panel.

If you have any queries on the content of this consultation, please contact Shazia Akhtar at Shazia.Akhtar2@nationalgrideso.com or cusc.team@nationalgrideso.com.

Respondent details	Please enter your details
Respondent name:	Matthew Dowds
Company name:	Muirhall Energy Limited
Email address:	md@muirhallenergy.co.uk
Phone number:	01501 785 088

For reference the applicable standard CUSC non-charging objectives are:

Relevant Objective
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
(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;
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.
*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

Please express your views in the right-hand side of the table below, including your rationale.

Code Administrator Consultation questions		
1	Do you believe that CMP342 Original proposal better facilitates the Applicable CUSC Non-Charging Objectives?	<p>No. The CUSC doesn't currently provide for the levying of VAT on top of the Cancellation Charge Secured Amounts. Nor was it ever contemplated in any of the proposal documents, reports or Ofgem approval of CMP192 introducing Generic User Commitment Methodology.</p> <p>This will increase Cancellation Charge Secured Amounts by 20% to the detriment of electricity consumers through increased costs. It will also have a distortive effect on competition as those developers who do not have parent companies with the requisite credit rating will need to provide higher cash deposits or a letters of credit, imposing a real cash cost on those developers and putting them at a competitive disadvantage to those developers with suitably credit rated parent companies.</p>
2	Do you support the proposed implementation approach?	<p>No.</p> <p>In terms of procedure, we disagree that CMP342 should proceed using the Self Governance Route. CMP342 is likely to:</p> <ul style="list-style-type: none"> (a) have a material effect on future electricity consumers through increased grid security costs and resultant increased electricity prices; (b) have a material effect on competition in the generation of electricity by disadvantaging those independent developers who can only provide cash deposit or letters of credit for Cancellation Charge Secured Amounts; (c) discriminate between different classes of CUSC Parties. <p>As such, CMP342 does not meet the Self-Governance Criteria and should instead be proposed under the standard modification route.</p> <p>In terms of the detailed proposals, we understand that the Cancellation Charge Secured Amounts do not attract VAT but that the Cancellation Charge itself would attract VAT as and when they fall due following termination of the relevant Bilateral Agreements.</p> <p>The original "Final Sums" methodology and associated financial security were cost reflective.</p>

They were identified as a barrier to entry, particularly for smaller developers of low carbon generation projects. As a result User Commitment methodology was introduced to lower this barrier to entry whilst retaining appropriate incentives to ensure that new-build generation projects notify cancellation, closure and capacity reduction in a timely manner. One of the key changes under the new User Commitment methodology was that the level of security required to support the Cancellation Charge did not follow the same profile of liability for the Cancellation Charges (e.g. with pre-commissioning Generator's securing 42% of the liability pre-consents, dropping down to 10% post consents). At the time, Ofgem determined these percentages to provide sufficient security cover and incentivisation. Following implementation of CMP223, these percentages were increased for embedded generation only to 45% pre-consents and 26% post consents.

Neither CMP192 nor CMP223 make any reference to increasing the Cancellation Charge amounts to include VAT for the purpose of fixing the percentage to be secured. The basis of calculation of the Cancellation Charge as currently provided in the CUSC (and as considered when the percentage figures were being increased for embedded generation under CMP223) does not provide for any increase in this value to account for VAT. It is clear from the terms of the CUSC that the Cancellation Charge (on which the security is sized) and VAT are dealt with separately.

The percentages for the Secured Amounts were considered an adequate and appropriate incentivisation mechanism and payment default protection based on Cancellation Charges net of VAT with VAT being paid in the normal way along with the Cancellation Charge, should the Bilateral Agreements be terminated.

That remains the case and given that the Secured Amounts only cover a maximum of 45% or 42% of the Cancellation Charge dropping down to 26% or 10% post consents, the artificial increase of the Cancellation Charge to account for future VAT for the purpose of sizing Secured Amounts will not have any material bearing on the adequacy and effectiveness of the existing User Commitment

		Methodology. Rather, such a change will merely increase the costs to Users of providing financial security on a more cost-reflective basis, undermining the key objectives of CMP192 and, in respect of cash deposits, result in a positive cashflow advantage to NGESO by levying a provisional amount for VAT which may never become due without any resultant benefit such as reduced TNUoS charges.
3	Do you have any other comments?	Click or tap here to enter text.

[REDACTED]

From: [REDACTED]
Sent: 27 August 2020 14:41
To: [REDACTED] (ESO), [REDACTED] (ESO), [REDACTED]
Subject: RE: EXT || CMP342 Consultation Response

Thanks [REDACTED]

Kind regards,

[REDACTED]

Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 27 August 2020 14:08
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED]

This has been shared with Panel

Dial in details for Friday are:

WebEx details:

Meeting

link: <https://uknationalgrid.webex.com/uknationalgrid/j.php?MTID=meff2fc484244588302afd2799866b916>

Audio connection:

Telephone: [REDACTED]
Access code: [REDACTED]
Password: [REDACTED]

@ [REDACTED] (ESO), [REDACTED] can contact you on [REDACTED] ~ 15 mins ahead of the CMP342 vote. Currently we envisage CMP342 will be discussed at 11.30am

[REDACTED]

T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm.

Annual Leave Advance Notice: 21 August 2020, 26 August 2020, 25 September 2020, 9 to 19 October 2020 (inclusive)

From: [REDACTED] (ESO), [REDACTED]
Sent: 27 August 2020 12:54
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Thanks [REDACTED]

[REDACTED]

nationalgridESO

T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm.

Annual Leave Advance Notice: 21 August 2020, 26 August 2020, 25 September 2020, 9 to 19 October 2020 (inclusive)

From: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Sent: 26 August 2020 17:14
To: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>

Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] ([REDACTED]@gmail.com) <[REDACTED]@gmail.com>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>

Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED]

Apologies for the delayed response and I hope the text below is acceptable. I am actually also on leave this week but I will try dial into the panel meeting on Friday.

'Thank you for your email and explanation of the process. We welcome further information from ESO and appreciate that there may have been some confusion at the last panel meeting.

The process in the figure describes how VAT is called upon if a cancellation charge event occurs. However current practices dictate that a developer must secure VAT to National Grid at a much earlier stage i.e. on acceptance of a connection offer and bi-annually thereafter. Therefore, developers are securing an excess of 20% securities for years on the basis that a project may be cancelled. We contest the point at which VAT becomes liable to be paid on the Cancellation Charge Secured Amount.

Considering the Cancellation Charge Secured Amount is outside the scope of VAT, then it is far from clear from the terms of the CUSC that National Grid are entitled to levy VAT (or a provision for future VAT) on the Cancellation Charge Secured Amount prior to a Cancellation Event occurring, as it is this event that crystallises the VAT charge. The Cancellation Charge Secured Amount is a sliding scale percentage of the "Cancellation Charge". It seems clear that the "Cancellation Charge" is a net amount on which VAT would then be payable but only at the point at which the Cancellation Charge is payable, and not before.

As provided in my consultation response-

- *The CUSC and CMP 192 do not provide for the levying of VAT on top of the Cancellation Charge Secured Amounts.*
- *The ongoing charging of provisional VAT on Cancellation Charge Secured Amounts has a detrimental effect on consumers costs and has a distortive effect on developer competition.*
- *The Criteria for self-governance is not met due to the material effect on existing and future electricity consumers, competition and commercial activities in generation and the impact increased costs has on sustainable development.*
- *Current practice results in a positive cashflow advantage to NGENSO by levying a provisional amount for VAT which may never become due without any resultant benefit such as reduced TNUoS charges.*

We will be happy to share further information with an Appeal to Ofgem or through the standard governance route.'

Kind regards,

[REDACTED]
[REDACTED]

Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>

Sent: 24 August 2020 16:38

To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>

Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] ([REDACTED]@gmail.com) <[REDACTED]@gmail.com>

Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED] hope you had a great holiday. Just following up on our conversation of 7 August 2020 and specifically when you plan to issue a response to ESO's clarification of VAT treatment (that they provided at Panel on 6 August).

Panel received Papers on 20 August and will currently be considering how they will vote ahead of Panel on 28 August so prudent this is sent to Panel ahead of Friday.



nationalgridESO

T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm.

Annual Leave Advance Notice: 21 August 2020, 26 August 2020, 25 September 2020, 9 to 19 October 2020 (inclusive)

From: .Box.Cusc.Team

Sent: 07 August 2020 13:37

To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>

Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] ([REDACTED]@gmail.com) <[REDACTED]@gmail.com>

Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED] – as discussed, you may recall that Panel asked ESO (as Proposer) to further clarify the VAT liability and when this is incurred. ESO agreed to clarify this. With this information, Panel could then make a final call on governance route and whether it would be appropriate to form a Workgroup – *CUSC 8.19.5 allows Panel if they so wish to establish a Workgroup up to the time of the Panel Vote.*

ESO provided this clarification yesterday to Panel and Panel asked that that this was shared with yourselves for transparency – ESO have shared this. **As discussed, any thoughts on this would be appreciated as it would be prudent to share at August's Panel for full transparency.**

Following receipt of the information from ESO, Panel made the decision that a Workgroup was not needed so CMP342 will proceed to a Panel Vote at August Panel.

You will recall at July Panel there was a mix of views on governance route and I mistakenly thought Panel had formally made this decision to move to standard governance. I have clarified this in the Headline Report with the revised text highlighted in yellow and this will be re-published.

“CMP342 'Clarification of VAT for Securities in the CUSC’

CMP342 seeks to clarify, and confirm the position that NGESO has always applied, that when calculating the amount Users are required to secure under the CUSC, the amount of applicable Value Added Tax is to be included.

The CUSC Panel had unanimously agreed that CMP342 should follow the self-governance route and proceed to Code Administrator Consultation. However, prior to undertaking the vote on whether or not to implement CMP342, Code Admin shared that there had been a challenge on material impacts of the proposed change from a respondent to the Code Administrator Consultation. The Panel is considering the appropriate governance route and will decide on the final outcome at its meeting at the end of August.

CMP342 documentation can be located via the following link:

<https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc-old/modifications/cmp342>”

At August Panel **(following any thoughts you have on what ESO provided):**

- Panel will make final decision on governance route; and
- Panel will carry out vote against the draft report they were issued with prior to July Panel

If Panel agree this is still self-governance, then you will be able to raise an Appeal to Ofgem (*CUSC 8.25.14 – 8.25.19 sets out this process*)

If Panel agree this is standard governance, then (once the Final Report has been sent to them) you will be able to send information directly to Ofgem

It is important to stress that the CMP342 Code Administrator Consultation has closed and we cannot include additional points/information that were not included in the responses to Code Administrator Consultation in the Final Report.

I also appreciate your feedback that it was:

- a) Not completely clear when you could interact with the process; and
- b) Not clear on when you could provide information or what information you could provide.

We will act on this.

Regards



nationalgridESO

T
M [Redacted]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. **Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.**

Annual Leave Advance Notice: None

From: [REDACTED] (ESO), [REDACTED]
Sent: 07 August 2020 12:18
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

I have this afternoon off and will be setting up cricket game at 4pm. Happy to talk before 2pm though today – I need to appraise you of where Panel are and your opportunities to input



T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. **Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.**

Annual Leave Advance Notice: None

From: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Sent: 07 August 2020 10:35
To: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Cc: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED]

4 o'clock today for a quick chat?

Kind regards,

Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 07 August 2020 09:41
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Subject: Re: EXT || CMP342 Consultation Response

[REDACTED] Do you have time today for a short call - specifically on the process and how you can input into the mod process. I can do from 3pm on 11 August otherwise.

To manage expectations, we are running the Mod process only. We have consulted on the proposed change, the consultation has closed and now Panel will make their decision / recommendation on what is contained within the report that was presented to them for July's Panel. There will be further opportunities for you to feed into this once Panel have made their decision.

It is important we make the distinction between this process and your ongoing "dispute" with ESO on treatment of VAT

Regards
[REDACTED]

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From: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Sent: Friday, August 7, 2020 9:15:42 AM
To: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED]

Tuesday afternoon at 2 would work for me.

I believe there was some confusion on the call regarding where VAT is accounted for between the parties, which I would be happy to clear up. Although this highlights the need for a full and detailed discussion at a workgroup to understand what is a complex issue.

Kind regards,

[REDACTED] **Error! Hyperlink reference not valid.**
Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 07 August 2020 08:27
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED] do you have time today or Tuesday for a quick catch up on where we are with CMP342 Modification Proposal?



nationalgridESO

T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. ***Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.***

Annual Leave Advance Notice: None

From: .Box.Cusc.Team
Sent: 03 August 2020 18:16
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Apologies [REDACTED] – I have only just seen this and we need to confirm next steps for the Mod process in accordance with the Governance Rules as set out in CUSC Section 8 (e.g. can Panel actually send the current Modification to a Workgroup). I have sought an internal legal view on this as unclear how this Mod process can take into account discussions outside that presented to Panel within the Draft Self Governance Report (which will become the Draft Final Modification Report).

Please bear with us on this – I realise how important this is for Muirhall; however, I have to ensure that the Mod process (administered independently by us as Code Admin) and any ESO/Muirhall dispute process are kept separate and it is important we get the right answer





T
M

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. **Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.**

Annual Leave Advance Notice: None

From: [redacted] <[redacted]@muirhallenergy.co.uk>
Sent: 31 July 2020 14:12
To: [redacted] (ESO), [redacted]@nationalgrideso.com>; [redacted] (ESO), [redacted]@nationalgrideso.com>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Cc: [redacted]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Thanks [redacted]

Further to the panel meeting today we are very surprised and disappointed that National Grid did not set out the complete factual position at the beginning of this process given the importance of this consultation not only for us but all other developers in the UK. This is why we reinforced our position on the call today.

It would be useful to understand the next steps following this morning's discussion.

It appears that the CMP is now going down the Standard Governance Route. Given the nature of the discussion today I would like to provide you with all the email correspondence on this matter between Muirhall Energy and National Grid as I do not believe you have been provided with this. In the meantime and to give you a flavour of the content of this email correspondence please see one of the email paragraphs sent by us to National Grid on the 8th April:

"
*The response from HMRC and the correspondence behind this only reinforces our position that the security deposits fall outwith the scope of VAT under applicable law.
Our lawyers have also reviewed the CUSC and ConsAg again and provided the following advice:
It is far from clear from the terms of the CUSC that National Grid is entitled to levy VAT (or a provision for future VAT) as part of the Cancellation Charge Secured Amount. The Cancellation Charge Secured Amount is a sliding scale percentage of the "Cancellation Charge". It seems clear that the "Cancellation Charge" is a net amount on which VAT would then be payable.
The "Cancellation Charge" is either the "Attributable Works Cancellation Charge" or, if terminated after the Trigger Date, the "Attributable Works Cancellation Charge plus the "Wider Cancellation Charge". Neither of these concepts*

expressly include any allowance for VAT. Similarly, the proforma Exhibit MM2 (Cancellation Charge Secured Amount Statement) in the CUSC doesn't provide for any increase of the secured amount to account for VAT. Our lawyers also reviewed the Final Modification Report, Ofgem approval and Ofgem impact assessment CUSC Modification Proposal 192 which implemented the current User Commitment Methodology set out in section 15 and whilst it was recognised that VAT would accrue on the Cancellation Charge, there is no suggestion in those documents that the financial security would be increased to provide for this. Therefore, the terms of the CUSC and/or the ConsAg do not expressly entitle NGENSO to increase the security amount for an additional provision for VAT. On the absence of any such provision, the security amounts should be calculated and levied on a net basis. Based on the above, we will not be depositing VAT payments with you until this matter is resolved.

Further to the panel discussion on the 29th May, National Grid had stated that 'the challenge was more along the lines of the wording of the CUSC' suggesting we had agreed with their position when this is clearly not the case, as evidenced above.

Therefore it is our view that the panel have not received all necessary and relevant information and/or documentation to enable them to make an informed decision on CMP342. By adding text to the CUSC through CMP342 National Grid are trying modify the CUSC rather than clarify the position. By doing so it is our view that this will amend a fundamental part of the CUSC that benefits National Grid but materially disadvantages developers when this is not competent as confirmed by HMRC and as per the advice above.

On the basis of the above we strongly disagree with the whole context of this CMP and we would ask that we continue to be part of the discussion with further opportunities for us to present the factual position to the panel members. I look forward to hearing from you.

Kind regards,

Error! Hyperlink reference not valid.
Muirhall Energy Limited
Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [redacted] (ESO), [redacted]@nationalgrideso.com>
Sent: 31 July 2020 11:42
To: [redacted] (ESO), [redacted]@nationalgrideso.com>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>; [redacted]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Hello [redacted],

Could you please join the call.

Thanks

[redacted]

From: [redacted] (ESO), [redacted]
Sent: 30 July 2020 15:34
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>; [redacted]@muirhallenergy.co.uk>; [redacted] (ESO),

[REDACTED] <[REDACTED]@nationalgrideso.com>

Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED] – good to speak to you earlier

Webex details for tomorrow are:

JOIN WEBEX MEETING

<https://uknationalgrid.webex.com/uknationalgrid/j.php?MTID=mf91665065fc69d16d14b48c17e39bcf8>

Meeting number (access code): [REDACTED]

Meeting password: [REDACTED]

JOIN BY PHONE

[REDACTED] UK London Toll

@ [REDACTED] (ESO), [REDACTED] will call you ~ 15 mins ahead of CMP342 agenda item on [REDACTED]



nationalgridESO

T [REDACTED]
M [REDACTED]

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. ***Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.***

Annual Leave Advance Notice: None

From: .Box.Cusc.Team

Sent: 30 July 2020 13:41

To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; .Box.Cusc.Team <cusc.team@nationalgrideso.com>

Subject: RE: EXT || CMP342 Consultation Response

Sorry [REDACTED] – we can't include this* as this wasn't within your response to the Code Administrator Consultation and it wouldn't be appropriate to include in a summary of the Code Administrator Consultation responses when it wasn't called out in your response.

Clearly, as you are attending tomorrow as an Observer, there could be opportunity to bring up this point tomorrow and I am happy to speak with the Independent Chair on this.

Happy to discuss

~~*Following a challenge from Muirhall Energy Limited regarding the inclusion of VAT in Securities, National Grid requested an opinion from HMRC. HMRC provided a response to National Grid which confirmed that the Cancellation Charge Secured Amounts were not within the scope of VAT~~



nationalgridESO

T
M

National Grid ESO, Faraday House, Gallows Hill, Warwick CV34 6DA

Normal Working Hours: 7.30am to 3.30pm. **Note that due to current homeschooling commitments, I will be working flexibly and apologies in advance that you may receive replies from me outside normal working hours.**

Annual Leave Advance Notice: None

From: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Sent: 30 July 2020 11:29
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Cc: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [REDACTED] [REDACTED]

Thanks for your email. I accept the changes made in the 'Do you support the proposed implementation approach?' section.

Although, the text in 'Do you believe that the CMP342 Original Proposal better facilitates the Applicable CUSC Objectives?' is background detail which summarises the discussion originally raised by [REDACTED] when the proposal was presented to the CUSC Panel on the 29th May 2020. So I do think that it is relevant to the consultation and this summary.

I appreciate your busy today [REDACTED] but as the deadline is 5pm today I would appreciate if this can be discussed as early as possible to avoid any last minute changes.

Kind regards,

Error! Hyperlink reference not valid.
Muirhall Energy Limited

Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Sent: 29 July 2020 20:51
To: [redacted] <[\[redacted\]@muirhallenergy.co.uk](mailto:[redacted]@muirhallenergy.co.uk)>
Cc: [redacted] (ESO), [redacted] <[\[redacted\]@nationalgrideso.com](mailto:[redacted]@nationalgrideso.com)>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

Many thanks for your email.

I have reviewed your summary below and noted that a couple of points you made weren't in your original consultation response (I have red-lined these), therefore we could not insert into the report. However, I have made some suggestions below in green text which if you agree, can include in the draft final modification report as this wording aligns more to what was submitted in your response.

I am now on annual leave until Monday 3 August, if you would like to discuss the below in more detail then please contact my colleague [redacted] (copied in). Please note, [redacted] is in Workgroup meetings tomorrow so may be unable to answer calls/emails straight away, however he will get back to you when he can. [redacted] will also be in attendance at the CUSC Panel on Friday.

Kind Regards,
[redacted]

Code Administrator Consultation summary	
Question	
Do you believe that the CMP342 Original Proposal better facilitates the Applicable CUSC Objectives?	No Following a challenge from Muirhall Energy Limited regarding the inclusion of VAT in Securities, National Grid requested an opinion from HMRC. HMRC provided a response to National Grid which confirmed that the Cancellation Charge Secured Amounts were not within the scope of VAT. The CUSC and CMP 192 do not provide for the levying of VAT on top of the Cancellation Charge Secured Amounts. Increasing Cancellation Charge Secured Amounts by 20% will have a detrimental effect on consumers costs and have a distortive effect on developer competition.

Do you support the proposed implementation approach?	<p>No</p> <p>This modification should have been progressed via a standard governance route rather than Self-Governance route.</p> <p>The Criteria for self-governance is not met due to the material effect on existing and future electricity consumers, competition and commercial activities in generation and the impact increased costs has on sustainable development.</p> <p>The Cancellation Charge Secured Amounts including a provisional allowance for potential future VAT also gives National Grid a positive cash flow advantage, which highlights why National Grid should not be governing this process.</p> <p>This change will merely increase the costs to Users of providing financial security on a more cost-reflective basis, undermining the key objectives of CMP192 and, in respect of cash deposits, result in a positive cashflow advantage to NGENSO by levying a provisional amount for VAT which may never become due without any resultant benefit such as reduced TNUoS charges.</p>
--	--



Faraday House
Gallows Hill
Warwick
CV34 6DA

Do you have any other comments?	No
---------------------------------	----

Legal text issues raised in the Consultation

No legal text issues raised in the Consultation.

From: [Redacted]
<[Redacted]@muirhallenergy.>

co.uk>
Sent: 29 July 2020 12:32
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [Redacted]

Can you please revise the Summary in the 'Draft Self – Governance Modification Report' to the details below:

Code Administrator Consultation summary	
Question	
Do you believe that the CMP342 Original Proposal better facilitates the Applicable CUSC Objectives?	<p>No</p> <p>Following a challenge from Muirhall Energy Limited regarding the inclusion of VAT in Securities, National Grid requested an opinion from HMRC. HMRC provided a response to National Grid which confirmed that the Cancellation Charge Secured Amounts were not within the scope of VAT. The CUSC and CMP 192 do not provide for the levying of VAT on top of the Cancellation Charge Secured Amounts. Increasing Cancellation Charge Secured Amounts by 20% will have a detrimental effect on consumers costs and have a distortive effect on</p>

	developer competition.
Do you support the proposed implementation approach?	No This modification should have been progressed via a standard governance route rather than Self-Governance route. The Criteria for self-governance is not met due to the material effect on existing and future electricity consumers, competition and commercial activities in generation and the impact increased costs has on sustainable development. The Cancellation Charge Secured Amounts including a provisional allowance for potential future VAT also gives National Grid a positive cash flow advantage, which highlights why National Grid should not be governing this process.
Do you have any other comments?	No
Legal text issues raised in the Consultation	
No legal text issues raised in the Consultation.	

Thank you for arranging for me to join the meeting. I don't believe I got invited to speak at the preliminary meeting but I hope I will have an opportunity on this occasion if required.

Kind regards,

Error! Hyperlink reference not valid.
Muirhall Energy Limited

Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Sent: 28 July 2020 11:56
To: [redacted] <[\[redacted\]@muirhallenergy.co.uk](mailto:[redacted]@muirhallenergy.co.uk)>
Cc: [redacted] (ESO), [redacted] <[\[redacted\]@nationalgrideso.com](mailto:[redacted]@nationalgrideso.com)>; [redacted] (ESO), [redacted] <[\[redacted\]@nationalgrideso.com](mailto:[redacted]@nationalgrideso.com)>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

Apologies for the delay in responding. You have until 5pm on Thursday 30 July to confirm that your response has been included in the CMP342 Draft final modification report.

In regards attending the CUSC Panel on Friday 31 July, I have spoken with the Chair who has confirmed you can dial in as an observer for the CMP342 discussion. As this is quite late on the agenda, my colleague [redacted] will email you 15 minutes before you need to dial into the meeting. Please note as an observer you do have to be invited by the Chair to speak/participate in the Panel meeting.

Kind regards,



nationalgridESO

Mobile [redacted]

Faraday House
Gallows Hill
Warwick
CV34 6DA

From: [redacted] <[redacted]@muirhallenergy.co.uk>
Sent: 23 July 2020 10:54
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

How long do I have to check that my response has been correctly recorded?

Also, I would like to join the meeting on the 31st July for when CMP342 is discussed, if that's okay?

Kind regards,

[redacted] **Error! Hyperlink reference not valid.**

Muirhall Energy Limited

Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Sent: 23 July 2020 09:01
To: [redacted] <[redacted]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

Apologies for the delay in responding to your email.

We will be publishing the Draft Final Self- Governance Report for CMP342 today, this is an opportunity for those who have responded to check that their response has been correctly recorded but not an opportunity to provide further comments.

This will also be sent to the CUSC Panel who will be holding their determination vote on Friday 31 July 2020.

Kind regards,



nationalgridESO
Mobile [redacted]

Faraday House
Gallows Hill
Warwick
CV34 6DA

From: [redacted] <[redacted]@muirhallenergy.co.uk>
Sent: 17 July 2020 11:50
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

Is there any further opportunities for engagement during this process?

I see the next steps below:

3	Draft Code Modification Self-Governance Report - 23 July 2020
4	Final Code Modification Self-Governance Report - 4 August 2020
5	Appeals Window 12 August 2020 to 3 September 2020
6	Implementation 4 September 2020

Kind regards,

[redacted] **Error! Hyperlink reference not valid.**
Muirhall Energy Limited

Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Sent: 09 July 2020 08:32
To: [redacted] <[redacted]@muirhallenergy.co.uk>
Subject: RE: EXT || CMP342 Consultation Response

Hi [redacted]

Many thanks for your email. I can confirm receipt of your response.

Kind regards,



nationalgridESO
Mobile [Redacted]

Faraday House
Gallows Hill
Warwick
CV34 6DA

From: [Redacted] <[Redacted]@muirhallenergy.co.uk>
Sent: 08 July 2020 17:44
To: .Box.Cusc.Team <cusc.team@nationalgrideso.com>
Cc: [Redacted] <[Redacted]@muirhallenergy.co.uk>
Subject: EXT || CMP342 Consultation Response

Dear CUSC Team,

Please find attached a consultation response to CMP342.

If you require any further information please let me know.

Kind regards,

[Redacted] **Error! Hyperlink reference not valid.**
Muirhall Energy Limited

Office: [Redacted] | Direct: [Redacted]
[Redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



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Subject: FW: [EXTERNAL] FW: EXT || VAT discussion

From: [REDACTED]

Sent: 08 April 2020 15:25

To: [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>; [REDACTED]@muirhallenergy.co.uk>

Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>

Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

The response from HMRC and the correspondence behind this only reinforces our position that the security deposits fall outwith the scope of VAT under applicable law.

Our lawyers have also reviewed the CUSC and ConsAg again and provided the following advice:

It is far from clear from the terms of the CUSC that National Grid is entitled to levy VAT (or a provision for future VAT) as part of the Cancellation Charge Secured Amount. The Cancellation Charge Secured Amount is a sliding scale percentage of the "Cancellation Charge". It seems clear that the "Cancellation Charge" is a net amount on which VAT would then be payable.

The "Cancellation Charge" is either the "Attributable Works Cancellation Charge" or, if terminated after the Trigger Date, the "Attributable Works Cancellation Charge plus the "Wider Cancellation Charge". Neither of these concepts expressly include any allowance for VAT. Similarly, the proforma Exhibit MM2 (Cancellation Charge Secured Amount Statement) in the CUSC doesn't provide for any increase of the secured amount to account for VAT.

Our lawyers also reviewed the Final Modification Report, Ofgem approval and Ofgem impact assessment CUSC Modification Proposal 192 which implemented the current User Commitment Methodology set out in section 15 and whilst it was recognised that VAT would accrue on the Cancellation Charge, there is no suggestion in those documents that the financial security would be increased to provide for this.

Therefore, the terms of the CUSC and/or the ConSag do not expressly entitle NGENSO to increase the security amount for an additional provision for VAT. On the absence of any such provision, the security amounts should be calculated and levied on a net basis.

Based on the above, we will not be depositing VAT payments with you until this matter is resolved.

Kind regards,

[REDACTED]
Muirhall Energy Limited

Office: [REDACTED] | [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>

Sent: 06 April 2020 12:29

To: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>
Cc: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Hi [redacted]

Please can I check that you'll be making deposits into the AMS accounts for the shortfalls by the end of the week.

Regards,
[redacted]

From: [redacted] (ESO), [redacted]
Sent: 12 March 2020 16:46
To: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>
Cc: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Hi [redacted]

Please find attached a redacted version of the full e-mail trail.

Note that although our tax manager redacted the post-trigger security percentages, that was not necessary as they are set out in the CUSC. Rather than wait for a revised redacted version, I'm sure you can work off this.

Regards,
[redacted]

From: [redacted] <[redacted]@muirhallenergy.co.uk>
Sent: 12 March 2020 10:58
To: [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>; [redacted] <[redacted]@muirhallenergy.co.uk>
Cc: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

[redacted]
|Thanks for the email.
I think it would be useful to see the email trail , am not sure what points can be commercially sensitive as this request is regarding our securities with NG, however if you think something is an issue for you why don't you redact that item (s). We would need to see the context of the email trail to fully understand the HMRC position.
Happy to discuss.
Regards

[redacted]
Muirhall Energy Limited
Office: [redacted] | Direct: [redacted]
[redacted]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL





From: [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Sent: 12 March 2020 10:49
To: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>
Cc: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

[redacted]

HMRC have come back to us in writing to confirm that the security deposits are outside the scope of VAT. The e-mail from HMRC is attached. The full e-mail trail is not included as it includes some commercial information.

Therefore, we now require you to top up the escrow accounts for the projects where there is a shortfall:

Project	Security Required	Security Placed	Shortfall
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

The normal CUSC period for provision of securities following the issue of new security statements is 30 days. Therefore, we require you to make the security payments **by 11 April 2020**.

Kind regards,

[redacted]

[redacted]

nationalgridESO

M [redacted]
E [redacted]@nationalgrideso.com

National Grid ESO, Faraday House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA



From: [redacted] <[redacted]@muirhallenergy.co.uk>
Sent: 09 January 2020 16:17
To: [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>; [redacted] <[redacted]@muirhallenergy.co.uk>
Cc: [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] <[redacted]@muirhallenergy.co.uk>; [redacted] (ESO), [redacted] <[redacted]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

[REDACTED]

Kind regards,

[REDACTED]
[REDACTED]
Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 09 January 2020 12:54
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Cc: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Thanks for your reply. Our tax manager has provided a reasoned basis for why the security is outside the scope of VAT, and would appreciate [REDACTED] view of this.

Regards,
[REDACTED]

From: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Sent: 09 January 2020 12:43
To: [REDACTED] (ESO), [REDACTED] <[REDACTED]e@nationalgrideso.com>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Cc: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

[REDACTED]

Thank you for providing your VAT managers response, this has been shared with [REDACTED].

We look forward to seeing HMRCs position once they have reviewed the VAT query.

Kind regards,

[REDACTED]
[REDACTED]
Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk

From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 20 December 2019 13:15
To: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>
Cc: [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] <[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

■■■■ ■■■■

I said yesterday that I've had a response from our VAT manager, after further review (including the view of ■■■■ that you provided).

It continues to be our view that the 'Security', in any form, is outside the scope of VAT on the basis that it does not constitute consideration for a supply, i.e. the 'Cancellation Charge'. Security provided in cash is paid into an escrow account and remains the "sole property and entitlement" of the customer (as defined in Section 15, para 6.2.4.6 of the CUSC) until the liability is discharged or it is agreed to offset the cash against the Cancellation Charge. Furthermore, the customer remains entitled to any interest that accrues on the amounts deposited. As the project progresses and the likelihood of completion increases, the level of security reduces and any amounts held in excess of the new level are released to the customer. These facts, in our view, are not indicative of an advance deposit or similar, particularly given the uncertainty that the Cancellation Charge may not arise (i.e. if the connection completes). To treat the cash deposit differently to the other forms of Security would be distortive from a VAT perspective.

We will seek to confirm this position with HMRC, although HMRC are generally reluctant to provide a position.

Please can you forward the above to ■■■■ for their review.

Regards,
■■■■

From: ■■■■ (ESO), ■■■■ <■■■■@nationalgrideso.com>
Sent: Friday, November 22, 2019 3:26:21 PM
To: ■■■■ <■■■■@muirhallenergy.co.uk>
Cc: ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ (ESO), ■■■■ <■■■■@nationalgrideso.com>
Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Hi ■■■■

I had the meeting with our indirect taxes manager, and she has gone away to review the position. Will hopefully be able to provide you a response soon.

Regards,
■■■■

From: ■■■■ <■■■■@muirhallenergy.co.uk>
Sent: 15 November 2019 17:55
To: ■■■■ (ESO), ■■■■ <■■■■@nationalgrideso.com>
Cc: ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ (ESO), ■■■■ <■■■■@nationalgrideso.com>
Subject: Re: [EXTERNAL] FW: EXT || VAT discussion

Thanks ■■■■ Regards ■■■■

From: ■■■■ (ESO), ■■■■ <■■■■@nationalgrideso.com>
Sent: Friday, November 15, 2019 5:15:48 PM
To: ■■■■ <■■■■@muirhallenergy.co.uk>
Cc: ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■ <■■■■@muirhallenergy.co.uk>; ■■■■

<[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>

Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Hi [REDACTED]

Just by way of update, I'm due to sit down with our indirect tax manager next week, so will hopefully be able to provide you an update after that.

Regards,
[REDACTED]

From: [REDACTED] (ESO), [REDACTED]

Sent: 05 November 2019 13:36

To: [REDACTED]@muirhallenergy.co.uk>

Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>; [REDACTED]

[REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>

Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

Thanks, [REDACTED], that's very helpful. I'll send it on to our legal and tax teams, and will get back to you.

From: [REDACTED]@muirhallenergy.co.uk>

Sent: 05 November 2019 09:18

To: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>

Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>; [REDACTED]

[REDACTED]@muirhallenergy.co.uk>

Subject: FW: [EXTERNAL] FW: EXT || VAT discussion

Please see below from [REDACTED]

Once you have had a chance to digest am happy to discuss.

Kind regards

[REDACTED]
Muirhall Energy Limited

Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



From: [REDACTED]

Sent: 04 November 2019 22:48

To: [REDACTED]@muirhallenergy.co.uk>

Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>; [REDACTED]

<[REDACTED]@muirhallenergy.co.uk>

Subject: RE: [EXTERNAL] FW: EXT || VAT discussion

[REDACTED],

The Cancellation Charge Secured Amount is security for payment of the Cancellation Charge which becomes due in the event of termination of a Bilateral Connection Agreement, BEGA and/or Construction Agreement or on reduction of Transmission Entry Capacity.

It most closely equates to a "forfeit deposit", that is to say a deposit against goods or services to be supplied at a future date and which is forfeited if the customer decides not to take up the goods or services (e.g. the Construction Agreement is terminated). In this respect, the mere act of termination of the Construction Agreement triggers the Cancellation Charge.

Whereas, a "returnable" or "security" deposit appears to be limited to a deposit held in security as protection against damage or loss caused by an extrinsic event – and not merely for cancellation of a contract for future works or services. Examples of security deposits are those given when hiring a car to ensure its return and to protect against damage caused to the car during the period of hire or a tenancy deposit to ensure rented accommodation is returned in a good state of repair.

The relevant HMRC guidance is available from the link below.

<https://www.gov.uk/guidance/vat-instalments-deposits-credit-sales>

To put the matter beyond doubt, non-statutory clearance could be obtained from HMRC:

<https://www.gov.uk/guidance/non-statutory-clearance-service-guidance>

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]@muirhallenergy.co.uk>

Sent: 04 November 2019 12:11

To: [REDACTED]

Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>

Subject: [EXTERNAL] FW: EXT || VAT discussion

[REDACTED]

Can you please review below and comment or let me know if a call is preferred.

Regards

██████████
Muirhall Energy Limited

Office: ██████████ | Direct: ██████████
██████████@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



From: ██████████ (ESO), ██████████ <██████████@nationalgrideso.com>
Sent: 04 November 2019 11:44
To: ██████████ <██████████@muirhallenergy.co.uk>
Cc: ██████████ <██████████@muirhallenergy.co.uk>; ██████████ <██████████@muirhallenergy.co.uk>; ██████████ <██████████@muirhallenergy.co.uk>; ██████████ (ESO), ██████████ <██████████@nationalgrideso.com>
Subject: RE: EXT || VAT discussion

Hi ██████████

From our call, I was expecting that you would provided more explanation on your position. I recall from the call that you referred to HMRC guidance.

After the call I did a bit of internet research for my own interest on the matter, and the issue appears to be whether it is a either (i) deposit that is an advanced payment for a service/product, which would be subject to VAT, or (ii) a fully refundable deposit / security, which is not subject to VAT. Below is an extract from an [HMRC guidance note](#). Other various articles also supported this.

14.2.3 Deposits

Most deposits serve primarily as advance payments and will create tax points under paragraph 14.2.2(a) when you receive them. But some types of deposit are not a consideration for a supply and their receipt does not create a tax point.

For example, if you take a deposit as security to ensure the safe return of goods you have hired out, and the deposit is either refunded when the goods are returned safely or forfeited to compensate you for loss or damage, then no tax point is created.

Also, if a third party acts as a stakeholder (as opposed to an agent of the vendor) in a supply of property and receives a deposit, then no tax point is created until the money is released to the vendor.

I don't know whether ██████████ were made aware that these securities are not an advance payment, and are fully refunded at the point the project connects. The cancellation charge only applies if the project terminates pre-connection.

Please can you ask ██████████ to provide a fuller explanation why, in their view, a fully refundable security such as this does create a tax point.

Regards,
██████████

From: [REDACTED]@muirhallenergy.co.uk>
Sent: 28 October 2019 12:43
To: [REDACTED]@muirhallenergy.co.uk>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>; [REDACTED] (ESO), [REDACTED]@nationalgrideso.com>
Cc: [REDACTED]@muirhallenergy.co.uk>; [REDACTED]@muirhallenergy.co.uk>
Subject: EXT || VAT discussion

[REDACTED]
Thanks for your email. We have taken our own tax / financial advice which is:

The security for cancellation charges constitutes a “forfeit deposit” for the purposes of VAT law; VAT is chargeable on the cancellation charge secured amount at the point of invoice (i.e. this is the tax point); and National Grid should issue a valid VAT invoice for the Cancellation Charge Secured Amount.

While we have discussed this internally on calls , this was a direct quote from our advisors at [REDACTED].
Regards

[REDACTED]
Muirhall Energy Limited
Office: [REDACTED] | Direct: [REDACTED]
[REDACTED]@muirhallenergy.co.uk | www.muirhallenergy.co.uk
Muirhall Farm, Auchengray, Carnwath, ML11 8LL



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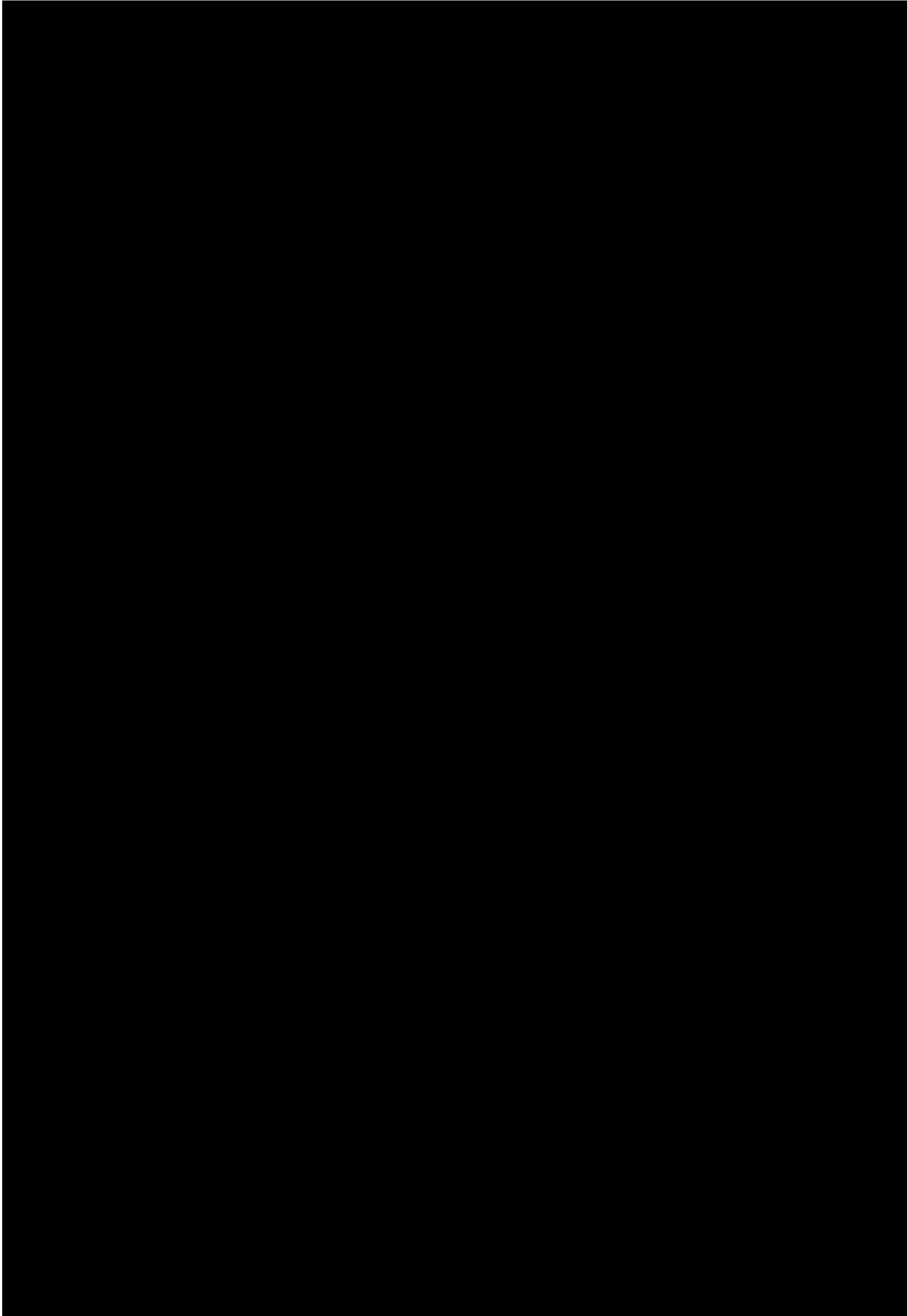
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Minutes from CUSC panel Decision

31/07/20



[REDACTED]

From: [REDACTED] (ESO), [REDACTED] <[REDACTED]@nationalgrideso.com>
Sent: 06 August 2020, 14:20
To: [REDACTED]
Subject: CMP342 - Illustrative Example of how Payment / VAT Flows
Attachments: CMP342 - Illustrative Explanation of VAT.pdf

Hi [REDACTED]

I understand at the last CUSC panel meeting, at which CMP342 was discussed, there was some discussion (and confusion) about how VAT is accounted for between the parties. With our VAT manager, we drew up the attached document to illustrate how the payments and VAT flow for the example where the generator has a cancellation charge liability of £100 + VAT and is required to secure 10%.

This was shared with CUSC panel members today, ahead of the panel meeting at the end of August where a decision on the CUSC proposal is due to be made.

If you have any questions on the attached document, please don't hesitate to come back to me.

Kind regards,
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
nationalgridESO

PLEASE DO NOT SEND ANY HARDCOPY POST UNTIL FURTHER NOTICE

M [REDACTED]
E [REDACTED]@nationalgrideso.com

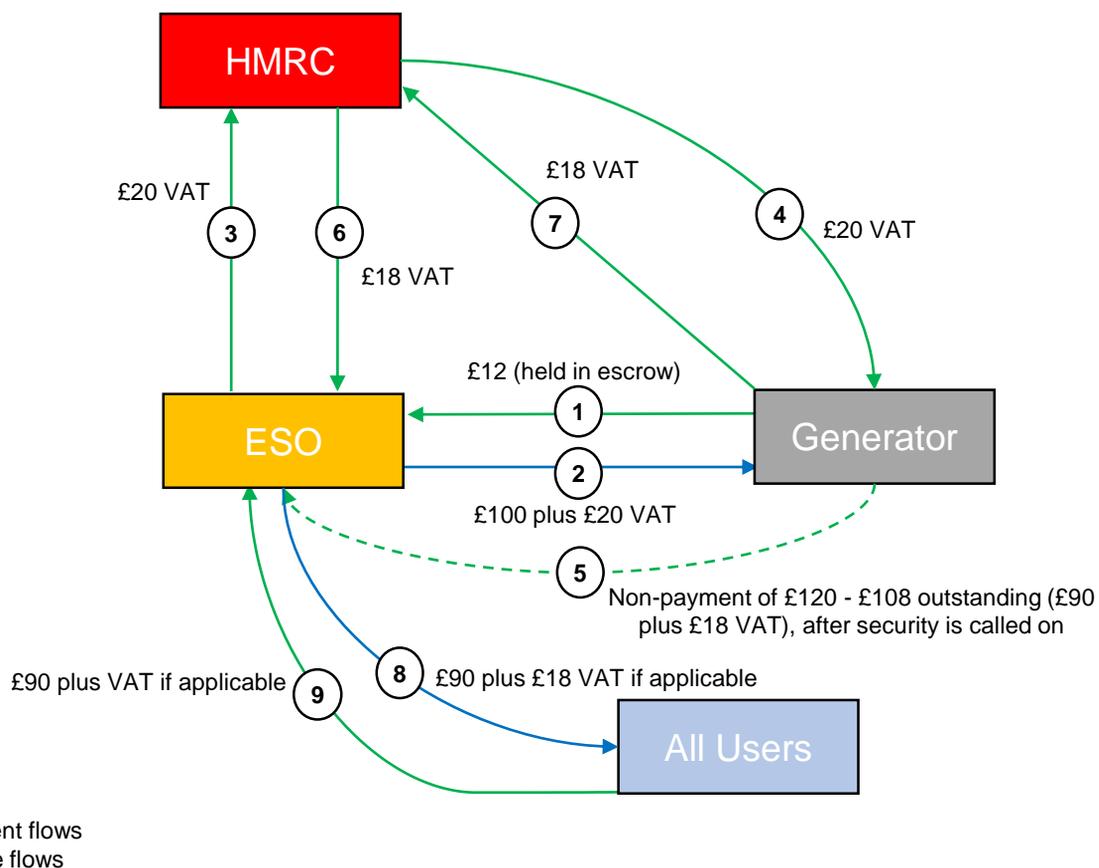
National Grid ESO, Faraday House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA



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Step	Description
1	Generator places security of £12 (outside the scope of VAT) (10% of total Cancellation Charge of £120 - £100 plus VAT of £20) – <i>the £12 is held in escrow until called upon by ESO or returned to the Generator</i>
2	ESO invoices the Generator for Cancellation Charge of £100 plus VAT of £20 (£120)
3	ESO pays HMRC VAT of £20 for the Cancellation Charge via its VAT return* (*based on the date of the invoice at 2 above)
4	Generator can claim the VAT of £20 on the Cancellation Charge via its VAT return* (*subject to Generator's normal recovery rates). Note: the position with HMRC is neutral. If Generator settles the full Cancellation Charge in reasonable time, the process ends at step 4.
5	If Generator fails to make payment of the £120, so security of £12 is called on or released from escrow account (£12 is offset against the £120 outstanding). Revised payment outstanding is now £108 (£90 plus £18 VAT)
6	ESO reclaims VAT of £18 off HMRC under the VAT bad debt relief provisions (this is £18 of £20 paid over to HMRC at step 3 above)
7	Generator is required to repay VAT of £18 to HMRC if previously reclaimed at step 4 above under the same provisions for VAT bad debts. Note: the position with HMRC is neutral
8	TNUoS charges in future year increased by £90 plus VAT if applicable due to the additional cost borne by ESO as a result of non-payment by the Generator. Invoices raised to all Users to recover this amount Please note the VAT payment are not noted illustrative above but for reference these are the same as steps 3 and 4.
9	All Users are make payment to ESO in respect of the increased TNUoS charges of £90 plus VAT if applicable

