

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP373: Deferral of BSUoS billing error adjustment (CMP373)</b>		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	National Grid Electricity System Owner (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	24 May 2021	Implementation date:	1 October 2021

## Background

Balancing Services Use of System (“BSUoS”) charges are the means by which National Grid Electricity System Operator (“NGESO”) recovers the costs associated with balancing the electricity transmission system. BSUoS charges are recovered from demand customers and generators based on the amount of energy imported or exported onto the network (£/MWh) within each half-hour period. The value varies in each half-hourly Settlement Period reflecting the different costs incurred by NGESO in each period. The Connection and Use of System Code (“CUSC”) sets out the Charging Methodology (by which BSUoS charges are calculated) and the manner in which charges are levied to Users<sup>3</sup>.

To enable complete recovery of the daily BSUoS charges incurred, there are two invoicing mechanisms used by NGESO for each Settlement Day of charges: (1) Settlement Final (“SF”) and (2) Reconciliation Final (“RF”). For SF, Settlement Final data is used to calculate BSUoS charges and invoice Users 16 working days after each relevant Settlement Day. For RF, Reconciliation Final data is used to reconcile BSUoS charges and

<sup>1</sup> References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> Per CUSC Section 11, a User is a person who is a party to the CUSC Framework Agreement, other than NGESO.

invoice for any over- or under-recovery 14 months after each relevant Settlement Day. The invoicing mechanism that costs are recovered via has interactions with the Default Tariff Cap, the cap on tariffs for all customers on standard variable and default energy tariffs.<sup>4</sup> The Default Tariff Cap calculation methodology specifically uses the SF Settlement Runs. Any adjustments to BSUoS costs made to the RF invoicing, which occurs after the SF invoicing run, cannot be reflected in the Default Tariff Cap.

As BSUoS charges are not known in advance, Users forecast what they consider their BSUoS liability in any half hour period will be. We understand that some Users will also apply a risk premium to this value – including Suppliers when pricing (non-pass-through) consumer contracts – to account for variance between forecast and outturn charges.

NGESO stated at the Transmission Charging Methodology Forum (“TCMF”) on 8 April 2021 that it intended to recover an additional ~£44m<sup>5</sup> of BSUoS charges because it had erroneously omitted charges of this sum from the SF invoices for certain Settlement Days in the 2020/21 Charging Year. On 19 April 2021, NGESO held a webinar with industry members to provide more detail on this issue.<sup>6</sup> In summary, of the ~£44m of under-recovered BSUoS charges:

- ~£33m of charges related to trading activities covering the period 30 September 2020 – 6 March 2021; and
- ~£10m of charges related to the Accelerated Loss of Mains Change Programme (“ALoMCP”) for the 2020/2021 charging year.

Following the webinar and NGESO’s published position on 20 April 2021<sup>7</sup> it was understood that NGESO intended to:

- Recover the ~£33m related to trading activities through RF invoicing from 26 May 2021 relative to the Settlement Periods in which the costs were initially incurred. NGESO’s publication noted the majority of the cost (~£30m) would be invoiced between December 2021 and February 2022; and
- Recover the ~£10m of ALoMCP costs by smearing them across all Settlement Periods invoiced through SF in 2021/22, with invoicing commencing on 28 April 2021.

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<sup>4</sup> For further information on the Default Tariff Cap, see: <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/default-tariff-cap>

<sup>5</sup> The actual sum is £43,018,799.35, comprised of costs associated to trading activities of £33,163,790.21, and costs associated to ALoMCP of £9,855,009.14 per the CMP373 FMR: [download \(nationalgrideso.com\)](https://www.nationalgrideso.com/download(nationalgrideso.com))

<sup>6</sup> <https://www.nationalgrideso.com/document/190426/download>

<sup>7</sup> <https://subscribers.nationalgrid.co.uk/t/d-84412E8AFD5D82762540EF23F30FEDED>

## **The modification proposal**

Following the 19 April webinar, CMP373 was raised by EDF Energy (“the Proposer”) on 20 April 2021. It initially intended to amend the manner in which the relevant ~£43m of BSUoS charges were to be recovered. The solution for CMP373 was then narrowed by the Workgroup to concern itself solely with the means by which the ~£33m of under-recovered charges relating to trading activities would be recovered. This was because NGENSO’s updated position, for recovery of the ~£10m of the ALoMCP costs to be done through the SF invoicing run across the Charging Year 2021/22 (weighted across all Settlement Days), had by then been published and was in agreement with the Proposer’s position on the ALoMCP costs. This reduced the Proposer’s proposed defect to the recovery of the ~£33m of charges relating to trading activities. It was also clarified that trading activities costs would be invoiced through the RF invoicing run between 19 November 2021 and 4 May 2022.

The CMP373 proposal would amend the approach to recovery of the ~£33m of trading activity costs from NGENSO’s intended approach of recovery through the RF run invoices for the Settlement Periods in which those costs were initially incurred, with billing taking place from the end of November 2021 onwards, to splitting the costs across each SF invoice for all Settlement Periods between 1 October 2021 and 31 March 2022 (“the Proposal”). These Settlement Periods would then be charged for again (albeit that the charge for some periods may be £0) during the RF run, which would take place from December 2022. No Workgroup Alternative CUSC Modifications were raised.

References to ‘the Baseline’ herein therefore reflect NGENSO’s stated position which was to recover the ~£33m of trading activities costs from November 2021 through the RF run invoices for the Settlement Periods in which those costs were initially incurred.

## **Urgency**

On 21 April 2021, the CUSC Panel wrote to us to recommend that CMP373 be treated as an Urgent Modification Proposal following an application by the Proposer. The recommendation for urgency was given in the context of NGENSO’s statements that it intended to recover charges during the RF invoicing run, “from” late May 2021, and was supported by the Panel on the basis that an alternative solution would have to be implemented prior to that date. On 23 April 2021, we granted Urgent status to this

Proposal under Ofgem’s Urgency Criteria (a), as we considered that the Proposal, if not urgently addressed, could have a significant commercial effect on Users. We noted that treating the Proposal as urgent would allow the exploration of potential solutions which may be implemented ahead of NGESO issuing invoices in late May.

We would note that the provision of clear, timely and consistent information that is accessible to all of industry by NGESO is an ongoing expectation and an important factor in helping to avoid the need for unnecessary urgent modifications to be raised. We believe not only the BSUoS charging and process controls should be reviewed and reflected upon (as identified by NGESO) in light of this issue, but also the sufficiency of the communication and information provision to industry in addressing this issue.

### **CUSC Panel<sup>8</sup> recommendation**

At the CUSC Panel meeting on 14 May 2021, a majority of the CUSC Panel considered that CMP373 would better facilitate the CUSC objectives than the Baseline and the Panel therefore recommended its approval. A majority of Panel members considered that the Proposal would better facilitate applicable CUSC charging objective (a) than the Baseline and would be neutral against objective (b), although votes from the other Panel members were mixed between neutral and negative against objectives (a) and (b).

### **Our decision**

We have considered the issues raised by the Proposal and the Final Modification Report (“FMR”) dated 14 May 2021. We have considered and taken into account the responses to the industry consultations on the Proposal which are attached to the FMR.<sup>9</sup> We have concluded that:

- implementation of the Proposal will better facilitate the achievement of the applicable objectives of the CUSC;<sup>10</sup> and
- directing that the modification be made is consistent with our principal objective and statutory duties.<sup>11</sup>

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<sup>8</sup> The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

<sup>9</sup> CUSC modification proposals, modification reports and representations can be viewed on NGESO’s website at: <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc/modifications>

<sup>10</sup> As set out in Standard Condition C5(5) of NGESO’s Transmission Licence, see: <https://epr.ofgem.gov.uk//Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

<sup>11</sup> The Authority’s statutory duties are wider than matters which the Panel must take into consideration and

## Reasons for our decision

We consider this Proposal will better facilitate CUSC charging objective (a), and has a neutral impact on the other applicable objectives. The existing provisions of the CUSC do not outline the relevant processes by which NGENSO's billing error should be rectified, and as such we have made our assessment against what NGENSO have stated is its intended solution (which we refer to as the Baseline).

We recognise that there have been several representations made for and against the differences in timing and approach of the Baseline and the Proposal. In our view, the key factors in evaluating the differing CMP373 proposals are the redistributive implications to Users, i.e. the Baseline enables costs to be recovered from the Users who would have been charged whereas the Proposal uses a roughly corresponding period in 2021/22 to allocate costs to Users in this period, and the extent to which suppliers have equal ability to pass on these costs, i.e. the Proposal enables the costs to be included in the Default Tariff Cap whereas the Baseline does not.

We have found the potential distortions and competitive detriment that may arise from including the cost recovery in the RF invoicing run rather than SF to be determinative in this case. We note the aim of the Baseline is to target as best possible the specific Users who would have paid the charges if they were levied when they should have been. However, in the case of BSUoS these are not directly attributable costs and do not send useful operational signals, so we do not see cost-reflectivity as determinative. Therefore we have found the Proposal to be positive in better facilitating effective competition compared to the Baseline, and both the Proposal and Baseline to be neutral in reflecting costs incurred as set out below, and hence we have decided to approve the Proposal.

***(a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;***

A majority of the Workgroup and Panel members considered that the Proposal would better facilitate charging objective (a), although three of the remaining four Panel members were of the view that the Proposal would be negative against objective (a).

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are detailed mainly in the Electricity Act 1989 as amended.

Opposing Panel members cited reasons such as RF run invoicing providing greater visibility and notice of upcoming charges and more fairly attributing charges to the parties that would have incurred them, and that issues arising with the Default Tariff Cap should be resolved outside the CUSC.

The vast majority of Workgroup and Code Administrator consultation responses supported the Proposal, predominantly because it would allow parties to recover what they consider to be unforeseeable costs over a reasonable timeframe and allow for costs to be reflected in the Default Tariff Cap methodology.

As set out in the FMR, the difference between SF invoicing under the Proposal and RF invoicing under the Baseline is that, under the Proposal, the trading activity costs, which would have been included in the SF invoice runs if the error had not occurred, and hence be applicable for the Default Tariff Cap, can be included in tariffs that are subject to the Default Tariff Cap. This is not the case under the Baseline. This allows all suppliers to recover the costs from consumers, whereas the Baseline would create differences between suppliers based on the suppliers' contractual relationship with their customers. In particular, distortions could arise depending on whether or not a supplier has a substantial proportion of domestic customers on the Default Tariff Cap or non-domestic customer with cost pass-through contracts.

We recognise that a number of points were raised, including that: generators' and suppliers' prices likely would have already been set and a benefit from the missing costs may have been received by some; the Baseline provides a substantial period of notice for the costs and visibility of charges ahead of RF invoices; and some reconciliation is to be expected through the SF/RF process. However, we also consider that ~£33m is substantially larger than the usual reconciliation difference between SF and RF. This may result in a material cashflow burden on some suppliers and generators and we are not convinced that Users could have reasonably foreseen or potentially managed the risk of such an amount being levied.

We believe that giving suppliers the opportunity to accrue for future liabilities within one fiscal year and include the costs in tariffs subject to the Default Tariff Cap, will help smaller and less liquid suppliers manage their cash flow and hence better facilitate competition between suppliers. Our view is that, under the Baseline, there could be distortions between suppliers depending on their customer base (and hence ability to pass on costs). By avoiding these distortions and allowing suppliers equal opportunity to

incorporate these costs in some form through use of SF invoicing instead of RF, which will allow them to be included in the Default Tariff Cap, the Proposal better facilitates competition between suppliers and is positive against objective (a).

***(b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 (requirements of a connect and manage connection);***

The majority of the Panel found the Proposal to be neutral against charging objective (b), however three Panel members voted the Proposal to be negative against this objective, and one member voted it to be positive. Similarly only one Workgroup member considered the Proposal to better facilitate objective (b). Panel members who saw the Proposal as negative against objective (b) were of the view that changing the ~£33m cost recovery to SF invoicing would transfer the cost to parties that would not have been liable had the charges been levied correctly initially as SF invoicing would not be able to attribute charges to those Users in the same way RF invoicing would be, and therefore would reduce cost reflectivity.

We note that, but for the error in not billing the trading activity costs, the costs should have been charged in the SF run for the 2020/21 Charging Year. As such, we consider that both the Baseline and the Proposal can be taken to be imperfect in the context of the BSUoS charging approach to cost-recovery as it is not now possible to recover the charges in this way. We recognise that both the Baseline and Proposal have trade-offs in the way they seek to solve the allocation of the under-recovered costs to Users and settlement periods.

Cost-reflective charging is, in principle, important for providing signals about the marginal or incremental costs that users confer on the system in order to influence choices and behaviour, for instance where to locate. As we have previously said<sup>12</sup>, we do not see balancing services charges as currently sending useful forward-looking signals. As such we do not consider that the recovery of costs under either the Proposal or the Baseline are likely to send any useful cost-reflective signal. We do not believe that

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<sup>12</sup>[https://www.ofgem.gov.uk/system/files/docs/2020/12/response\\_to\\_the\\_second\\_bsuos\\_task\\_force\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/12/response_to_the_second_bsuos_task_force_report.pdf)

suppliers will be able to pass the cost to all consumers who drew power (thereby, broadly, driving the value of suppliers' liabilities) during the relevant Settlement Periods, or that generators will be able to take any different action now as a result of the charges being levied at RF.

Moreover, the Baseline allows the costs to be recovered from the relevant Users at the time the costs were incurred in 2020/21, rather than the Users at the time of the relevant periods of SF invoicing in 2021/22 under the Proposal. However, under the Baseline approach, Users are not incurring charges as they would have through the SF invoicing run had the charges been levied correctly initially, and are instead having charges retrospectively applied, which cannot be considered a forward-looking cost signal. The Proposal enables the costs to be recovered in a similar fashion to how they initially should have been, through SF invoicing over a roughly corresponding period in 2021/22. However, as noted in the FMR, there are concerns over potentially spurious accuracy in using corresponding periods, and charges will not reflect the exact Users who would have been charged for the costs in 2020/21.

Therefore, given the above considerations, on balance we consider both the Baseline and the Proposal to be neutral against objective (b).

## **Legal text**

Whilst we have approved this Proposal, we are disappointed to again see errors in the legal text associated to a CUSC Modification Proposal. In our view, the legal text is sufficiently clear for us to understand the practical operation of the Proposal and for us to form an opinion on the Proposal. These 'housekeeping' errors do not affect our assessment of the Proposal and once resolved, should implement the Proposal as intended. The misalignments to other CUSC provisions in the current legal text that we expect to be resolved are:

- Charges are levied within a Charging Year, rather than a 'financial year' and we are not sure that all of the relevant charges would have been 'due' during 2020/21<sup>13</sup>; and
- 'settlement days' should be Settlement Days to align to the rest of the Charging Methodology and to Section 11 of CUSC to ensure clarity to liable Users.

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<sup>13</sup> [Balancing Services Use of System \(BSUoS\) charges | National Grid ESO](#) – 30 March 2020, "BSUoS Payment calendar" – we invite NGEESO to confirm if the invoices issued in respect of the SF run for Settlement Dates in March 2021 were in fact due within-year



We note that there have been multiple instances of errors in legal text provided by the Code Administrator over the last six to twelve months. As we have said previously, we expect proper legal text to be provided for CUSC Modification Proposals.

### **Decision notice**

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that modification proposal CMP 373: *Deferral of BSUoS billing error adjustment* be made.

**Patrick Cassels**

**Head of Electricity Network Access, Energy Systems Management and Security**

Signed on behalf of the Authority and authorised for that purpose