

Modification proposal:	Connection and Use of System Code (CUSC) CMP312: Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)		
Decision:	The Authority ¹ directs that this modification be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	27 March 2019	Implementation date:	1 April 2018

Background

On 22 February 2019, National Grid Electricity System Operator (ESO, the 'Proposer') raised Connection and Use of System Code (CUSC) modification proposal CMP312. This proposal seeks to change the Transmission Network Use of System (TNUoS) charging methodology set out in the CUSC to correct an error in the legal text introduced with previous approved modification proposals CMP264 and CMP265.³ The Proposer requested that CMP312 be treated as an Urgent CUSC Modification Proposal.

The Proposer and the Panel considered that CMP312 should be granted urgent status, because of the potential significant commercial impact on certain generators (a potentially erroneous £27m charge in total), caused directly by an error in the way in which the legal text enacting a previous code modification was inserted into the CUSC. To avoid this potential impact, the modification, if approved, would need to be implemented before the end of the 2018/19 financial year, before charges for that year are levied on generators.

On 27 February 2019, we decided that CMP312 should be treated as urgent. On its own, the aggregate commercial impact of the error may not be considered to be of "significant commercial impact". But, in these circumstances, where failing to correct an apparently obvious error this charging year could result in the requirement for a re-settlement process after the fact, we believed it appropriate for the modification to proceed on an urgent basis.

The modification proposal

The proposal explains that, following our approval of WACM 4 of CMP264 and CMP265 in June 2017, the CUSC was updated to reflect a move to gross rather than net TNUoS charging arrangements for demand at Supplier Balancing Mechanism Units (BMUs). The purpose of that modification was to prevent embedded generators being paid by suppliers for reducing TNUoS liabilities, with such payments being subsidised by consumers.

The proposal states that an unintended consequence of the text introduced following the approval of that modification is gross charging arrangements being applied to Licensable

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

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

³ CMP264 and CMP265 sought to change electricity transmission charging arrangements for Embedded Generators: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cmp265-gross-charging-tnuos-hh-demand-where>

Power Stations under a Bilateral Embedded Generation Agreement, and Power Stations under a Bilateral Connection Agreement (collectively, for the purposes of CMP312, “Relevant Generators”). The Proposer argues that the CUSC should be updated to reflect the fact that this was not the intention of CMP264 and CMP265, but was rather a clear error in the legal text which was not a solution to the defect noted under the modifications.

The Proposer considers that 14.17.14 of the CUSC should be updated, to ensure that, for Relevant Generators, the Chargeable Demand Capacity will be based on the average of the net import of the relevant BMUs as previously was the case. The modifications following CMP264 and CMP265 took effect from 1 April 2018. As charges for 2018/19 have yet to be invoiced, this amendment would prevent the Relevant Generators being subject to erroneous gross charges for 2018/19.

This CUSC Modification Proposal only corrects TNUoS charging for Relevant Generators, and the ESO will not need to recalculate tariffs following approval of this modification. An early, indicative view of the financial impact of error is a total of c.£30m being charged to Relevant Generators, rather than the c.£3m which they should be liable for under the arrangements that were intended to be in place under CMP264 and CMP265.

The modification would correct a potential over-recovery of revenues from the Relevant Generators. It would not have an impact on other users liable for 2018/19 network charges.

CUSC Panel⁴ recommendation

The CUSC Panel held an extraordinary meeting on 14 March 2019 to record the vote for CMP312. At the meeting, the Panel members unanimously voted that CMP312 would facilitate better the applicable CUSC charging objectives. The Panel therefore recommended its approval.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 18 March 2019. We have considered and taken into account the responses to the Code Administrator consultation on the modification proposal which are attached to the FMR.⁵ We have concluded that:

1. implementation of the modification proposal will facilitate better the achievement of the relevant charging objectives of the CUSC;⁶ and
2. directing that the modification be made is consistent with our principal objective and statutory duties.⁷

Reasons for our decision

⁴ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁵ CUSC modification proposals, modification reports and representations can be viewed on the ESO’s website at <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc?mods>

⁶ As set out in Standard Condition C5(5) of NGET’s Transmission Licence.

⁷ The Authority’s statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

We consider this modification proposal will facilitate CUSC charging objective (e) better and has a neutral impact on the other applicable charging objectives.

(e) Promoting efficiency in the implementation and administration of the CUSC arrangements

All members of the CUSC Panel and four of the five respondents to the Code Administrator consultation agreed that CMP312 facilitates objective (e) better. The other consultation respondent considered CMP312 neutral against this objective.

Our position on CUSC charging objective (e)

We consider CMP312 will facilitate objective (e) better. We agree with the Proposer, Panel and consultation respondents that CMP312 will correct a manifest error in the legal text as part of the implementation of CMP264 and CMP265. Moving to gross charging for Relevant Generators was not intended as part of our decision, nor was it part of the policy development for those modifications. Correcting this manifest error in a timely manner will facilitate the implementation and administration of the CUSC arrangements. It will prevent charges being levied on the basis of incorrect legal text.

Ensuring that the correct charges are effective from 1 April 2018, ahead of the invoicing of those charges, will avoid the need to unwind erroneous charges of approximately £27m to relevant generators. Approval of the modification will prevent the ESO having to recalculate tariffs on the basis of incorrect legal text. Implementation of this modification will result in no impact on network charges for any parties, as, until this modification was raised, the ESO and other potentially affected parties were unaware of the erroneous legal text.

We note that consultation respondents and Panel members have argued that CMP312 facilitates some other charging objectives better, in particular objective (a) relating to facilitating effective competition.⁸ Given the modification is reversing an unintentional change, we have not considered the merits of a move from net to gross charging for Relevant Generators. We consider that objective (e) is the most appropriate objective against which to assess this correction of a manifest error.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority hereby directs that modification proposal CMP312: "Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)" be made.

Andrew Burgess
Deputy Director, Charging and Access
Duly authorised on behalf of the Authority

⁸ CUSC charging objective (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.'