

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP339: Consequential changes for CMP317 and CMP327 (TCR) (CMP339)</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:	17 December 2020	Implementation date:	01 April 2021

## Background

In November 2019, we published our decision (and associated Directions) on the Targeted Charging Review ('TCR') Significant Code Review (the 'SCR Decision').<sup>3</sup>

Once the Directions are implemented, the costs of operating, maintaining and upgrading the electricity grid will be spread more fairly and, through reducing harmful distortions, are expected to save consumers approximately £300m per year, with anticipated £4bn-£5bn in consumer savings to 2040, as outlined in our SCR Decision and Impact Assessment<sup>4</sup>.

The TCR included a review of how residual network charges are set and recovered, and also sought to remove some remaining distortions in network charging, known as Embedded Benefits. Embedded Benefits is the name given to the differences in charging arrangements between Small Distributed Generators and large generators (with capacity >100MW) connected to either the distribution or transmission networks.

Small Distributed Generators do not pay or receive the Transmission Generation Residual ('TGR'). Neither does on-site generation. Since the TGR is currently a negative charge, this is a benefit for larger generators and a disbenefit to Small Distributed Generators and on-site generation. This is being addressed by setting the TGR to £0 under our SCR Decision.

Alongside our SCR Decision, we issued a Direction to NGESO<sup>5</sup> (the 'Direction') to bring forward proposals to modify the CUSC to give effect to the TCR. CMP317/327<sup>6</sup> is an amalgamated modification proposal that seeks to implement certain aspects of the SCR Decision, namely setting the TGR to £0 and implementing the so called 'connection exclusion'. It concerns compliance with the range permitted for average annual transmission charges paid by producers set out in the Commission Regulation (EU) No.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "us" 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> [https://www.ofgem.gov.uk/system/files/docs/2019/12/full\\_decision\\_doc\\_updated.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/12/full_decision_doc_updated.pdf)

<sup>4</sup> See for example, p5 of the SCR Decision.

<sup>5</sup> [https://www.ofgem.gov.uk/system/files/docs/2019/11/cusc\\_direction\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/11/cusc_direction_1.pdf)

<sup>6</sup> CMP317 ("Identification and exclusion of Assets Required for Connection when setting Generator Transmission Network Use of System (TNUoS) charges") and CMP327 ("Removing the Generator Residual from TNUoS Charges (TCR)")

838/2010, referred to in this letter as the 'Limiting Regulation'. The permitted range in Great Britain is €0-2.50/MWh.

This decision is published alongside our determination on CMP317/327.<sup>7</sup>

## The modification proposal

CMP317/327 will amend Section 14 of the CUSC. NGENSO raised CMP339 as a consequential modification to incorporate new definitions into Section 11 of the CUSC to support the proposals being developed under CMP317/327. CMP339 was progressed alongside CMP317/327 as part of a Joint Workgroup.

CMP317/327 resulted in a total of 84 options for change, NGENSO's Original Proposal and 83 Workgroup Alternative CUSC Modifications ('WACMs'). The CMP317/327 proposals are comprised of various permutations of options within seven discrete modules, each of which covers different aspects of the modification (explained more fully in Section 8.0 of the Final Modification Report ('FMR') for CMP317/327)<sup>8</sup>.

The CMP339 legal text provides a range of definitions required to support implementation of the various proposals under CMP317/327. Overall, there were 13 new defined terms proposed by the Workgroup. For some terms, multiple options were put forward for the definition. The terms and definitions are listed in Sections 4.2 – 4.8 of the CMP339 FMR.<sup>9</sup>

Of the 13 definitions, four were included in every CMP339 option, because they are required for each proposed solution in CMP317/327. These definitions are:

- *'Limiting Regulation': 'European Commission Regulation 838/2010 in the context of setting limits on annual average transmission charges payable by Generators (or any subsequent UK law specifying such limits).'*
- *'Adjustment Revenue': 'A positive or negative adjustment to overall Generator TNUoS charges to ensure compliance with the Limiting Regulation.'*
- *'Adjustment Tariff': 'The non locational £/kW tariff that applies Adjustment Revenue to Generators liable for TNUoS charges to ensure compliance with the Limiting Regulation.'*
- *'Ex-Post Reconciliation': 'The charge or credit to Demand and Generator Users in respect of TNUoS charges in the event of a breach of the Limiting Regulation'.*

Different combinations of the remaining nine terms are required for different options under CMP317/327, as described more fully in Section 4 of the CMP339 FMR. These terms are:

- *'Charges for Physical Assets Required for Connection'*
- *'Offshore Generator Only Spurs'*
- *'Onshore Generator Only Spurs'*
- *'Pre-Existing Assets'*
- *'Shared Assets'*
- *'Target Rate for recovery from Generators'*
- *'Relevant BSC Charges'*
- *'Additional Adjustments Revenue'*
- *'Ancillary Services Exclusion'*

<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/cmp317-cmp327-excluding-assets-required-connection-and-removing-transmission-generator-residual>

<sup>8</sup> <https://www.nationalgrideso.com/document/173591/download>

<sup>9</sup> <https://www.nationalgrideso.com/document/174791/download>

CMP339 resulted in twenty-four options for change, the Original Proposal and 23 WACMs. The different proposals reflect different combinations of defined terms, as they are required to support options under CMP317/327. The appropriate proposal to implement through CMP339 is therefore dependent on which option is approved by the Authority in CMP317/327. The full matrix of the CMP339 solutions and the CMP317/327 solutions with which they align is described in Section 4.9 of the FMR.

The Workgroup assessed the Original Proposal, the 23 WACMs and existing arrangements (the 'Baseline') against the Applicable CUSC Objectives.<sup>10</sup> Five Workgroup members identified a specific WACM they felt was the best option. These selections were aligned with the Workgroup Members' preferred option for CMP317/327. The remaining Workgroup members indicated they did not consider there to be a best option, because this is an enabling modification and the best option depends on the Authority's decision on CMP317/327.

### **CUSC Panel recommendation**

At the CUSC Panel meeting on 31 July 2020, a majority of the CUSC Panel voted that the Original Proposal and all 23 WACMs under CMP339 would better facilitate the Applicable CUSC Objectives than the Baseline. This is because they all facilitate the changes required by their related CMP317/327 solutions.

Whilst some Panel Members expressed a preference as to which option was "best", there was no majority recommendation in this regard.

### **Our decision**

We have considered the issues raised by the modification proposal and the FMR dated 13 August 2020. We have also considered the responses to the Workgroup Consultation and the Code Administrator Consultation on the modification proposal that are attached to the FMR.<sup>11</sup> We have concluded that:

- implementation of the Original Proposal of the modification will better facilitate the achievement of the Applicable CUSC Objectives; and
- directing that the Original Proposal of CMP339 be made is consistent with our principal objective and statutory duties.<sup>12</sup>

### **Reasons for our decision**

Our decision on CMP317/327, published today, is to approve the Original Proposal. Our reasons for this are set out in our determination letter.

We are approving the Original Proposal for CMP339 because it is the corresponding solution to the Original Proposal under CMP317/327. The Original Proposal for CMP339

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<sup>10</sup> Applicable CUSC Objectives are defined in paragraph 15 of SLC C10 of NGENSO's Transmission Licence. <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

For clarity, these differ from the Applicable Charging Objectives under which CMP317/327 was assessed.

<sup>11</sup> CUSC modification proposals, modification reports and representations can be viewed on NGENSO's website at: <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc/modifications>

<sup>12</sup> 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 (in particular, but not limited to section 3A) as amended.

will add the necessary definitions to the CUSC for the Original Proposal of CMP317/327 to be effectively implemented.

The definitions required to implement our decision on CMP317/327 are the four universal definitions listed above, and the specific definition of '*Charges for Physical Assets Required for Connection*' which supports our decision in CMP317/327. The definition of '*Charges for Physical Assets Required for Connection*' which enables implementation of the Original Proposal for CMP317/327 is '*Connection Charges and charges in respect of an Onshore local circuit, Onshore local substation, Offshore local circuit and Offshore local substation*'.<sup>13</sup>

We consider this modification proposal will better facilitate Applicable CUSC Objectives (a), (b), (c), and (d) as compared to the Baseline.

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

Of the nine Panel Member votes, five considered that the Original Proposal better facilitated Applicable CUSC Objective (a), whilst three considered it to be neutral, and one considered it to be negative. The Panel Member who considered the Original Proposal to be negative considered that it would not result in the efficient discharge by the transmission licensee of its EU law obligations.

Generally, those Panel Members that considered the Original Proposal to be positive or neutral against this objective were of the view that all of the proposals under CMP339 were valid in that they contained the required definitions to support the corresponding modification options under CMP317/327. This was also the case for voting under the remaining Applicable CUSC Objectives, save where we have identified particular arguments made by the Voting Parties.<sup>14</sup>

*Our decision*

We consider that the Original Proposal better facilitates Applicable CUSC Objective (a) as compared to the Baseline. Our view is that, alongside the implementation of CMP317/327, this modification fulfils obligations placed on NGESO as a result of the Direction, in particular setting the TGR to £0 and implementing a more accurate definition of the 'Connection Exclusion', by introducing the defined term: '*Charges for Physical Assets Required for Connection*'.

For the reasons set out in our decision on CMP317/327, we do not agree that implementation of this modification would result in the transmission licensee breaching its EU law obligations. Rather, our view is that implementation of CMP317/327 and CMP339 will make compliance with the Limiting Regulation more likely.

***(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***

Seven Panel Members considered the Original Proposal to be neutral against Applicable CUSC Objective (b) and two viewed it as negative. These Panel Members believed the

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<sup>13</sup> This definition is required to clarify the interpretation of the Connection Exclusion, as explained in more detail in our decision on CMP317/327

<sup>14</sup> Annex 6 of the FMR details the full Voting Statements of the CUSC Panel, see <https://www.nationalgrideso.com/document/174796/download>

Original Proposal to be detrimental to competition with one Panel Member expressing a view that implementation of any proposal which did not include a target would have a negative impact on competition.

#### *Our decision*

We consider that the Original Proposal better facilitates Applicable CUSC Objective (b) as compared to the Baseline. Along with the changes under CMP317/327, it introduces a more accurate definition of the connection exclusion and removes the TGR, thus removing a distortion in network charging and facilitating competition in the market.

As set out in our CMP317/327 decision, our view is that the approval of the Original Proposal will better facilitate competition when compared with the Baseline. In particular, we consider that the inclusion of a target would negatively affect competition as this would effectively undermine and potentially even negate the impact of setting the TGR to £0, since it would result in some generators benefitting from a negative adjustment to their charges, beyond what is necessary to achieve compliance with the Limiting Regulation.

#### ***(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency<sup>15</sup>***

Seven of nine Panel Members considered the Original Proposal to be neutral against Applicable CUSC Objective (c). Of the remaining Panel Members, one considered the Original Proposal to be positive against this objective, whilst the other considered it to be negative. The Panel Member who considered this objective to be better facilitated was of the view that, in conjunction with CMP317/327, this modification would implement the correct interpretation of 'European legislation' into the CUSC. The Voting Party that voted against was of the contrary view.

#### *Our decision*

We consider that the Original Proposal better facilitates Applicable CUSC Objective (c) as compared to the Baseline, the Limiting Regulation being a relevant legally binding decision of the Commission. Our view is that CMP339, by introducing a term to implement a more accurate (albeit not wholly accurate) definition of the Connection Exclusion into the CUSC, will be more likely to result in compliance with the Limiting Regulation.<sup>16</sup>

#### ***(d) promoting efficiency in the implementation and administration of the CUSC arrangements***

Eight Panel Members considered the Original Proposal to better facilitate Applicable CUSC Objective (d), whilst one considered it to be negative against this objective. The majority of Panel Members held the view that, as CMP339 is necessary to implement any solution under CMP317/327, it is positive in promoting this objective. The Panel Member considering it to be negative felt that the Original Proposal would be inefficient on the basis that it would introduce legally non-compliant terms into the CUSC.

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<sup>15</sup> 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).

<sup>16</sup> Our interpretation of the Limiting Regulation is detailed in Legal Annexes One and Two of our decision on CMP317/327.

### *Our decision*

We consider that the Original Proposal better facilitates Applicable CUSC Objective (d) as compared to the Baseline. It supports and implements our decision in CMP317/327. As set out in our CMP317/327 determination, we consider the Original Proposal to be administratively the most simple to implement.

### **Decision notice**

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that the Original Proposal of the CUSC modification proposal CMP339: *Consequential changes for CMP317/327 (TCR)* be made.

### **Eleanor Wood, Head of Electricity Network Charging**

Signed on behalf of the Authority and authorised for that purpose