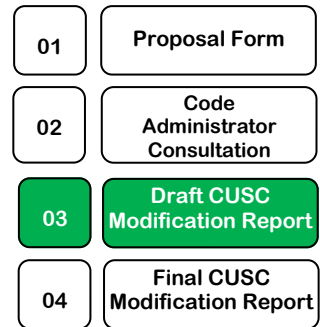



CMP312:


Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)



Purpose of Modification: To address the issue caused to Generator Users liable for demand TNUoS charges which has been created through a clear error in the approved legal text for CMPs 264/5.

 This Draft Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic version of this document and all other CMP312 related documentation can be found on the National Grid ESO website via the following link: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/correcting-erroneous-legal-text-section-14>

The purpose of this document is to assist the CUSC Panel in making its recommendation on whether to implement CMP312.

 **High Impact:** Generator Users liable for Demand TNUoS

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Timetable

The Code Administrator recommends the following timetable:

Request for Urgency Received	22 February 2019
Panel consideration of Urgency	25 February 2019
Ofgem decision on Urgency	27 February 2019
Publish Code Administrator Consultation (5WDs)	27 February 2019
Code Administrator Consultation closing date	06 March 2019
Draft Modification Report to CUSC Review Panel and Industry (3 WDs)	08 March 2019
CUSC Panel Recommendation Vote	14 March 2019
Submit Final Modification Report to Authority	18 March 2019
Authority Decision (7WDs)	28 March 2019
Date of Implementation	29 March 2019



Any questions?

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1 About this document

This document is the Draft Final CUSC Modification Report and it contains the responses received to the Code Administrator Consultation which closed on 6 March 2019.

CMP312 was proposed by National Grid ESO on the 22 February as an urgent modification and submitted to the CUSC Modifications Panel for its consideration on 25 February 2019. The Panel recommended that the Proposal should be considered as Urgent and proceed straight to Code Administrator Consultation. The Authority granted urgency status on the 27 February 2019 and directed that the modification follow the Urgent timescale proposed by the Code Administrator. The letter from the Authority setting out the reasons for urgency is set out in Annex 3.

CMP312 aims to address the issue caused to Generator Users liable for demand TNUoS charges which has been created through a clear error in the approved legal text for CMP264 and CMP265.

Code Administrator Consultation Responses

Five responses were received to the Code Administrator Consultation. A summary of the responses can be found in Section 9 of this document. Overall all respondents agreed that the proposal better facilitated the applicable CUSC objectives.

This Draft Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid ESO Website, along the Panel recommendation on urgency and Ofgem's decision letter.

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/correcting-erroneous-legal-text-section-14>

2 Summary

Defect

An unintended consequence of the text introduced by WACM 4 of CMPs 264/5 is gross charging arrangements being applied to Licensable Power Stations under a BEGA, and Power Stations under a BCA (for the purposes of this CUSC Modification Proposal, "relevant Generators"). The CUSC should be updated to reflect that this was not the intention of CMPs 264/5, is a clear error in the approved legal text and is not a solution to the defect noted under the approved modification(s).

What

This CUSC Modification Proposal only affects TNUoS charging for relevant Generators (as defined in the Defect). No other Parties' charges are affected by this CUSC Modification Proposal. The Company does not intend to recalculate any tariffs should this modification be approved.

14.17.14 of CUSC should be updated, retrospectively with an implementation date of 1st April 2018, to reflect that for relevant Generators the Chargeable Demand Capacity will be, as previously, based on the average of the **net** import of the relevant BMUs.

Retrospective amendment is required to prevent the relevant Generators being subject to gross charges for 2018/19. As demand TNUoS liabilities are incurred at the point of triad, without a retrospective change to the charging methodology, for the year 2018/19, relevant Generators will be charged at a gross level.

Why

Following Authority approval of WACM 4 of CMPs 264/265 in June 2017, the CUSC was updated to reflect a move to gross rather than net TNUoS charging arrangements for demand at Supplier BMUs. The purpose of this modification was to prevent embedded generators being paid by Suppliers for reducing TNUoS liabilities, with such payments being subsidised by consumers.

The Final Modification Report for CMPs 264/5, the Authority Consultation on those modifications, and BSC changes P348/9 speak solely of the effect of these modifications on embedded generation and Supplier demand charges. There is no indication that it was expected that the purpose or outcome of these modifications was that relevant Generators would be charged at a gross level.

This CUSC Modification does not take a position as to the merits of charging relevant Generators at a gross level. It is the Proposer's opinion that the move to gross charging for all demand was not intended by CMPs 264/5 and is a material change which should itself be the subject of a separate and focused modification, rather than something which happens as a consequence of changes to other arrangements.

An early, indicative view of the financial impact of the gross charging arrangement is a total of c.£30m being charged to relevant Generators, rather than the c.£3m which they would have been liable for under the former net regime. These numbers will be updated over the course of this modification as further data becomes available.

How

Draft legal text has been appended to this Modification Proposal Form but it is intended to replace the reference to 'gross import' within 14.17.14 of CUSC with 'net import' so as to preserve the charging arrangements pre-implementation of CMP264/265 for relevant Generators.

3 Solution

14.17.14 of CUSC should be updated to reflect that for relevant Generators, the Chargeable Demand Capacity will be based on the average of the **net** import of the relevant BMUs.

4 Urgency Request

The Proposer requested that CMP312 be treated as an urgent proposal, it should not be treated as self-governance due to its material impact on some parties and should proceed directly to Code Administration Consultation. This is because:

- Whilst CMPs 264/5 were approved in 2017, this is the first year in which reconciliation of all Parties' charges will be based on the new gross methodology and it is the view of the Proposer that no industry party expected the new gross

arrangements to apply to the relevant Generators. Without this change, relevant Generators will be subject to additional TNUoS charges for which we believe they have not prepared – this is likely to constitute a windfall loss to those Parties. Given the circumstances at Triad these will be in the order of c.£30m.

- A decision on this modification is requested before the 1st April 2019 to ensure The Company can bill affected relevant Generators in the way it is believed was always intended.
- Owing to the binary nature of the solution the Authority will either approve the modification in which case charges revert to net for relevant Generators, or they will reject it in which case charges across all demand are based on gross data. This modification proposal should therefore proceed without a Workgroup (as no WACMs are anticipated), directly to Code Administrator Consultation.

The CUSC Modification Panel unanimously agreed that CMP312 met the criteria for urgency and as such considered that it should be treated as an Urgent CUSC Modification Proposal. The Panel concluded that there could be a significant commercial impact on parties, consumers or other stakeholder(s) if this is not treated as urgent.

The CUSC Modification Panel agreed by majority that the modification should proceed directly to Code Administration Consultation. One Panel member requested that this go to a Workgroup because it could cause further unintended consequences.

The Authority decided¹ that CMP312 should be granted urgent status because of the potential significant commercial impact on relevant generators (a potentially erroneous £27m charge), caused directly by an error in the way in which the legal text enacting a previous code modification was inserted into the CUSC. The Authority noted that 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. Were this modification to be approved under a non-urgent timetable, it might result in a consequential requirement to reimburse generators.

The Authority agreed with the urgent timetable proposed by the Code Administrator and that CMP312 should proceed directly to Code Administrator Consultation and if approved be implemented before the end of the 2018/19 charging year.

A copy of the Panel recommendation on Urgency and Ofgem's decision letter can be found in Annex 2 and 3.

¹ The CUSC Panel and Ofgem's views on Urgency for CMP312 is available using the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/correcting-erroneous-legal-text-section-14>

5 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This modification is not in scope of either the SCR of residual charging, nor that of access/forward-looking charges. It is not expected to be contingent on any other work, nor is it anticipated being a dependency in any other piece of work.

Consumer Impacts

This CUSC Modification Proposal seeks to revert to the charging methodology pre-implementation of CMPs 264/5 in respect of relevant Generators in order to correct a clear error in the legal text. It is not in the interests of current or future consumers for industry Parties to face unexpected charges as a result of unintended changes to legal text.

Costs

Industry costs:	
Resource costs	£4,538.00 – 1 Code Consultation <ul style="list-style-type: none">• 0 Workgroup meetings• 0 Workgroup members• 4 consultation respondents
Total Industry Costs	£4,538.00

6 Relevant Objectives

It is felt that this modification is positive against objective a) and e).

Although the relevant legal text was approved in June 2017, The Proposer believes that Parties are likely only to monitor and review changes to CUSC which will affect their own commercial or legal positions. The relevant Generators may not have been aware of the unintended changes that CMPs 264/5 brought about to their own charging regimes given that this was not the purpose of WACM4 of CMPs 264/5. It is likely that those Parties will not have considered their new TNUoS liabilities in their business plans and that these charges would constitute a windfall loss, distorting competition. On this basis, this CUSC Modification Proposal is positive against objective a).

It is important that the CUSC is changed according to the relevant governance processes and that Parties are aware of changes that affect their businesses. It is equally important that legal text errors where found are addressed. As the implementation of WACM4 of CMPs 264/5 carried an unintended consequence to non-Supplier BMU it is appropriate to rectify the legal text within the CUSC. Gross charging for the relevant Generators was not the focus of any prior consultation either by the Code Administrator or The Authority and is considered to be an erroneous and unintended change. Ensuring that changes

managed through the CUSC process are clear to all Parties and that errors are corrected when identified better facilitates objective e).

Impact of the modification on the Applicable CUSC Objectives (Charging):

Relevant Objective	Identified impact
(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;	Positive
(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 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);	None
(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;	None
(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1 *; and	None
(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive
*Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).	

7 Implementation

In order to ensure that relevant Generators are not charged at a gross level for the 2018/19 Charging Year, approval of this CUSC Modification Proposal would need to take place prior to 1st April 2019 and have an implementation date of 1st April 2018. Liability for demand TNUoS takes effect at the point of triad and as such it is not possible to avoid charging under the current methodology unless this change takes effect retrospectively. The Proposer recognises that retrospective changes to charging arrangements are

undesirable, however it is necessary in this particular case, in The Proposer’s view owing to the exceptional circumstances.

If this CUSC Modification Proposal is not approved with a retrospective implementation date but is otherwise approved for the 2019/20 Charging Year and any subsequent years, The Company requires a decision before, and an implementation date of 1st April 2019.

8 Legal Text

Please see Annex 1

9 Code Administrator Consultation Responses:

The Code Administrator Consultation was issued on 27 February 2019 for 5 Working Days and closed on the 6 March 2019.

Five responses were received to the Code Administrator Consultation, these responses are detailed in the table below:

Respondent	Do you believe that CMP312 better facilitates the Applicable CUSC objectives?	Do you support the proposed implementation approach?	Do you have any other comments?
Karen Davies, Seabank Power Limited	Yes. Charging generators based on gross demand instead of net demand was an unintended consequence of CMP 264/5. CMP312 corrects this error and better facilitates Applicable CUSC Objective (b)	Yes.	No.
Paul Mott, EDF Energy	Yes. It is our opinion that the move to gross charging for all demand, accidentally captured in the erroneous word “gross” in the legal text, was not intended by CMPs 264/5, was never discussed at the workgroup, is not (therefore) a feature in any way of the content of the FMR which was the basis of the workgroup and panel vote, and would, if enacted on, represent a material change which would come as a considerable surprise to every CUSC party, and would therefore be detrimental to CAO (e), efficient administration (it would be rather pig-headed to administer the CUSC in accordance with a manifest drafting	Yes. In order to ensure that relevant generators are not charged at a gross level for the 2018/19 charging year that is about to end, the mod needs an implementation date of 1st April 2018.	No.

	<p>error), and to CAO (a) competition. In essence, this is a simple case of a manifest error.</p>		
<p>Joshua Logan, Drax Group PLC</p>	<p>Yes, CMP264 and CMP265 never intended to implement a gross TNUoS demand charging regime for power stations with a BCA or BEGA. CMP312 will change the CUSC to correct a clear error in the implemented legal text of modifications CMP264 and CMP265.</p> <p>Applicable CUSC Charging Objective (a) – Positive</p> <p>This error in the CUSC has a material impact on the demand TNUoS charge liability of affected generators, with some parties being more severely impacted than others. National Grid forecasts have been provided on a net charging basis for power stations with a BCA or BEGA. We agree with the proposer that such additional costs will not have been considered in business plans and that these erroneous charges would constitute a windfall loss with a varying impact across different generators, therefore distorting competition. CMP312 prevents generators becoming liable for such charges, this promotes competition and as such is positive against this CUSC objective.</p> <p>Applicable CUSC Charging Objective (e) – Positive</p> <p>CMP264/265 proposals, consultations and workgroup discussions did not propose or consider the impact of a gross TNUoS demand charging regime for power stations with a BCA or BEGA. The impact or merits of such change were not considered in the modification process or against the applicable objectives, the CUSC must be changed when required to address issues regarding erroneous legal text. CMP312 ensures efficiency in the implementation and administration of</p>	<p>We support the proposed implementation approach, if this approach is followed then the relevant generators will not be liable for the additional erroneous gross TNUoS demand charges, this will ensure affected generators are charged on the basis of forecasts throughout the year, which reflect the intended approach.</p> <p>We welcome the authority’s decision on urgency and note that this modification requires approval prior to 1st April 19 for the proposed implementation approach to be possible.</p>	<p>Should this modification not get authority approval prior to 1st April 19 or be rejected, generators would be obliged to pay such charges. We would expect Ofgem to act in good faith to resolve this issue within the charging year as this was clearly not the intended consequence of CMP264/265. If this cannot be achieved, then reconciliation arrangements are required and we wish to see details on how these will work/ be implemented ASAP.</p>

	the CUSC arrangements by correcting erroneously implemented legal text.		
James Anderson, Scottish Power Energy Management Ltd	<p>Yes. It is clear that there was no intention at any stage of the CMP264/5 modification process to amend the TNUoS demand charging methodology for “relevant Generators” as defined in CMP312. In their determination on CMP312, Ofgem made no reference to the introduction of gross charging for these generators. Introduction of an unintended charge on relevant generators through an accident of legal text would present a windfall loss to those generators which they would be unable to recover through the wholesale market in the relevant charging year. Uncertainty over network charging is detrimental to competition and could lead to higher risk premia being applied in future years. CMP312 therefore better facilitates competition (Applicable ChargingObjective (a)).</p> <p>The ESO Charging Team had not anticipated a change to the charging methodology in respect of “relevant Generators” and would need to amend billing systems in order to raise the appropriate charges. As this is an unintended change, likely to be reversed by a future charging modification, such change may prove short-lived and unnecessary. By avoiding such changes, CMP312 better promotes efficiency in the administration of the CUSC arrangements (Applicable Charging Objective (d)).</p> <p>CMP312 is neutral against the other Applicable Charging Objectives and overall better meets those Objectives.</p>	Yes. Gross charging for “relevant Generators” should not take effect in charging year 2018/19 and therefore CMP312 should be implemented with an effective date of 1st April 2018.	WACM 4 of CMP312 did not seek any different treatment of “relevant Generators” than the other Alternatives developed by the CMP264/5 Working Group and utilised the same “modular” legal text developed for all Alternatives delivering similar outcomes to WACM 4. A similar error would have been introduced from the legal text for those Alternatives.
Harriet Harmon, NGENSO	Yes. We consider that the original purpose of CMPs 264 & 265 was to address the market distortion commonly known as ‘embedded	A retrospective implementation for this CMP has been requested as it is the	

benefits', such that consumers would cease to subsidise payments to smaller embedded generators through a move to gross charging arrangements. We further believe that the intent of WACM4 (the approved WACM for CMPs 264/5) was not for Power Stations with a BCA or Licensable Power Stations under a BEGA (collectively, for the purposes of this CMP, "relevant Generators") to pay triad charges on gross demand data.

It is important that all market participants are engaged in changes which affect or could affect their businesses and we do not consider it appropriate, therefore that a change which aimed to deal with charging arrangements for smaller embedded generators should affect their larger transmission-connected counterparts. Whilst we accept that the legal text for WACM4 of CMPs 264/5 was approved in 2017, it is our view that relevant Generators were unlikely to have paid close attention to the proposal to the extent that they would have prepared for an aggregate c.£30m to be billed between them. Unexpected (windfall) losses damage competition – businesses depend on being able to forecast their financial exposure and where that ability is hampered for any reason, parties face additional costs which they either have to absorb or pass through to market – we believe either places them at a relative competitive disadvantage. As this CUSC Modification Proposal seeks to prevent a windfall loss to generators, it is better than the baseline against applicable objective a).

Where any change has unintended consequences, it is right to address them (to the extent possible) before those consequences affect parties or consumers directly. Allowing changes to one group's charges to influence

most efficient way to ensure that the invoices to the relevant Generators (as described in the CMP) are not sent. There are several scenarios for implementation:

The CUSC Charging Methodology changes to implement WACM4 of CMPs 264/5 took effect on 1st April 2018. Liability for HH demand charges starts in November of each year (that is, if a HH site were not connected between November and February it would have no TNUoS liability).

Any implementation date falling between 1st November and the end of this Charging Year would be ineffectual – the liability has already been incurred and therefore we would have to invoice in accordance with the CUSC as it was at the point of liability. Technically, an implementation date of 31st October 2018 or earlier would deliver the intention of CMP312 (that invoices are not sent to relevant Generators), but for simplicity we feel that

	<p>those of another group, without that influence being debated and considered is not an appropriate governance process and this CMP312 is therefore better against applicable objective e) as, without considering the merits of gross vs. net charging for relevant Generators, it ensures that in this instance, the original intent and purpose of the approved CMPs (264/5) are implemented without broader market repercussions. Whilst not expressly an applicable objective, we have set tariffs for the 2018/19 Charging Year on the basis of demand at relevant Generators being managed at a net level – were we to recover this c.£30m (ie if CMP312 were rejected), it would constitute an over-recovery which would then fall in to the K factor in future Charging Years (per our Licence). We do not believe that an avoidable over- or under-recovery is efficient, or that it sends the right signals to industry participants.</p>	<p>an implementation date of 1st April 2018 – such that we effectively remove any reference to gross arrangements for the relevant Generators – is preferable.</p> <p>Without a retrospective implementation date, any approval would mean charges were levied on relevant Generators on a gross basis for 2018/19, and on a net basis for Charging Years hence.</p> <p>No other parties' charges are affected by this CMP or by a retrospective implementation date.</p>	
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Power Stations with a Bilateral Connection Agreement and Licensable Generation with a Bilateral Embedded Generation Agreement

14.17.14 The Chargeable ~~Gross~~-Demand Capacity for a Power Station with a Bilateral Connection Agreement or Licensable Generation with a Bilateral Embedded Generation Agreement will be based on the average of the gross-net import over each Triad leg of the BM Units associated with the Power Station (in Appendix C of its Bilateral Connection Agreement or Bilateral Embedded Generation Agreement, including metered additional load) during the Triad.

11 Annex 2: Urgency Request

Trisha McAuley OBE
Independent Chair
CUSC & Grid Code Panel

Nadir Hafeez
Ofgem
By email

25 February 2019

Dear Nadir

**Connection and Use of System Code (CUSC) Modification Panel
Recommended Timetable for CMP312 'Correcting erroneous legal text in
Section 14 following implementation of CMPs 264/5 (consequential)'**

This modification aims to address the issue caused to Generator Users liable for demand TNUoS charges which has been created through a clear error in the approved legal text for CMP264 and CMP265. All documentation for these modifications can be located [here](#).

On 22 February 2019, National Grid (ESO) raised CMP312 and requested that the modification be treated as urgent. The Proposer set out their rationale within the proposal form, which is the following:

Urgency has been requested as, whilst CMPs 264/5 were approved in 2017, this is the first year in which reconciliation of all Parties' charges will be based on the new gross methodology and it is the view of the Proposer that no industry party expected the new gross arrangements to apply to the relevant Generators. Without this change, relevant Generators will be subject to additional TNUoS charges for which we believe they have not prepared – this is likely to constitute a windfall loss to those Parties. Given the circumstances at Triad these will be in the order of c.£30m

The CUSC Modifications Panel ("the Panel") considered CMP312 and the associated request for urgency at the CUSC Modifications Panel meeting held on 25 February 2019. This letter sets out the views of the Panel on the request for urgent treatment and the procedure and timetable that the Panel recommends.

Request for Urgency

The Panel considered the request for urgency with reference to Ofgem's Guidance on Code Modification Urgency Criteria. The unanimous view of the Panel is that **CMP312 does meet** these criteria and **SHOULD** be treated as an Urgent CUSC Modification Proposal.

In the discussion, members of the Panel noted the following;

- That there could be a significant commercial impact on parties, consumers or other stakeholder(s) if this is not treated as urgent.

Procedure and Timetable

Having decided to **recommend urgency** to Ofgem, the Panel discussed an appropriate timetable for CMP312.

The Panel agreed that CMP312 subject to Ofgem's decision on Urgency should follow the attached Code Administrators proposed timetable (Appendix 1 **Urgent recommendation**). This was supported by majority view.

Please do not hesitate to contact me if you have any questions on this letter or the proposed process and timetable. I look forward to receiving your response

Yours sincerely



Trisha McAuley OBE
Independent Chair of the CUSC and Grid Code Panel

Appendix 1– Timetables for consideration

Timetable 1: Urgent timetable for implementation by 29 March 2019:

Modification Stage	Date
Request for Urgency Received	22 February 2019
Panel consideration of Urgency 2019	25 February 2019
Ofgem decision on Urgency	26 February 2019
Publish Code Administrator Consultation (5WDs)	27 February 2019
Code Administrator Consultation closing date	6 March 2019
Draft Modification Report to CUSC Review Panel and Industry (3 WDs)	8 March 2019
CUSC Review Panel Recommendation Vote	14 March 2019
Submit Final Modification Report to Authority	18 March 2019
Authority Decision (7WDs)	28 March 2019
Date of implementation	29 March 2019

In the event that CMP312 is not granted urgent status it will be prioritised and a timetable will be drafted in conjunction with the CUSC Panel.

12 Annex 3: Ofgem Decision Letter



Making a positive difference
for energy consumers

Trisha McAuley
CUSC Panel Chair
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Date: 27 February 2019

Dear Trisha,

CMP312 'Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)' – decision on urgency

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 which, in the Proposer's view, corrects an error in the legal text introduced with previous modification proposals CMP264 and CMP265.¹ The Proposer requested that CMP312 be treated as an Urgent CUSC Modification Proposal.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 25 February 2019. On the same day, the Panel wrote to inform us of its unanimous view that CMP312 should be treated as urgent because there could be a significant commercial impact on parties, consumers or other stakeholder(s) if the proposal is not treated as urgent.

We have considered both the Panel's and the Proposer's arguments. We have decided that CMP312 **should be progressed on an urgent basis**. We have set out our reasoning below.

The 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 this 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 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 that this was not the intention of CMP264 and CMP265, but is rather a clear error in the legal text which was not a solution to the defect noted under the modifications.

¹ 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>

The Proposer intends that 14.17.14 of the CUSC should be updated, to reflect that for relevant generators the Chargeable Demand Capacity will be, as previously, based on the average of the net import of the relevant BMUs. 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 gross charges for 2018/19.

This CUSC Modification Proposal only affects TNUoS charging for relevant generators, and the ESO does not intend to recalculate any tariffs should this modification be approved. 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 would have been liable for under the arrangements that were intended to be in place under CMP264 and CMP265.

Panel discussion

The Panel considered the request for urgency by reference to Ofgem's Guidance on Code Modification Urgency Criteria.² The Panel's unanimous view was that CMP312 does meet these criteria and should be treated as an Urgent CUSC Modification Proposal.

The Panel concluded that there could be a significant commercial impact on parties, consumers or other stakeholder(s) if CMP312 is not treated as urgent.

Our views

We have considered the proposal and the Panel's views on urgency. We have assessed the request against the urgency criteria set out in our published guidance, and in particular, whether the proposal is linked to an imminent issue or a current issue that, if not urgently addressed, may cause a significant commercial impact on parties, consumers or other stakeholder(s).

We accept the Proposer and the Panel's case and have decided that CMP312 should be granted urgent status, because of the potential significant commercial impact on relevant generators (a potentially erroneous £27m charge), caused directly by an error in the way in which the legal text enacting a previous code modification was inserted into the CUSC. We note that, 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. Were this modification to be approved under a non-urgent timetable, it might result in a consequential requirement to reimburse generators.

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 believe it appropriate for the modification to proceed on an urgent basis.

We also note that the modification set out by the Proposer would correct a (potential) over-recovery of revenues from the relevant generators, if approved. It would therefore not have an impact on other users liable for 2018/19 network charges.

For the avoidance of doubt, in granting this request for urgency, we have made no assessment of the merits of the proposal and nothing in this letter in any way fetters our discretion in respect of this proposal.

² https://www.ofgem.gov.uk/system/files/docs/2016/02/urgency_criteria.pdf

Next steps

We agree with the majority view of the Panel that the timetable should follow the Code Administrator's proposed urgent timetable to maximise the chances of the change, if approved, being implemented before the end of the 2018/19 charging year.

We are disappointed that the modifications, CMP264 and CMP265, contained an apparent error in the legal text that was not identified in the review of that legal text. We also consider that such an error could reasonably have been identified far sooner rather than leading to unwelcome uncertainty so close to the end of the charging year. We encourage all parties to ensure a robust approach is taken to all change proposals.

Yours sincerely,

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

13 Annex 4: Code Administrator Consultation Responses

CUSC Code Administrator Consultation Response Proforma

CMP312 - Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)

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

Please send your responses by **5:00pm** on **6 March 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not be included within the Final Modification Report to the Authority.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at Shazia.Akhtar2@nationalgrid.com

These responses will be included within the Draft Final Modification Report to the CUSC Panel and within the Final CUSC Modification Report sent to the Authority.

Respondent:	<i>Karen Davies (karen.davies@seabank.co.uk)</i>
Company Name:	<i>Seabank Power Limited</i>
Please express your views regarding the Code Administrator Consultation, including rationale. (Please include any issues, suggestions or queries)	<p><i>For reference, the Applicable CUSC Objectives (Charging):</i></p> <ul style="list-style-type: none">(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;(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 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);(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;

	<p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p>
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* Objective (d) 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 questions

Q	Question	Response
1	Do you believe that CMP312 better facilitates the Applicable CUSC objectives? Please include your reasoning.	Yes. Charging generators based on gross demand instead of net demand was an unintended consequence of CMP 264/5. CMP312 corrects this error and better facilitates Applicable CUSC Objective (b).
2	Do you support the proposed implementation approach?	Yes.
3	Do you have any other comments?	No.

CUSC Code Administrator Consultation Response Proforma

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Any queries on the content of the consultation should be addressed to Shazia Akhtar at Shazia.Akhtar2@nationalgrid.com

These responses will be included within the Draft Final Modification Report to the CUSC Panel and within the Final CUSC Modification Report sent to the Authority.

Respondent:	Paul Mott
Company Name:	EDF Energy
Please express your views regarding the Code Administrator Consultation, including rationale. (Please include any issues, suggestions or queries)	<p><i>For reference, the Applicable CUSC Objectives (Charging):</i></p> <ul style="list-style-type: none">(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;(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 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);(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;

	<p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p>
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Code Administrator Consultation questions

Q	Question	Response
1	Do you believe that CMP312 better facilitates the Applicable CUSC objectives? Please include your reasoning.	Yes. It is our opinion that the move to gross charging for all demand, accidentally captured in the erroneous word “gross” in the legal text, was not intended by CMPs 264/5, was never discussed at the workgroup, is not (therefore) a feature in any way of the content of the FMR which was the basis of the workgroup and panel vote, and would, if enacted on, represent a material change which would come as a considerable surprise to every CUSC party, and would therefore be detrimental to CAO (e), efficient administration (it would be rather pig-headed to administer the CUSC in accordance with a manifest drafting error), and to CAO (a) competition. In essence, this is a simple case of a manifest error.
2	Do you support the proposed implementation approach?	Yes. In order to ensure that relevant generators are not charged at a gross level for the 2018/19 charging year that is about to end, the mod needs an implementation date of 1st April 2018.
3	Do you have any other comments?	No.

CUSC Code Administrator Consultation Response Proforma

CMP312 - Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)

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Please send your responses by **5:00pm** on **6 March 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not be included within the Final Modification Report to the Authority.

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These responses will be included within the Draft Final Modification Report to the CUSC Panel and within the Final CUSC Modification Report sent to the Authority.

Respondent:	<i>Joshua Logan</i> Joshua.logan@drax.com 01757 612736
Company Name:	<i>Drax Group Plc</i>
Please express your views regarding the Code Administrator Consultation, including rationale. (Please include any issues, suggestions or queries)	<i>For reference, the Applicable CUSC Objectives (Charging):</i> (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; (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 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); (c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the

	<p>developments in transmission licensees' transmission businesses;</p> <p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p>
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Code Administrator Consultation questions

Q	Question	Response
1	<p>Do you believe that CMP312 better facilitates the Applicable CUSC objectives? Please include your reasoning.</p>	<p>Yes, CMP264 and CMP265 never intended to implement a gross TNUoS demand charging regime for power stations with a BCA or BEGA. CMP312 will change the CUSC to correct a clear error in the implemented legal text of modifications CMP264 and CMP265.</p> <p>Applicable CUSC Charging Objective (a) – Positive</p> <p>This error in the CUSC has a material impact on the demand TNUoS charge liability of affected generators, with some parties being more severely impacted than others. National Grid forecasts have been provided on a net charging basis for power stations with a BCA or BEGA. We agree with the proposer that such additional costs will not have been considered in business plans and that these erroneous charges would constitute a windfall loss with a varying impact across different generators, therefore distorting competition. CMP312 prevents generators becoming liable for such charges, this promotes competition and as such is positive against this CUSC objective.</p> <p>Applicable CUSC Charging Objective (e) – Positive</p> <p>CMP264/265 proposals, consultations and workgroup discussions did not propose or consider the impact of a gross TNUoS demand charging regime for power stations with a BCA or BEGA. The impact or merits of such change were not considered in the modification process or against the applicable objectives, the CUSC must be changed when required to address issues regarding erroneous legal text. CMP312 ensures efficiency in the implementation and administration of the CUSC arrangements by correcting erroneously implemented legal text.</p>

Q	Question	Response
2	<p>Do you support the proposed implementation approach?</p>	<p>We support the proposed implementation approach, if this approach is followed then the relevant generators will not be liable for the additional erroneous gross TNUoS demand charges, this will ensure affected generators are charged on the basis of forecasts throughout the year, which reflect the intended approach.</p> <p>We welcome the authority's decision on urgency and note that this modification requires approval prior to 1st April 19 for the proposed implementation approach to be possible.</p>
3	<p>Do you have any other comments?</p>	<p>Should this modification not get authority approval prior to 1st April 19 or be rejected, generators would be obliged to pay such charges. We would expect Ofgem to act in good faith to resolve this issue within the charging year as this was clearly not the intended consequence of CMP264/265. If this cannot be achieved, then reconciliation arrangements are required and we wish to see details on how these will work/ be implemented ASAP.</p>

CUSC Code Administrator Consultation Response Proforma

CMP312 - Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)

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Any queries on the content of the consultation should be addressed to Shazia Akhtar at Shazia.Akhtar2@nationalgrid.com

These responses will be included within the Draft Final Modification Report to the CUSC Panel and within the Final CUSC Modification Report sent to the Authority.

Respondent:	<i>James Anderson</i> <i>James.anderson@scottishpower.com</i>
Company Name:	<i>ScottishPower Energy Management Limited</i>
Please express your views regarding the Code Administrator Consultation, including rationale. (Please include any issues, suggestions or queries)	<i>For reference, the Applicable CUSC Objectives (Charging):</i> (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; (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 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); (c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;

	<p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p>
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Code Administrator Consultation questions

Q	Question	Response
1	<p>Do you believe that CMP312 better facilitates the Applicable CUSC objectives? Please include your reasoning.</p>	<p>Yes. It is clear that there was no intention at any stage of the CMP264/5 modification process to amend the TNUoS demand charging methodology for “relevant Generators” as defined in CMP312. In their determination on CMP312, Ofgem made no reference to the introduction of gross charging for these generators.</p> <p>Introduction of an unintended charge on relevant generators through an accident of legal text would present a windfall loss to those generators which they would be unable to recover through the wholesale market in the relevant charging year. Uncertainty over network charging is detrimental to competition and could lead to higher risk premia being applied in future years. CMP312 therefore better facilitates competition (Applicable Charging Objective (a)).</p> <p>The ESO Charging Team had not anticipated a change to the charging methodology in respect of “relevant Generators” and would need to amend billing systems in order to raise the appropriate charges. As this is an unintended change, likely to be reversed by a future charging modification, such change may prove short-lived and unnecessary. By avoiding such changes, CMP312 better promotes efficiency in the administration of the CUSC arrangements (Applicable Charging Objective (d)).</p> <p>CMP312 is neutral against the other Applicable Charging Objectives and overall better meets those Objectives.</p>

Q	Question	Response
2	Do you support the proposed implementation approach?	Yes. Gross charging for “relevant Generators” should not take effect in charging year 2018/19 and therefore CMP312 should be implemented with an effective date of 1 st April 2018.
3	Do you have any other comments?	WACM 4 of CMP312 did not seek any different treatment of “relevant Generators” than the other Alternatives developed by the CMP264/5 Working Group and utilised the same “modular” legal text developed for all Alternatives delivering similar outcomes to WACM 4. A similar error would have been introduced from the legal text for those Alternatives.

CUSC Code Administrator Consultation Response Proforma

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Any queries on the content of the consultation should be addressed to Shazia Akhtar at Shazia.Akhtar2@nationalgrid.com

These responses will be included within the Draft Final Modification Report to the CUSC Panel and within the Final CUSC Modification Report sent to the Authority.

Respondent:	<i>Harriet Harmon</i> (harriet.harmon@nationalgrid.com)
Company Name:	<i>National Grid Electricity Transmission (System Operator)</i>
Please express your views regarding the Code Administrator Consultation, including rationale. (Please include any issues, suggestions or queries)	<p><i>For reference, the Applicable CUSC Objectives (Charging):</i></p> <p>(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;</p> <p>(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 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);</p> <p>(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;</p> <p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.</p>

	<p>These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p>
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* Objective (d) 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 questions

Q	Question	Response
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<p>1</p>	<p>Do you believe that CMP312 better facilitates the Applicable CUSC objectives? Please include your reasoning.</p>	<p>Yes. We consider that the original purpose of CMPs 264 & 265 was to address the market distortion commonly known as ‘embedded benefits’, such that consumers would cease to subsidise payments to smaller embedded generators through a move to gross charging arrangements. We further believe that the intent of WACM4 (the approved WACM for CMPs 264/5) was not for Power Stations with a BCA or Licensable Power Stations under a BEGA (collectively, for the purposes of this CMP, “relevant Generators”) to pay triad charges on gross demand data.</p> <p>It is important that all market participants are engaged in changes which affect or could affect their businesses and we do not consider it appropriate, therefore that a change which aimed to deal with charging arrangements for smaller embedded generators should affect their larger transmission-connected counterparts. Whilst we accept that the legal text for WACM4 of CMPs 264/5 was approved in 2017, it is our view that relevant Generators were unlikely to have paid close attention to the proposal to the extent that they would have prepared for an aggregate c.£30m to be billed between them. Unexpected (windfall) losses damage competition – businesses depend on being able to forecast their financial exposure and where that ability is hampered for any reason, parties face additional costs which they either have to absorb or pass through to market – we believe either places them at a relative competitive disadvantage. As this CUSC Modification Proposal seeks to prevent a windfall loss to generators, it is better than the baseline against applicable objective a).</p> <p>Where any change has unintended consequences, it is right to address them (to the extent possible) before those consequences affect parties or consumers directly. Allowing changes to one group’s charges to influence those of another group, without that influence being debated and considered is not an appropriate governance process and this CMP312 is therefore better against applicable objective e) as, without considering the merits of gross vs. net charging for relevant Generators, it ensures that in this instance, the original intent and purpose of the approved CMPs (264/5) are implemented without broader market repercussions. Whilst not expressly an applicable objective, we have set tariffs for the 2018/19 Charging Year on the basis of demand at relevant Generators being managed at a net level – were we to recover this c.£30m (ie if CMP312 were rejected), it would constitute an over-recovery which would then fall in to the K factor in future Charging Years (per our Licence). We do not believe that an avoidable over-</p>
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Q	Question	Response
		<p>or under-recovery is efficient, or that it sends the right signals to industry participants.</p>
2	<p>Do you support the proposed implementation approach?</p>	<p>A retrospective implementation for this CMP has been requested as it is the most efficient way to ensure that the invoices to the relevant Generators (as described in the CMP) are not sent. There are several scenarios for implementation:</p> <p>The CUSC Charging Methodology changes to implement WACM4 of CMPs 264/5 took effect on 1st April 2018. Liability for HH demand charges starts in November of each year (that is, if a HH site were not connected between November and February it would have no TNUoS liability).</p> <p>Any implementation date falling between 1st November and the end of this Charging Year would be ineffectual – the liability has already been incurred and therefore we would have to invoice in accordance with the CUSC as it was at the point of liability. Technically, an implementation date of 31st October 2018 or earlier would deliver the intention of CMP312 (that invoices are not sent to relevant Generators), but for simplicity we feel that an implementation date of 1st April 2018 – such that we effectively remove any reference to gross arrangements for the relevant Generators – is preferable.</p> <p>Without a retrospective implementation date, any approval would mean charges were levied on relevant Generators on a gross basis for 2018/19, and on a net basis for Charging Years hence.</p> <p>No other parties' charges are affected by this CMP or by a retrospective implementation date.</p>
3	<p>Do you have any other comments?</p>	