Stage 06: Final CUSC Modification Report	At what stage is this document in the process?

CMP295: Contractual Arrangements for Virtual Lead Parties (Project TERRE)

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft CUSC Modification
06	Final CUSC Modification Report

Purpose of Modification: Under BSC P344 and GC0097, and future market arrangements, an aggregator will combine the export capabilities of SVA-registered embedded generation to participate in the BM. In order to facilitate Grid Code compliance, and to ensure appropriate rights/obligations for Virtual Lead Parties (as to be defined in BSC P344), accession to the CUSC is necessary and entry into specific CUSC contracts is required.

This Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic version of this document and all other CMP295 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/contractual-arrangements-virtual-lead

At the Special CUSC Panel meeting on 12 September 2019, the Panel members agreed by majority that the Original was better than the baseline and recommended that it should be implemented.

The purpose of this document is to assist the CUSC Modification Panel in making its recommendation on whether to implement CMP295.

High Impact: Persons who will be Virtual Lead Parties in the BSC

Medium Impact: The Company

The Workgroup concludes:

All Workgroup Members concluded that the Original proposal facilitates the Applicable CUSC Objectives better than the baseline. No potential Workgroup Alternative Consultation Modifications (WACMs/WAGCMs) were proposed.

Contents

Timetable

The Code Administrator recommends the following timetable:	
Workgroup Report presented to Panel	26 July 2019
Code Administration Consultation Report issued to the Industry	31 July 2019
Draft Final Modification Report presented to Panel	12 September 2019
Modification Panel decision	12 September 2019
Final Modification Report issued to Authority	4 October 2019
Indicative Decision Date	8 November 2019
Decision implemented in CUSC	22 November 2019

Any questions?

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1 About this Document

This document is the Final CUSC Modification Report document that contains the discussion of the Workgroup which formed in October 2018 to assess and develop the proposal, the responses to the Workgroup Consultation which closed on 8 February 2019 and the Workgroup vote held on 9 July 2019. The Panel reviewed the Workgroup Report at their CUSC Panel meeting on 26 July 2019 and agreed that the Workgroup had met its Terms of Reference and that the Workgroup could be discharged.

CMP295 was proposed by National Grid ESO and was submitted to the CUSC Modifications Panel for its consideration on 27 April 2018. The Panel decided to send the Proposal to a Workgroup to be developed and assessed against the CUSC Applicable Objectives. The Authority determined that the proposal should ***not*** be considered on an Urgent timescale.

CMP295 deals with the issue that under BSC P344 and GC0097, and future market arrangements, an aggregator will combine the export capabilities of SVA-registered embedded generation to participate in the BM. In order to facilitate Grid Code compliance, and to ensure appropriate rights/obligations for Virtual Lead Parties (as to be defined in BSC P344), accession to the CUSC is necessary and entry into specific CUSC contracts is required. The Workgroup consulted on this Modification and a total of 5 responses were received. These responses can be views in Section 5 of this Report.

Workgroup Conclusions

At the final Workgroup meeting, Workgroup members voted on the Original Proposal. All members voted that the Original Proposal better facilitated the Applicable CUSC objectives and is better than baseline.

Code Administrator Consultation

No responses were received to the Code Administrator Consultation.

CUSC Panel View

At the Special CUSC Panel meeting on 12 September 2019, the Panel voted on CMP295 against the applicable CUSC objectives. The Panel members agreed by majority that the Original was better than the baseline and recommended that the Original should be implemented.

This 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 https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/contractual-arrangements-virtual-lead

2 Terms of Reference

The full Terms of Reference can be found in Annex 1.

Table 1: CMP295 ToR

Specific Area	Location in the report
a) Work closely with CMP291 workgroup to ensure BCAs are compatible	Throughout Section 4
b) Clarity on Scope of VLPs	Throughout Section 4
c) Are there any unintended consequences intended?	Section 4, P9
d) Consider efficient process and transparency of VLPs	Throughout Section 4
e) Workgroup to be mindful of locational aspects	Throughout Section 4
f) Appropriate linkage to P344 and GC0097 and changes required as a result of these modifications	Section 4, P6
g) Avoid discrimination for example 4.3 and 4.4 of draft legal text	Section 4, P10
h) Implementation Arrangements	Section 9
i) Legal Text	Throughout Section 4, Section 11 and Annex 4
j) Cross Section of Stakeholder Representation, Experience and Expertise	Section 4, P12, P14

k) Consideration of supplier additional BMUs	Section 4, P14
l) Applicability across all types of aggregation	Section 4, P10

3 Original Proposal

Defect

Under BSC P344, new entrants to the market will be created – 'Virtual Lead Parties' (hereafter 'VLPs') – and will, in their capacity as the aggregator of SVA-registered generating units, participate in the provision of services under Project TERRE. GC0097 outlines specific technical requirements for these VLPs, including but not limited to communications and operational metering. The VLP will accede to certain sections of the BSC, and the CUSC (including Section 6 thereof which mandates compliance with the Grid Code). In order to enable access to the System and to participate as a BMU, the VLP will need to sign a Bilateral Agreement, however in their current form, no CUSC Exhibit is appropriate for VLPs as they do not own or operate the individual stations. A new Agreement is therefore required for these new users to reflect a) they do not own or operate the stations; b) The Company may require further technical assurances which would ordinarily be in the Appendices F1 onwards to a BELLA and/or BEGA; and c) the sites aggregated by the VLP are SVA-registered and cannot be CVA.

What

It is proposed that in order to deliver a new Agreement for VLPs, the following changes are made:

Section 1 – Introduce VLPs as a User Category and update application process accordingly;

Section 3 – Revisions to amend existing text and new part added to create VLPs

Section 11 – Define VLPs and the new Agreement;

Create a new, or use the extant CUSC Exhibit F (application form) - the Proposer believes this should be decided by the Workgroup rather than form part of this initial proposal;

Create a new Bilateral Agreement under Schedule 2 of the CUSC, reflecting the unique nature of the VLPs' relationship to the generating units – it is proposed that this is a hybrid of a BELLA and BEGA (relevant Clauses only) and utilises the existing Appendix F

This Proposal has one appended document, that being a draft version of the new BA which might apply. Additional legal text should be produced through the Workgroup.

Why

Under BSC P344, new entrants to the market will be created – 'Virtual Lead Parties' (hereafter 'VLPs') – and will, in their capacity as the aggregator of SVA-registered generating units, participate in the provision of services under Project TERRE. GC0097 outlines technical requirements for these VLPs, including but not limited to communications and operational metering. The VLP will accede to certain sections of the BSC, and the CUSC (including Section 6 thereof which mandates compliance with the Grid Code). In order to enable access to the System and to participate as a BMU, the VLP will need to sign a Bilateral Agreement, however in their current form, no CUSC Exhibit is appropriate for VLPs as they do not own or operate the individual stations. A new Agreement is therefore required for these new users to reflect a) they do not own or operate the stations; b) The Company may require additional detail on the technical requirements which would ordinarily be in the Appendices F1 onwards to a BELLA and/or BEGA; and c) the sites aggregated by the VLP are SVA-registered and cannot be CVA.

Without a change to the CUSC to facilitate this new Agreement and to introduce the concept of VLPs, there is a significant risk that there are regulatory/code 'gaps' in the overall TERRE process insofar as it relates to VLPs. Whilst the VLP will be required to adhere to the Grid Code to the extent it is relevant, there are technical requirements outlined to the other registrants of BMUs which will be equally valid for VLPs but which may not otherwise be codified appropriately.

How

Legal text drafting is attached as indicated, but in summary:

It is proposed that in order to deliver a new Agreement for VLPs, the following changes are made:

Section 1 – Introduce VLPs as a User Category and update application process accordingly;

Section 3 – Revisions to amend existing text and new part added to create VLPs

Section 11 – Define VLPs and the new Agreement;

Create a new, or use the extant CUSC Exhibit F (application form) - the Proposer believes this should be decided by the Workgroup rather than form part of this initial proposal;

Create a new Bilateral Agreement under Schedule 2 of the CUSC, reflecting the unique nature of the VLPs' relationship to the generating units – it is proposed that this is a hybrid of a BELLA and BEGA (relevant Clauses only) and utilises the existing Appendix F.

4 Proposer's solution

Legal Text Attached

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

It is linked to but does not influence P344/Project TERRE.

Consumer Impacts

This CMP facilitates other industry changes and therefore supports the benefits thereof.

5 Workgroup Discussions

The Workgroup convened six times to discuss the issue, detail the scope of the proposed defect, devise potential solutions, assess the proposal in terms of the CUSC Applicable Objectives and review the responses to the Workgroup Consultation.

The Workgroup discussed a number of the key attributes under CMP295 and these discussions are described below.

1. **P344 and Virtual Lead Parties**

1.1 The Proposer of CMP295 initially advised the workgroup of the need to include contractual arrangements for Virtual Lead Parties within the CUSC. CMP295 is a consequential change of P344, which was a BSC modification raised by National Grid in June 2016. P344 sought the alignment of the BSC with the European Balancing Project through implementing the Project TERRE GB settlement arrangements

1.2 TERRE (Trans European Replacement Reserves Exchange) requirements. This was in order to facilitate the introduction and implementation of Project TERRE at national level and to comply with the first tranche of obligations in the European Network Codes (ENCs).

1.3 The Third Energy Package was adopted in 2009 by the European Union, and signalled a move towards a harmonised European energy market. In order to help facilitate this move towards harmonisation, cross border European Network Codes (ENCs) were required by the legislation of the Third Energy Package. The ENCs would cover areas of cross border impact.

1.4 The vast majority of the ENCs came into EU law in 2016 with 2 year implementation periods. ENCs, once implemented, take precedence over any pre-existing GB law or arrangements, inclusive of existing licences and codes that impact GB energy market stakeholders. Failure to demonstrate compliance could mean GB running the risk of infraction proceedings and subsequently potential fines to be imposed on GB Market Participants.

1.5 In order to establish the European Balancing Guideline (EBGL), and to subsequently to achieve a pan European Replacement Reserve Balancing Market, Project TERRE itself sought to set up a central platform which could give the European Replacement Reserve Balancing Market close to real time exchange of Replacement Reserves between European Transmission System Operators. Under P344, the concept of a Virtual Lead Party was introduced to the BSC.

1.6 Virtual Lead Parties will be able to aggregate multiple SVA sites (generation and or demand) to create a Secondary Balancing Mechanism Unit (BMU). It is proposed that these VLPs will take instruction to provide Ancillary/Balancing services. The Supplier in question would take TNUoS and BSUoS Liabilities. Currently, the concept of VLPs does not exist in the CUSC. Small embedded parties would not normally have a contractual relationship directly with the ESO, and whilst a VLP may not own or technically operate the site, there would be no TEC requirements.

1.7 From the Proposer's perspective, in order to participate and provide the aforementioned services, Virtual Lead Parties would be required to accede to certain parts of the CUSC. As such, National Grid ESO suggested to the workgroup that their proposal would be to ensure that the following changes are made to facilitate to concept of a VLP into the CUSC:

- Section 1 – Introduce VLPs as a User Category and update application process accordingly;
- Section 3 – A new 'Part C' to be added to describe the general CUSC provisions applicable for VLPs
- Section 11 – Define VLPs and the new Agreement;
- Create a new, or use the extant CUSC Exhibit F (application form) - the Proposer believes this should be decided by the Workgroup rather than form part of this initial proposal;
- Create a new Bilateral Agreement under Schedule 2 of the CUSC, reflecting the unique nature of the VLPs' relationship to the generating units – it is proposed that this is a hybrid of a BELLA and BEGA (relevant Clauses only) and utilises the existing Appendix F.

1.8 The proposer highlighted that some of the technical requirements for VLPs were being delivered by a Grid Code modification, namely GC0097, which sought to modify the Grid Code to set GB processes to allow market participants and the TSO to coordinate with one another to facilitate participation in Project Terre. GC0097 was implemented in September 2018 as per the direction of Ofgem[1].

1.9 The importance of timescales for the modification were highlighted within the workgroup. P344 is due to be implemented into the BSC on 18 February 2019. Once implemented, this would allow Virtual Lead Parties to register and allocate SVA Metering Systems to Secondary BM Units. As such, the CUSC would need to be updated shortly thereafter to ensure the process as a whole is compliant. The workgroup also asked National Grid ESO to make clearer the pre-qualification process that would be involved.

2. Potential Issues with VLPs and Acceding to the CUSC

[1] https://www.nationalgrideso.com/sites/eso/files/documents/GC0097%20Decision%20Letter.pdf

2.1 A workgroup member highlighted that as a result of the solution put forward by the ESO, VLPs would need to accede to the CUSC. As such it was suggested that a lead time would be needed in order to allow parties to make this adjustment and understand their potential obligations under the CUSC. The workgroup also considered whether acceding to the CUSC could potentially provide a barrier for entry. Some workgroup members argued that the complexity of the CUSC could potentially add such a barrier to parties wishing to act as virtual lead parties. The ESO, however, stated that they believed that a bi-lateral agreement at the very least would need to be in place for this process to fully work.

2.2 In terms of bi-lateral agreements, an observer to the workgroup stated that they believed that agreements for a VLP to participate in the Balancing Market should be as simple and as streamlined as possible. The ESO pointed out at several junctures in the discussions that as the solution only required the Virtual Lead Parties to accede to certain sections of the CUSC, as opposed to the whole agreement, therefore this issue was mitigated.

3. Contractual Agreements for Virtual Lead Parties

3.1 During the workgroup meeting, members highlighted that CMP295 would require Virtual Lead Parties to accede to the CUSC, and that as things stand, bilateral agreements form schedules to the CUSC, which enable The ESO to have differences within specific agreements for different Parties. The ESO stated that they envisage all VLPs would have the same front end agreement, however the technical requirement in the appendix could be more specific.

3.2 One workgroup member highlighted scenarios whereby Secondary BM Unit, with multiple sites, may relate to ten sites but not all would be necessarily bidding into TERRE services. The ESO offered their opinion that bilateral agreements do not specify the BMU/Balancing Reserve and different agreements, with the workgroup eventually agreeing that BMUs should and can be referenced in agreements, that there should be separate agreements for the 2 markets as there are obligations in BM that Parties solely active in TERRE should not be party to. However, and observer to the workgroup maintained that a VLP should accede to the CUSC as a BM Participant (noting that within the Grid Code a BM Participant can enter both BM and RR and has specific independent obligations for each market).

3.3 The ESO also highlighted that by virtue of the bilateral agreement there were Obligations on CUSC parties. Some workgroup members and an observer highlighted this is what was agreed and implemented in GC0097, and this may potentially impact on pre-qualification.

3.4 The ESO highlighted that arrangements vary under bilateral agreements. An observer highlighted that sites in a secondary BM Unit may be initially registered to that BM Unit, but can change over time, questioning whether such circumstances may impact on the bilateral agreement.

3.5 Some workgroup members stated their wish to ensure sites comply with metering requirements. If metering requirements change then bilateral agreements may also need to change.

3.6 The workgroup discussed whether metering requirements were already covered elsewhere, with certain workgroup members highlighting SOGL Article 161. The suggestion of recording this in an impact register was put forwards. A Aggregator impact Matrix is already included as an obligation within BC04 (introduced in GC0097).

3.7 The Workgroup noted that that under the Grid Code Connection Conditions and European Connection Conditions, there are specific requirements on BM Participants to meet some basic requirements so they can participate in the BM. These relate to issues such as Control Telephony, Operational metering and electronic data communication facilities.

3.8 The proposer was asked by some workgroup members for their view on how bilateral agreements would work if sites or metering arrangements changed over time. One workgroup member reiterated that it was not his belief that they should sit in the CUSC. The ESO stated that they would speak to their legal team in regards to this, and are working under the assumption that something will be needed to tie VLPs into relevant sections of the CUSC.

4. Unintended Consequences of CMP295

4.1 One workgroup mentioned that VLPs may be able to avoid several obligations across codes, and this would be technically permissible. It was pointed out that the SOGL rules should apply to VLPs and Non-VLPs equally, reducing any chance of discriminatory treatment. The ESO made it clear that they would not be asking VLPs to accede to section 4 of the CUSC. Some workgroup members stated that they were unsure what obligations The ESO were trying to put on the VLPs, as this wasn't particularly clear.

4.2 The ESO stated that they had given broader consideration to this, as The ESO operate the Balancing Mechanism. The point was made that if VLPs wish to participate in the Balancing Mechanism, the ESO should have a form of contract and/or agreement with each participant, despite the recompense being dealt with by Elexon. It was also highlighted that there was a need for uniformity and consistency.

4.3 Elexon as observer asked if the contractual agreements could go into the CUSC itself as opposed to a new type of agreement. The ESO advised that the agreement would be part of the CUSC, and The ESO are not entering bespoke commercial arrangements with different VLPs. This was supported by a workgroup member who highlighted that the nuance was that the agreements are the same summarily, and that if a VLP were using the CUSC and providing TERRE services, arrangements must be the same, and the terms and conditions should also be identical.

5. SVA vs CVA Discrimination and Treatment

5.1 One workgroup mentioned that VLPs may be able to avoid several obligations. The workgroup discussed the treatment of CVA and SVA metering, and whether there would be any discrimination between the two in relation to this

modification. One workgroup member initiated this discussion by enquiring whether CVA registered participants or traditional BM Units must use extant arrangements, and whether this was part of P344. Elexon observed that it did not, as SVA sites must be HH metered under the terms of the BSC.

5.2 The ESO opined that for the purposes of VLPs and Project TERRE, a VLP cannot have anything CVA registered within its Virtual BM Unit. SOGL Article 2 Paragraphs 3a and 3d were highlighted by one workgroup member, as they to point to the contrary. The genesis of the distinction between CVA and SVA was also discussed, with some workgroup members stating that they believed it was actually Elexon that made this distinction as opposed to new Electricity Network Connectees. The workgroup discussed whether this could lead to discrimination based on volume. One observer highlighted that the P344 workgroup interpreted the EBGL to mandate the participation of aggregation facilities at the distribution level. This view was subsequently reinforced by OFGEM's definition that Independent Aggregators are parties who bundle changes in consumer's loads or distributed generation output for sale in organised markets and who do not simultaneously supply the customer with energy.

6. Prequalification and VLPs

6.1 The issue of prequalification was discussed with the workgroup at length. The workgroup noted that Grid Code Modification GC0114 mod is also ongoing in relation to pre-qualification. One workgroup member highlighted that SOGL Article 162 places a performance element to qualification, and that in his opinion this process could all be done through System Operator Guidelines (SOGL), and not through the CUSC.

6.2 It was also opined that if a VLP can no longer meet the Pre-Qualification criteria, then they may not apply participate in Project TERRE related activity, so questions were raised by the workgroup in relation to the ongoing monitoring of this. The ESO is currently seeking legal advice of where prequalification should sit, and will be able to update this section of the report post consultation. This does not preclude the development of the modification in the meantime. During subsequent workgroups, it was clarified that the ESO believes that VLPs would be required to accede to CUSC regardless of Project TERRE and Pre-qualification activity due to the currently designed industry solution for VLPs. As VLPs will be required to establish secondary BMUs, a relation between the VLP and ESO would need to be created even if the VLP had no intention of ever participating in Project TERRE activities.

6.3 Why do VLPs need to accede to CUSC?

Outlined below are reasons the ESO have given to explain why VLPs would need to accede to the CUSC:

- Provides clarity to all industry parties as to what's required of VLPs in an open/transparent way;
- Allows creation of 'standard form' contracts which all VLPs will use;
- Provides protection to ESO and VLPs in terms of what T&Cs will be offered;
- Allows VLPs to participate in CUSC open governance; and

- Supports requirements of Grid Code – acceding to CUSC also accedes to Grid Code

6.4 Why do VLPs need Bilateral Agreements with National Gird ESO?

Outlined below are reasons the ESO have given to explain why VLPs would need bi-lateral agreements with the ESO:

- The ESO own the BM and so need a bilateral agreement with VLPs for them to use the BM (Elexon only administer the BM); and
- Grid Code (through GC0017) contains the high-level requirements for VLPS, these will be detailed in the technical requirements in the VLPA

7. Discussions around Legal Text

7.1 The workgroup held discussions over the proposed legal text throughout the workgroup stages, but most specifically in the second workgroup. Several clauses of the initial legal text were agreed to be amended or removed during workgroup 2.

7.2 The ESO representative presented the draft legal text of the bilateral agreement to the Workgroup. A number of queries were raised by workgroup in relation to the legal text, especially around the use of Boundary Point Metering System in the bilateral agreement and whether this was appropriate. The ESO representative agreed to take on board this feedback however suggested that the legal text was included in the consultation as-is so that the views of the VLP community could also be captured in an updated version of the legal text along with the Workgroup's comments. The Workgroup agreed that this was a pragmatic approach as they could also raise their comments on the legal draft via the consultation.

7.3 In addition to the draft version of the aforementioned legal text, the ESO would require Virtual Lead Parties to accede to the CUSC using the CUSC accession agreements documented as Exhibit A to the CUSC.

7.4 Post Consultation, The Workgroup held various discussions around the Legal Text which are documented in paragraph. The consultation responses (detailed in section 5) and also workgroup discussion required revisions to the legal text, which the ESO took away and amended accordingly. The full revised version of the legal text is in Annex 4 of this report for consideration.

8. Workgroup Diversity and Knowledge Base

8.1 The workgroup on several occasions discussed whether the current membership of the workgroup was sufficient in terms of expertise, as it did not include any parties who were potential Virtual Lead Parties. The Code Administrator went back to industry in order to source new workgroup members who were VLPs, but none came forward. As such, the workgroup expressed that they would really value the input of Virtual Lead Parties to this consultation in order to fully inform the work of the working group.

9. Interactions with CMP291

9.1 When CMP295 was initially raised, the modification was directed to be progressed with CMP291: *"The open, transparent, non discriminatory and timely publication of the harmonised rules for grid connection (in accordance with the RfG, DCC and HVDC) and the harmonised rules on system operation (in accordance with the SOGL) set out within the Bilateral Agreement(s) exhibited in the CUSC".* The reason for this was twofold; namely logistical and some overlaps in subject matter, especially in regards to Bilateral Connection Agreements.

9.2 During the lifecycle of this modification, it was determined that CMP295 should be split out due to impending Project Terre deadlines in Q4 of 2019. Subsequently, CMP291 and CMP295 are progressing separately, but the workgroup is mindful of any crossovers in regards to BCAs and will continue to check in throughout the ongoing modification process.

10. Post Consultation Discussions

10.1 The workgroup convened on a further two occasions post workgroup consultation. The workgroup initially considered the 5 responses received to the consultation in detail, all of which can be found in section 5 and also Annex 3 of this report.

10.2 In the continued workgroup consultation discussions, several aspects of CMP295 were discussed in order to develop the final solution which would enable Virtual Lead Parties to enter in to contracts as Virtual Lead Parties within Project TERRE.

10.3 Having reviewed the workgroup consultation responses, three particular issues which had been highlighted within the consultation was discussed and addressed. These were: **1. The requirement for a 24 hour, 7 days a week contact for VLPs**; **2. Use of PTSN** and **3. The requirement for accuracy within 1% for metering**

10.4 The workgroup discussed whether parties would have to have 24:7 communication operability to operate as a VLP. It was opined by some members of the workgroup that this was a particularly onerous stipulation to place on potentially small parties, who would more likely that not only be able to provide a contact within office hours.

10.5 The ESO stated that contact can be managed virtually if required. Workgroup members said that they didn't ultimately think that this was necessary or sometimes feasible for smaller TERRE participants. However, the ESO pointed out that the energy system operates on a 24/7 basis.

10.6 It was also opined that it would be would be up to the VLP to ensure data submitted to show it was unavailable for use. The ESO also mentioned they do not expect the VLP to have a full manned control room, but someone who can manage the assets remotely 24:7. Some workgroup members maintained that this was onerous.

10.7 The workgroup concluded that it was an issue with the Grid Code rather than CUSC. The requirements are stipulated there and these CUSC arrangements accurately reflect them as it. If/when the Grid Code is changed then the CUSC agreements will need to be updated

Use of PTSN and Accuracy within 1% for metering

10.8 During the consultation, concerns were expressed in regards to the use of PTSN and the need for metering accuracy within 1%. If a VLP was to become party to the CUSC, there would be a need for compliance on both of these issues.

10.9 Workgroup consultation provided feedback that some of the requirements were outdated and may not be viable in the long term (PTSN and fax machine). The ESO responded to this feedback by updating the legal accordingly, however the requirements consulted upon were the current requirements in Grid code. The ESO updated the legal text to reflect that more modern equivalents would also be allowed if agreed with the ESO.

10.10 In relation to the 1% metering accuracy, the workgroup consultation provided feedback that this may be onerous for VLPs who may not have a metering system of sufficient accuracy installed at a site, but is compliant with the CoP for such a site. The ESO updated this to refer to 1% or as per the relevent CoP for metering.

10.11 Prior to the final workgroup, the ESO considered the issues around both PTSN and the need for 1% metering accuracy. In the period before the final workgroup, the ESO made changes to both the bi-lateral agreement and the proposed legal text, which can be found in annexes to this report. The workgroup agreed that the changes made to both the bi-lateral agreement and the legal text had been addressed by the changes made by the ESO.

Consideration of Additional Supplier Unit

10.12 Additional supplier units were considered by the Workgroup post consultation, and was deemed not to affect the modification as suppliers are required to accede to the CUSC as part of their Use of System application and so they are captured by the requirements of CUSC via this route. There is no interaction between CMP295 and the ability of a Supplier (once acceded to CUSC) to request additional BMUs in the view of the workgroup.

Attempts to Diversify the workgroup membership

10.13 As referred to in Section 4, Paragraph 8.1, the workgroup looked to diversify the workgroup. The workgroup itself did not attract the required interest from Virtual Lead Parties, but 2 new workgroup members joined the group post consultation, which was needed in order to attain quoracy, as a prior workgroup member left the workgroup. These members were not able to vote as they had not met the required number of meetings in order to do so as set out in the Terms of Reference in Annex 1 of this report.

6 Workgroup Consultation responses

The CMP295 Workgroup sought the views of CUSC Parties and other interested parties in relation to the issues noted in this document and specifically in response to the questions highlighted in the report and summarised below:

The CMP295 Workgroup Consultation was issued on 18 January 2019 for 15 Working Days, with a closing date of 9 February 2019. 1 additional question to the standard Workgroup consultation questions was asked.

5 responses were received to the Workgroup Consultation and are detailed in the table below.

Response from	Q1: Do you believe that CMP295 Original proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives?	Q2: Do you support the proposed implementation approach?	Q3: Do you have any other comments?	Q4: Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	Q5. Do you have any specific comments on the proposed wording of the bi-lateral agreements
SSE Plc.	Yes. SSE agree that a modification is required to support the introduction of Project TERRE within GB Trading Arrangements, complementary to approved modifications P344 and GC0097.	Yes	Given that this Modification concerns the terms and conditions related to balancing, we would remind the TSO of their legal obligations in respect of Articles 4, 5, 6 and 10 of EBGL and	The proposed wording of the 'bi-lateral' agreement is incompatible with EBGL and in particular the terms and conditions related to balancing required in accordance with Article 18 (and the approval / amendment	SSE included a comprehensive response in regards to Bi-lateral Agreements. Please see full response in Annex 3 of this report.

	SSE agree that there is a need for the GBESO to introduce a contractual mechanism that binds VLPs to Grid Code obligations introduced by GC0097 that allows GBESO to take effective action in the event of non-compliance. SSE agree, in line with P344 and GC0097, that it is appropriate that a lighter touch approach be applied to VLPs acceding to the CUSC, which ensures that only relevant parts of the Code become applicable. In principle, SSE would prefer to see the Terms & Conditions required to bind VLPs to the CUSC, and their obligations under the Grid		in particular the need for them to follow the procedure set out in Article 6(3). In regard to associated CUSC changes we would remind the TSO of the legal certainty that they have identified with the Option 1 and Option 2 approach in the paper, concerning Grid Code and CUSC changes, produced last Autumn.	procedures set out in Articles 4, 5, 6 and 10) for balancing service providers (BSPs) and balance responsible parties (BRPs). For the avoidance of doubt, this includes Users who, according to CMP295, would be VLPs. The proposed VLPA relates to a 'Standard Product' within the meaning given to that in EU law – Article 2(28) of EBGL. As Annex 1 to the TSO's proposal of 18th June 2018 submitted to the NRA set outs, Project TERRE related matters fall wholly within the vires of the terms and conditions related to balancing which the TSO is legally required to produce and	

	Code, wholly set out within the body of the Code itself rather than set out in a bilateral contract/exhibit to the CUSC. Notwithstanding this preference, the new exhibit for VLPs should not allow any bilateral/negotiated agreement to vary terms and conditions, in line with EBGL requirements. All terms and conditions must remain standard and transparent (we highlight some concerns in this respect in response to Q5 below). Any variance should be limited to the list of technical assets comprising the Secondary BM Unit. On balance, SSE believes that the original proposal better facilitates			operate to and, if appropriate, it can only seek amendment to via the explicit procedure set out in Article 6(3) of EBGL. The TSO (or the VLP) does not have the vires to amend such terms and conditions related to balancing (and neither does the NRA have the power itself to delegate its – NRA – powers in this matter to the TSO) without following the amendment procedure in Articles, 4, 5, 6 and 10 of EBGL. By way of evidence for this we would refer the Workgroup to Ofgem's letters of 11th December 2018 to the BSC Panel and 4th February 2019 (concerning amending the TSO's 18th June 2018	

	ACOs (b), (c) and (d) for the reasons set out by the Proposer.			proposal) – see for example: "once we are confident that the Article 18 submission is robust that we [Ofgem] would approve it and that the existing provisions in the current regulatory framework would become the official terms and conditions related to balancing as referred to in Article 18 EBGL. At this stage, we expect that any amendment to those terms and conditions would comply with the amendment processes set in the EBGL." [emphasis added] and "The relevant provisions …. required for compliance with Article 18, need to be transposed into the GB	

				network codes so that we [Ofgem] can have a clear and transparent role in approving and amending them in the future." [emphasis added] Therefore, the proposed wording will need to be changed to ensure legal compliance. Failure to do so will render the TSO vulnerable to acting in a way that is incompatible with EU law. In this regard we are mindful that even if the current wording in CMP295 were to be approved by the NRA (which, for the legal reasons we here note, is highly unlikely) this would not prevent the risk of legal action, on the ground of non-compliance with the	

				primary law (namely in this case EU law) being taken against the TSO. In particular, we would note the following seven specific items in the proposed legal text: Firstly “2.1.1 The Company and / or the User as appropriate having received the derogations (if any) required in respect of the Grid Code.” We would remind the Workgroup of the statement from the Authority in it’s 11th December 2018 letter1, in answering question 2, namely: “Article 62 EBGL does not provide the ability to derogate from the obligation set in Article 18.”	

				Therefore we do not believe that it is legally possible for either the TSO or the User to seek, or obtain, any derogation(s) from the Grid Code in respect of any requirements associated with the terms and conditions related to balancing. Secondly "3.2 ….The data fields, format, frequency and method of submission from the User to The Company shall be agreed between the parties acting cooperatively and reasonably." For the reasons noted elsewhere in this response, it is not possible for the TSO and the User to agree different data fields, format, frequency and	

				method of submission than the harmonised and transparent requirements that all providers of the Project TERRE Standard Product are; in accordance with the obligations set out in the terms and conditions related to balancing; required to comply with. Furthermore, allowing the TSO and the User to agree differences would be granting those parties the power to derogate from the EBGL Article 18 requirements which, as we have noted above, is not permitted by any party – even the NRA cannot grant a derogation in respect of Article 18 matters.	

				Notwithstanding the above, allowing the TSO and the User to agree such differences would also affect cross border trade (which would be incompatible with Article 8(7) of Regulation 714/2009) and be determinantal to competition (in contravention of the Treaties of the Union) as it would place the User in an advantageous (or, less likely, disadvantageous) position compared to other market participants that are all providing Project TERRE bids both within GB but, just as importantly, also within other Member States. In addition to the above, as this proposed wording	

				relates to data provision for balancing services under EBGL this means that the requirements of SOGL are relevant to this CMP295 proposal. In this respect we would reiterate the need to fully comply with the obligations, in SOGL, as regards the TSO having to apply a common minimum requirement for data. Variations to the common minimum requirements for data, as proposed by CMP295, could be said therefore to be incompatible with SOGL. Finally, given that the TSO and / or NRA can be considered to be emanations of the state, the provision of such an advantage to one (or more) User(s) could	

				amount to State Aid. In this regard, we refer the Workgroup to the European Commission's webpage2 on State Aid and in particular we would bring to the Workgroup's attention: "A company which receives government support gains an advantage over its competitors." And "State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities." [emphasis added] For the avoidance of doubt, allowing an undertaking (such as a VLP) an advantage in the form of the data fields, format,	

				frequency and method of submission, when compared to other undertakings, would clearly fall within this State Aid definition. As an aside, we would also remind the TSO of it's Licence obligations to comply with the CUSC and in particular, as it relates to them exercising Good Industry Practice3. Why as a "skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances" would the TSO place different requirements on different Users where they are all engaged in providing the same balancing service, namely the	

				Project TERRE Standard Product, under the same or similar circumstances ? Thirdly “4.2 ….where The Company reasonably requires such compliance and has specified such a requirement in respect of such Generating Units and/or Demand Control in this VLPA.” We note that the TSO is obliged by Article 18 of EBGL to set out all the necessary requirements concerning balancing in the context of Standard (and Specific) Products in the terms and conditions related to balancing in it’s Article 18 EBGL proposal to the Authority (which it did on	

				18th June 2018). It is not possible for the TSO to apply (or dis-apply) secret, special requirements (in a discriminatory manner) on one (or more) User(s) without this being part of the terms and conditions related to balancing. Therefore the TSO will need, in the CMP295 proposal, to ensure that the requirements in respect of Generating Units and / or Demand Control Users are applied to all. Fourthly "5.4 Subject to clause 7.1, if the User or The Company wishes to modify alter or otherwise change the technical conditions or the manner of their operation under Appendix F5 to	

				this VLPA this shall be deemed to be a Modification for the purposes of the CUSC." For the detailed reasons we have already provided under the first, second and third points above, it is not possible for the User or the TSO to modify, alter, or otherwise change the technical (or other, non-technical) requirements or the manner of their operation as they form the terms and conditions related to balancing. To do otherwise (as this wording in 5.4 suggests) would mean that the TSO would be acting in a non-harmonised, non-transparent and	

				discriminatory manner. Furthermore, it would also leave the User who relied on any such 'Modification' with no legal certainty. That having been said, we would remind the Workgroup that amendments to the terms and conditions related to balancing are, of course, permitted as long as they comply with the procedure noted in Article 6(3) EBGL; which Ofgem also referred to in a number of places in its letters of 11th December 2018 and 4th February 20194. Fifthly "7.2 The Company and the User shall effect any amendment required to be made to this VLPA by the Authority as a result of a	

				change in the CUSC or the Transmission Licence, an order or direction made pursuant to the Act or a Licence, or as a result of settling any of the terms hereof. The User hereby authorises and instructs The Company to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time." Whilst we have sympathy with the principle of this proposed wording, we would remind the TSO that amendments to the terms and conditions related to balancing have to follow the procedure set out in Article 6(3) of EBGL. This cannot be circumvented via any bi-lateral agreement	

				even if (which we do not believe will happen) Ofgem were to somehow agree to this by approving the currently proposed wording of the VLPA in this consultation. On a related matter, we are mindful that such amendments may have arisen from, for example, a CUSC or Transmission Licence change and; as we detailed in our reasoning5 concerning the Option 1 and Option 2 approach in our P374 submission; there are options as to how this can be legally achieved in a way that complies with the procedure set out in Article 6(3) of EBGL. Sixthly “7.3 The	

				Company has the right to vary Appendix F5 to this VLPA to reflect any changes necessary in the event of change to the documents or standards referred to in Appendices F5." For the reasons detailed in the five points above, it is not legally possible for the TSO to unilaterally vary the conditions or requirements in respect of terms and conditions related to balancing. The only way this can be achieved is by way of the procedure set out in Article 6(3) of EBGL. Seventh In light of the detailed comments made in the preceding six points, the wording in 7.1. of the	

				proposed legal text needs to be amended and we have provided appropriate changes below: "7.1 Subject to 7.2 and 7.3, n No variation to the terms and conditions in this VLPA is permitted. Variations to the list of the Users' site(s) / location(s) covered by this VLPA shall not be effective unless made in writing and signed by or on behalf of both The Company and the User."	
Npower Business Solutions	We believe that the proposed original better facilitates Applicable CUSC Objectives (a), (d) and (e) than the baseline: • Facilitating (a) because it allows implementatio n of TERRE and independent BM access, which will	npower Business Solutions supports the implementation approach proposed and note that we recognise that VLPs have adequate time to accede to the CUSC in advance of the expected TERRE go-live date in December 2019.	npower Business Solutions supports the implementat ion approach proposed and note that we recognise that VLPs have adequate time to accede to the CUSC in advance of the expected	We would encourage the Code Administrator to consider the make-up of this (and other) working group(s) to ensure that there is appropriate representation from across the industry – extending invitations beyond the conventional thermal	1. We would emphasise the importance that the content takes account of the potential implementation of BSC modifications P375 and P376 2. We note the requirement for DSR operators to be manned and ready for communication with National

	facilitate competition. • Facilitating (d) by implementing TERRE in GB, ensuring consistency with the requirements of the European Balancing Guideline (EBGL). • Facilitating (e) by providing a means of ensuring that Virtual Lead Parties (VLPs) are compliant with their obligations under the CUSC .		TERRE go-live date in December 2019.	generators, to include suppliers and also the independent aggregators (or their representative Trade Associations i.e. the ADE and Energy-UK).	Grid on a 24/7 basis, given that several entities operating in this space intend only to offer balancing services for part of the day we would suggest that it would be more appropriate for the requirement to reflect the need to manned and ready for communication during any periods that providers are offering balancing services 3. We would request further information as to why there is a requirement for +/-1% metering accuracy which appears to be at a higher accuracy than settlement metering.
The ADE	The original better facilitates Applicable CUSC Objectives (a), (d) and (e) than the baseline. It facilitates (a) because it allows implementatio n of TERRE	The ADE supports the proposed implementation approach and highlights the importance of ensuring that VLPs have enough time to accede to the CUSC in advance of TERRE's go-live data of Q4	The Workgroup should ensure that potential VLPs are represented at any future workgroups.	No	It is important that the wording takes into account any implications of the potential implementation of BSC modifications P375 and P376 • It is unclear why there is a requirement to be manned and

	and independent BM access, which will facilitate competition. It facilitates (d) by implementing TERRE in the UK, ensuring consistency with the EBGL. It facilitates (e) by providing a means of ensuring that VLPs are compliant with their obligations under the CUSC.	2019.			ready for communication with National Grid on a 24/7 basis, given that some VLPs are likely to only offering balancing services for part of the day. It may be more appropriate for the requirement to be altered to being manned and ready for communication at any time that they are offering balancing services • The specification that operators must use PSTN facilitates for voice communication with National Grid fails to take into account that this network is expected to shut down in the coming years. It may make sense to specify an alternative to this requirement. • The requirement that meters have 1% accuracy is disproportionate for operational metering accuracy, meaning that it will be higher accuracy than

					settlement metering in many cases. Aligning the accuracy requirements with those in the metering codes of practice is a more appropriate solution.
Flextricity Ltd.	Yes, the original better facilitates Applicable CUSC Objectives (b) – because implementing the TERRE solution will open the BM to new parties, facilitating competition. It also better facilitates objective (c) as it implements TERRE in GB, which is part of the EBGL.	Yes. It is important that implementation is aligned with the BSC introduction of VLPs and TERRE go-live in late 2019. The implementation should ensure that VLPs have enough time to accede to the CUSC before TERRE go-live	As noted in the consultation report, it would improve the solution if the Workgroup looked to make sure that in future some members of the workgroup were potential VLPs or at least non-BM balancing services providers.	No	In Appendix F5 – Schedule 2, the reference to 1% meter accuracy will mean in some cases that the operational metering accuracy requirement is greater than that of the settlement metering. That doesn't seem proportionate for small sites. I would suggest aligning the accuracy requirements with those in the metering codes of practice. In Appendix F5 - Schedule 1, it says the operator must use PTSN facilities. BT looks to be shutting down the PTSN network in the

					next few years, asking providers to use a communication network that is soon to be discontinued is not practical or future proof. Since VLPs may offer balancing services during parts of the day, rather than being required to offer the services 24/7 is the requirement that the VLP be manned and ready for communication from National Grid 24/7 necessary? Would a requirement that the VLP be manned and ready for communication at any time they are offering balancing services make more sense?
Enel X	We believe that CMP295 is better than the baseline at facilitating objectives (a), (c), and (d), to the extent that it is necessary to allow participation by Virtual Lead Parties (VLPs) in the	Yes. If this modification is necessary to allow VLPs to participate, then it should be implemented as soon as possible, so that potential VLPs can complete all the necessary processes in time for the go-live of	This process was not well publicised amongst potential VLPs – many of whom do not have regulatory staff sufficiently large to	No	• Clause 3.2: There is no mention in this agreement of the process for the User to maintain their portfolio by adding or removing Boundary

	Balancing Mechanism and Project TERRE.	Project TERRE.	follow all CUSC, Grid Code, and BSC activity. We recommend that more intensive outreach efforts be undertaken for future modifications that are similarly important to parties who are not yet participants.		Point Metering Systems. This is a routine part of the business of an aggregator as customers' capabilities change, or different aggregators succeed in competing for their business. To be practicable, this must be a quick and simple process – not something that requires a variation to the agreement. • Clause 4.1: The word "relevant" is mis-spelled. • Appendix F5, Item 5 and Schedule 1: In this day and age, is it really appropriate to require the provision and maintenance

					of fax machines? If an additional mode of communication besides EDL, System Telephony, and Control Telephony, then email would seem an obvious choice. Appendix F5, Schedule 2: It may be worth considering whether 1.0% accuracy is actually necessary for operational metering. We cannot see any justification for requiring operational metering to be more accurate than settlement metering. It would be prudent to consider what degree of metering error could actually make a material difference to the ESO's dispatch decisions, and to set the accuracy requirements to be just slightly better than that.

					Any tighter accuracy requirements would be needlessly expensive, undermining efficiency. We suspect that this exercise would find that 2.5% accuracy would suffice, particularly when dealing with small sites. It would be prudent to carry out the final drafting with BSC modifications P375 and P376 in mind, to avoid having to revise the agreements to accommodate submetering and baseline,

7 Workgroup Vote

The Workgroup believe that the Terms of Reference have been fulfilled and CMP295 has been fully considered.

The Workgroup met on 9 July 2019 and voted on whether the Original would better facilitate the Applicable CUSC Objectives than the baseline and what option was best overall. Note that vote 2 (does the WACM facilitate the objectives better than the Original?) was not held due to no WACMs being proposed.

The Workgroup agreed unanimously that the Original was better that the baseline. The voting record is detailed below.

Vote 1: does the original or WACM facilitate the objectives better than the Baseline?

Workgroup Member	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Grahame Neale – National Grid ESO					
Original	Positive	Positive	Positive	Positive	Yes
Voting statement: The proposer believes that CMP295 will have a positive impact on CUSC applicable objectives B, C and D whilst being neutral against objective A. This is because CMP295 will support the delivery of TERRE and the associated benefits such as increased competition (from smaller generators, storage and demand response providers) in the provision of Balancing Services, compliance with EBGL requirements and transparency of the terms applicable to VLPs.					
Workgroup Member	**Better facilitates ACO (a)**	**Better facilitates ACO (b)?**	**Better facilitates ACO (c)?**	**Better facilitates ACO (d)?**	**Overall (Y/N)**
Robert Longden – Cornwall Energy					
Original	Positive	Positive	Positive	Positive	Yes
Voting statement: CMP295 will ensure there is a CUSC contract to facilitate Virtual Lead Party participation in TERRE and the Balancing Mechanism, promoting competition and ensuring compliance with the Electricity Balancing Guideline.					

Workgroup Member	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Bill Reed - RWE					
Original	Positive	Positive	Positive	Positive	Yes
Voting statement: CMP295 will ensure there is a CUSC contract to facilitate Virtual Lead Party participation in TERRE and the Balancing Mechanism, promoting competition and ensuring compliance with the Electricity Balancing Guideline.					

Workgroup Member	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Josh Logan - Drax					
Original	Positive	Positive	Positive	Positive	Yes
Voting statement: CMP295 will ensure there is a CUSC contract to facilitate Virtual Lead Party participation in TERRE and the Balancing Mechanism, promoting competition and ensuring compliance with the Electricity Balancing Guideline.					

Vote 2: Which option is best?

Workgroup Member	BEST Option?
Grahame Neale – National Grid ESO	**Original**
Robert Longden – Cornwall Energy	**Original**
Bill Reed – RWE Supply and Trading	**Original**
Josh Logan - Drax	**Original**

8 CMP295: Relevant Objectives

Impact of the modification on the Applicable CUSC Objectives (Standard):	
Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive
(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;	Positive – facilitates TERRE arrangements which expand competition to smaller generating stations.
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Positive – facilitates the introduction of TERRE into GB arrangements
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive – ensures that Bilateral Agreements are updated to reflect the introduction of a new Market Participant, and ensures that those BAs are consistent across
*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).	

9 Implementation

Proposer's initial view:

As above, CMP295 should not be approved by the Authority unless P344 and GC0097 are approved. Implementation should be aligned with the BSC and Grid Code, specifically such that new Bilateral Agreements are available immediately from the date of the BSC release which contains the relevant TERRE arrangements.

As no system changes are required to implement this proposal, the relevant BSC and Grid Code proposals have been approved and the need to meet the timescales for pre-registration, the Proposer believes that CMP295 should be implemented 10 working days after the Authority's decision.

10 Code Administrator Consultation: Responses

The Code Administrator Consultation was issued on 31 July 2019 for 20 Working Days, with a close date of 29 August 2019. No responses were received to the Code Administrator Consultation.

11 CUSC Panel Views

At the CUSC Special Panel meeting on 12 September 2019, the Panel voted on CMP295 against the Applicable CUSC Standard Objectives.

The Panel members by majority agreed that the Original was better than the baseline and recommended that it should be implemented.

For reference the Applicable CUSC Standard Objectives are:

(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence

(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;

(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and

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

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

Vote 1: ***Does the original facilitate the objectives better than the Baseline?***

Panel Member: Andy Pace

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Yes	Yes	Yes
Voting Statement					
CMP295 will ensure there is a CUSC contract to facilitate Virtual Lead Party participation in TERRE and the Balancing Mechanism, promoting competition and ensuring compliance with the Electricity Balancing Guideline.					

Panel Member: Garth Graham

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	No	Yes	No	Neutral	No
Voting Statement					
In respect of Applicable Objective (a), this proposal, by not addressing the harmonised approach required by EBGL and applying Article 18 in a way that is inconsistent with the EBGL requirements is not better in discharging the obligations by the Licensee. In terms of Applicable Objective (b), by opening up the provision of services by virtual lead parties this better facilitates effective competition in the generation and supply of electricity. In regards to Applicable Objective (c), this proposal is not better as it incorrectly implements the requirements, set out in Article 18 of EBGL to provide balancing services according to the terms and conditions agreed by the NRA, which cannot be varied except after a public consultation and NRA approval of those changes. This is incompatible with EU law and thus fails to comply with the Regulation. In addition the erroneous approach to Article 16(6) (including that the exemption request was submitted late - months after the deadline set in EBGL - was not subject to a pubic consultation etc., etc.,) means that the approach to pricing for virtual lead parties, introduced by this proposal, will be incompatible with EU law and thus does not comply with the Regulation. The proposal is neutral in terms of (d). Overall this proposal is not better when compared with the baseline.					

Panel Member: Simon Sheridan (Alternate to Jon Wisdom)

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Yes	Neutral	Yes
Voting Statement					
We believe CMP295 is positive in relation to A as it ensures that NGESO meets its obligations to be compliant with all relevant legislation. In relation to B and C, we believe CMP295 is positive as it facilitates VLP's participation in the TERRE and Wider Access arrangements and expands competition by allowing smaller generating stations to actively participate in the market and it ensures that Bilateral Agreements are updated to reflect the introduction of a new Market Participant, and ensures that those agreements are consistent across industry.					

Panel Member: Cem Suleyman

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Yes	Yes	Yes
Voting Statement					
I agree with the arguments made by the Proposer.					

Panel Member: Robert Longden

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
Voting Statement					
The modification is necessary to allow VLPs to fully participate in the market under Project TERRE and should be implemented.					

Panel Member: Paul Mott

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Yes	Yes	Yes	Yes
Voting Statement					
CMP295 will support the delivery of TERRE into GB arrangements (CAO (c)) and the associated benefits such as increased competition (from smaller generators, storage and demand response providers) in the provision of Balancing Services (CAO (b)), compliance with EBGL requirements and transparency of the terms applicable to VLPs. It will ensure there is a CUSC contract to facilitate Virtual Lead Party participation in TERRE and the Balancing Mechanism (CAO (d))					

Vote 2 – *Which option is the best?*

Panel Member	BEST Option?
Andy Pace	Original
Garth Graham	Baseline
Simon Sheridan (Alternate to Jon Wisdom)	Original
Cem Suleyman	Original
Robert Longden	Original
Paul Mott	Original

The CUSC Panel therefore recommended by majority that the Original could be implemented.

12 Legal Text

The final legal text can be found in Annex 4 of this report.

13 Impacts

Costs

Industry costs (Standard CMP)	
Resource costs	**£9,075** – 2 Consultation • 6 Workgroup meetings • 6 Workgroup members • 1.5 man days effort per consultation response • 5 consultation respondents
Total Industry Costs	**£41,745**

Annex 1: CMP295 Terms of Reference

CMP295 Terms of Reference

CMP295 looks to address the current issue that under other industry modifications (BSC P344 and GC0097), and future market arrangements, an aggregator will have the ability to combine the export capabilities of SVA-registered embedded generation to participate in the Balancing Mechanism. In order to facilitate Grid Code compliance, and to ensure appropriate rights/obligations for Virtual Lead Parties (as to be defined in BSC P344), accession to the CUSC is necessary and entry into specific CUSC contracts will be required.

Responsibilities

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal CMP295 Contractual Obligations for Virtual Lead Parties, tabled by NGET at the Modifications Panel meeting on 27 April 2018.

2. The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:

   Standard Objectives

   (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;

   (b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;

   (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and

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

3. It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

Scope of work

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.

5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:

   a. Work closely with CMP291 to ensure BCA are compatible
   b. Clarity on scope of VLP
   c. Are there any unintended consequences created?
   d. Cons. efficient process and transparency of VLP
   e. Mindful of locational aspects
   f. Appropriate linkage to P344 and GC0097 and only changes required as a result of these
   g. Avoid discrimination for example 4.3 and 4.4 of draft legal text
   h. Cross section of Stakeholder Representation, Experience and Expertise?
   i. Legal Text ?
   j. Implementation Arrangements?
   k. Consideration of supplier additional BMUs?
   l. Applicability across all types of aggregation?

6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.

7. The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.

8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.

9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.

10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.20. The Workgroup Consultation period shall be for a period of **15 working days** as determined by the Modifications Panel.

11. Following the Consultation period, the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Workgroup will be required to undertake any further analysis and update the original Modification Proposal and/or WACMs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Workgroup's deliberations and conclusions. The report should make it clear where and why the Workgroup chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WACM against the majority views of Workgroup members. It should also be explicitly stated where, under these circumstances, the Workgroup chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on **TBC** for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on **TBC.**

Membership

13. It is recommended that the Workgroup has the following members:

Role	Name	Representing
Chairman	Joseph Henry	National Grid ESO Code Administrator
Technical Secretary	Rachel Hinsley	National Grid ESO Code Administrator

Proposer	Grahame Neale	National Grid ESO
Industry Representatives	Bill Reed	RWE
	James Anderson	Scottish Power
	Peter Bolitho	Waters Wye Associates
	Joshua Logan	Drax
	Robert Longden	Cornwall Energy
	Andrew Colley	SSE
Observers	Matthew Roper	Elexon

NB: A Workgroup must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP295 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.

15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise]. There may be up to three rounds of voting, as follows:

- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
- Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal*;*
- Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Workgroup report in as much detail as practicable.

16. It is expected that Workgroup members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes place. Where abstention occurs, the reason should be recorded in the Workgroup report.

17. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.

18. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.

19. The Workgroup membership can be amended from time to time by the CUSC Panel.

Appendix 1

Proposed CMP295 Timetable

The Code Administrator recommends the following timetable:	
Workgroup Report presented to Panel	26 July 2019
	27 September 2019
Code Administration Consultation Report issued to the Industry	31 July 2019
Draft Final Modification Report presented to Panel	4 September 2019
Modification Panel decision	12 September 2019
Final Modification Report issued to Authority (25 WD)	4 October 2019
Indicative Decision Date	8 November 2019
Decision implemented in CUSC	22 November 2019

Annex 2: CMP295 Attendance Register

A – Attended

X – Absent

O – Alternate

D – Dial-in

Name	Organisation	Role	WG1	WG2	WG3	WG4	WG5	WG6
Joseph Henry	Code Administrator	Chair	A	A	A	A	X	A
Rachel Hinsley	Code Administrator	Technical Secretary	O	O	A	A	A	A
Grahame Neale	National Grid ESO	Proposer	O	O	A	A	A	A
Andrew Colley	SSE	Workgroup Member	O	X	A	A	D	X
Robert Longden	Cornwall Energy	Workgroup Member	A	X	X	X	D	D
Bill Reed	RWE Supply and Trading	Workgroup Member	A	A	A	A	A	A

James Anderson	Scottish Power	Workgroup Member	A	A	A	X	X	X
Paul Youngman	Drax	Workgroup Member	A	O	O	O	O	O
Peter Bolitho	Waters Wye Associates	Workgroup Member	A	X	X	X	X	X
Paul Jones	Uniper	Workgroup Member	X	X	X	X	X	A
Rick Parfitt	ADE	Workgroup Member	X	X	X	X	X	A
Matthew Roper	Elexon	Workgroup Observer	A	A	A	O	A	A

Annex 3: Workgroup Consultation Responses

CUSC Workgroup Consultation Response Proforma

CMP295 'Contractual Arrangements for Virtual Lead Parties (Project TERRE)'

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

Please send your responses by **8 February 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup report which is submitted to the CUSC Modifications Panel.

Respondent:	Rick Parfett, 0203 031 875, rick.parfett@theade.co.uk
Company Name:	The Association for Decentralised Energy (ADE)
Do you believe that the proposed original better facilitate the Applicable CUSC Objectives? Please include your reasoning.	The original better facilitates Applicable CUSC Objectives (a), (d) and (e) than the baseline. It facilitates (a) because it allows implementation of TERRE and independent BM access, which will facilitate competition. It facilitates (d) by implementing TERRE in the UK, ensuring consistency with the EBGL. It facilitates (e) by providing a means of ensuring that VLPs are compliant with their obligations under the CUSC.
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	The ADE supports the proposed implementation approach and highlights the importance of ensuring that VLPs have enough time to accede to the CUSC in advance of TERRE's go-live data of Q4 2019.
Do you have any other comments?	The Workgroup should ensure that potential VLPs are represented at any future workgroups.
Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	No

Specific questions for CMP295

Q	Question	Response

Q	Question	Response
5	**Do you have any specific comments on the proposed wording of the bi-lateral agreements**	• It is important that the wording takes into account any implications of the potential implementation of BSC modifications P375 and P376 • It is unclear why there is a requirement to be manned and ready for communication with National Grid on a 24/7 basis, given that some VLPs are likely to only offering balancing services for part of the day. It may be more appropriate for the requirement to be altered to being manned and ready for communication at any time that they are offering balancing services • The specification that operators must use PSTN facilitates for voice communication with National Grid fails to take into account that this network is expected to shut down in the coming years. It may make sense to specify an alternative to this requirement. • The requirement that meters have 1% accuracy is disproportionate for operational metering accuracy, meaning that it will be higher accuracy than settlement metering in many cases. Aligning the accuracy requirements with those in the metering codes of practice is a more appropriate solution.

CUSC Workgroup Consultation Response Proforma

CMP295 'Contractual Arrangements for Virtual Lead Parties (Project TERRE)'

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

Please send your responses by **8 February 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup report which is submitted to the CUSC Modifications Panel.

Respondent:	*Andrew Colley andrew.colley@sse.com 01189534276*
Company Name:	*SSE plc*
Do you believe that the proposed original better facilitate the Applicable CUSC Objectives? Please include your reasoning.	*Yes.* *SSE agree that a modification is required to support the introduction of Project TERRE within GB Trading Arrangements, complementary to approved modifications P344 and GC0097.* *SSE agree that there is a need for the GBESO to introduce a contractual mechanism that binds VLPs to Grid Code obligations introduced by GC0097 that allows GBESO to take effective action in the event of non-compliance.* *SSE agree, in line with P344 and GC0097, that it is appropriate that a lighter touch approach be applied to VLPs acceding to the CUSC, which ensures that only relevant parts of the Code become applicable.* *In principle, SSE would prefer to see the Terms & Conditions required to bind VLPs to the CUSC, and their obligations under the Grid Code, wholly set out within the body of the Code itself rather than set out in a bilateral contract/exhibit to the CUSC.* *Notwithstanding this preference, the new exhibit for VLPs should not allow any bilateral/negotiated agreement to vary terms and conditions, in line with EBGL requirements. All terms and conditions must remain standard and transparent (we highlight some concerns in this respect in response to Q5 below). Any variance should be limited to the list of technical assets*

	comprising the Secondary BM Unit. *On balance, SSE believes that the original proposal better facilitates ACOs (b), (c) and (d) for the reasons set out by the Proposer.*
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	*Yes.*
Do you have any other comments?	*Given that this Modification concerns the terms and conditions related to balancing, we would remind the TSO of their legal obligations in respect of Articles 4, 5, 6 and 10 of EBGL and in particular the need for them to follow the procedure set out in Article 6(3). In regard to associated CUSC changes we would remind the TSO of the legal certainty that they have identified with the Option 1 and Option 2 approach in the paper, concerning Grid Code and CUSC changes, produced last Autumn.*
Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	

Specific questions for CMP295

Q	Question	Response
5	**Do you have any specific comments on the proposed wording of the bi-lateral agreements**	*Yes* **** [SEE BELOW]*

***

The proposed wording of the 'bi-lateral' agreement is incompatible with EBGL and in particular the terms and conditions related to balancing required in accordance with Article 18 (and the approval / amendment procedures set out in Articles 4, 5, 6 and 10) for balancing service providers (BSPs) and balance responsible parties (BRPs). For the avoidance of doubt, this includes Users who, according to CMP295, would be VLPs.

The proposed VLPA relates to a 'Standard Product' within the meaning given to that in EU law – Article 2(28) of EBGL.

As Annex 1 to the TSO's proposal of 18th June 2018 submitted to the NRA set outs, Project TERRE related matters fall wholly within the vires of the terms and conditions related to balancing which the TSO is legally required to produce and operate to and, if appropriate, it can only seek amendment to via the explicit procedure set out in Article 6(3) of EBGL.

The TSO (or the VLP) does not have the vires to amend such terms and conditions related to balancing (and neither does the NRA have the power itself to delegate its – NRA – powers in this matter to the TSO) without following the amendment procedure in Articles, 4, 5, 6 and 10 of EBGL.

By way of evidence for this we would refer the Workgroup to Ofgem's letters of 11th December 2018 to the BSC Panel and 4th February 2019 (concerning amending the TSO's 18th June 2018 proposal) – see for example:

"*once we are confident that the Article 18 submission is robust that we [Ofgem] would approve it and that the existing provisions in the current regulatory framework would become the official terms and conditions related to balancing as referred to in Article 18 EBGL. At this stage, we expect that any amendment to those terms and conditions would comply with the amendment processes set in the EBGL*." [emphasis added]

and

"*The relevant provisions …. required for compliance with Article 18, need to be transposed into the GB network codes so that we [Ofgem] can have a clear and transparent role in approving and amending them in the future*." [emphasis added]

Therefore, the proposed wording will need to be changed to ensure legal compliance. Failure to do so will render the TSO vulnerable to acting in a way that is incompatible with EU law. In this regard we are mindful that even if the current wording in CMP295 were to be approved by the NRA (which, for the legal reasons we here note, is highly unlikely) this would not prevent the risk of legal action, on the ground of non-compliance with the primary law (namely in this case EU law) being taken against the TSO.

In particular, we would note the following seven specific items in the proposed legal text:

Firstly

"*2.1.1* ***The Company*** *and / or the* ***User*** *as appropriate having received the derogations (if any) required in respect of the Grid Code."*

We would remind the Workgroup of the statement from the Authority in it's 11th December 2018 letter[1], in answering question 2, namely:

"*Article 62 EBGL does not provide the ability to derogate from the obligation set in Article 18*."

[1] https://www.elexon.co.uk/documents/change/modifications/p351-p400/auto-draft-5/

Therefore we do not believe that it is legally possible for either the TSO or the User to seek, or obtain, any derogation(s) from the Grid Code in respect of any requirements associated with the terms and conditions related to balancing.

Secondly

*"3.2 ….The data fields, format, frequency and method of submission from the **User** to **The Company** shall be agreed between the parties acting cooperatively and reasonably*."

For the reasons noted elsewhere in this response, it is not possible for the TSO and the User to agree different data fields, format, frequency and method of submission than the harmonised and transparent requirements that all providers of the Project TERRE Standard Product are; in accordance with the obligations set out in the terms and conditions related to balancing; required to comply with.

Furthermore, allowing the TSO and the User to agree differences would be granting those parties the power to derogate from the EBGL Article 18 requirements which, as we have noted above, is not permitted by any party – even the NRA cannot grant a derogation in respect of Article 18 matters.

Notwithstanding the above, allowing the TSO and the User to agree such differences would also affect cross border trade (which would be incompatible with Article 8(7) of Regulation 714/2009) and be determinantal to competition (in contravention of the Treaties of the Union) as it would place the User in an advantageous (or, less likely, disadvantageous) position compared to other market participants that are all providing Project TERRE bids both within GB but, just as importantly, also within other Member States.

In addition to the above, as this proposed wording relates to data provision for balancing services under EBGL this means that the requirements of SOGL are relevant to this CMP295 proposal. In this respect we would reiterate the need to fully comply with the obligations, in SOGL, as regards the TSO having to apply a common minimum requirement for data. Variations to the common minimum requirements for data, as proposed by CMP295, could be said therefore to be incompatible with SOGL.

Finally, given that the TSO and / or NRA can be considered to be emanations of the state, the provision of such an advantage to one (or more) User(s) could amount to State Aid.

In this regard, we refer the Workgroup to the European Commission's webpage[2] on State Aid and in particular we would bring to the Workgroup's attention:

"*A company which receives government support gains an advantage over its competitors*."

And

[2] http://ec.europa.eu/competition/state_aid/overview/index_en.html

"*State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities*." [emphasis added]

For the avoidance of doubt, allowing an undertaking (such as a VLP) an advantage in the form of the data fields, format, frequency and method of submission, when compared to other undertakings, would clearly fall within this State Aid definition.

As an aside, we would also remind the TSO of it's Licence obligations to comply with the CUSC and in particular, as it relates to them exercising Good Industry Practice[3].
Why as a "skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances" would the TSO place different requirements on different Users where they are all engaged in providing the same balancing service, namely the Project TERRE Standard Product, under the same or similar circumstances?

Thirdly

"4.*2 ….where **The Company** reasonably requires such compliance and has specified such a requirement in respect of such **Generating Units** and/or **Demand Control** in this **VLPA***."

We note that the TSO is obliged by Article 18 of EBGL to set out all the necessary requirements concerning balancing in the context of Standard (and Specific) Products in the terms and conditions related to balancing in it's Article 18 EBGL proposal to the Authority (which it did on 18th June 2018).

It is not possible for the TSO to apply (or dis-apply) secret, special requirements (in a discriminatory manner) on one (or more) User(s) without this being part of the terms and conditions related to balancing. Therefore the TSO will need, in the CMP295 proposal, to ensure that the requirements in respect of Generating Units and / or Demand Control Users are applied to all.

Fourthly

"*5.4 Subject to clause 7.1, if the **User** or **The Company** wishes to modify alter or otherwise change the technical conditions or the manner of their operation under Appendix F5 to this **VLPA** this shall be deemed to be a **Modification** for the purposes of the **CUSC***."

For the detailed reasons we have already provided under the first, second and third points above, it is not possible for the User or the TSO to modify, alter, or otherwise change the technical (or other, non-technical) requirements or the manner of their operation as they form the terms and conditions related to balancing.

To do otherwise (as this wording in 5.4 suggests) would mean that the TSO would be acting in a non-harmonised, non-transparent and discriminatory manner.

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[3] Defined in Section 11 of the CUSC as "in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances"

Furthermore, it would also leave the User who relied on any such 'Modification' with no legal certainty.

That having been said, we would remind the Workgroup that amendments to the terms and conditions related to balancing are, of course, permitted as long as they comply with the procedure noted in Article 6(3) EBGL; which Ofgem also referred to in a number of places in its letters of 11th December 2018 and 4th February 2019[4].

Fifthly

"*7.2* ***The Company*** *and the* ***User*** *shall effect any amendment required to be made to this* ***VLPA*** *by the* ***Authority*** *as a result of a change in the* ***CUSC*** *or the* ***Transmission Licence,*** *an order or direction made pursuant to the* ***Act*** *or a* ***Licence****, or as a result of settling any of the terms hereof. The* ***User*** *hereby authorises and instructs* ***The Company*** *to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time*."

Whilst we have sympathy with the principle of this proposed wording, we would remind the TSO that amendments to the terms and conditions related to balancing have to follow the procedure set out in Article 6(3) of EBGL. This cannot be circumvented via any bi-lateral agreement even if (which we do not believe will happen) Ofgem were to somehow agree to this by approving the currently proposed wording of the VLPA in this consultation.

On a related matter, we are mindful that such amendments may have arisen from, for example, a CUSC or Transmission Licence change and; as we detailed in our reasoning[5] concerning the Option 1 and Option 2 approach in our P374 submission; there are options as to how this can be legally achieved in a way that complies with the procedure set out in Article 6(3) of EBGL.

Sixthly

"*7.3* ***The Company*** *has the right to vary Appendix F5 to this* ***VLPA*** *to reflect any changes necessary in the event of change to the documents or standards referred to in Appendices F5*."

For the reasons detailed in the five points above, it is not legally possible for the TSO to unilaterally vary the conditions or requirements in respect of terms and conditions related to balancing. The only way this can be achieved is by way of the procedure set out in Article 6(3) of EBGL.

Seventh

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[4] https://www.ofgem.gov.uk/system/files/docs/2019/02/article_18_request_for_amendment_-_04.02.19_0.pdf

[5] https://www.elexon.co.uk/documents/change/modifications/p351-p400/article-10-ebgl-and-bsc-modification-procedures-approaches/

In light of the detailed comments made in the preceding six points, the wording in 7.1. of the proposed legal text needs to be amended and we have provided appropriate changes below:

"*7.1 ~~Subject to 7.2 and 7.3, n~~ No variation to the terms and conditions in this* ***VLPA is permitted. Variations to the list of the Users' site(s) / location(s) covered by this VLPA*** *shall not be effective unless made in writing and signed by or on behalf of both* ***The Company*** *and the* ***User***."

[end]

CUSC Workgroup Consultation Response Proforma

CMP295 'Contractual Arrangements for Virtual Lead Parties (Project TERRE)'

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

Please send your responses by **8 February 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup report which is submitted to the CUSC Modifications Panel.

Respondent:	*Graeme Dawson* *m: 07713 332952 e: graeme.dawson@npower.com*
Company Name:	*npower Business Solutions*
Do you believe that the proposed original better facilitate the Applicable CUSC Objectives? Please include your reasoning.	We believe that the proposed original better facilitates Applicable CUSC Objectives (a), (d) and (e) than the baseline: • Facilitating (a) because it allows implementation of TERRE and independent BM access, which will facilitate competition. • Facilitating (d) by implementing TERRE in GB, ensuring consistency with the requirements of the European Balancing Guideline (EBGL). • Facilitating (e) by providing a means of ensuring that Virtual Lead Parties (VLPs) are compliant with their obligations under the CUSC. --- *For reference, the Applicable CUSC Objectives for the Use of System Charging Methodology are:* *((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; *(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* *(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.* *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).
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	npower Business Solutions supports the implementation approach proposed and note that we recognise that VLPs have adequate time to accede to the CUSC in advance of the expected TERRE go-live date in December 2019.
Do you have any other comments?	*We would encourage the Code Administrator to consider the make-up of this (and other) working group(s) to ensure that there is appropriate representation from across the industry – extending invitations beyond the conventional thermal generators, to include suppliers and also the independent aggregators (or their representative Trade Associations i.e. the ADE and Energy-UK).*
Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	-

Specific questions for CMP295

Q	Question	Response
5	**Do you have any specific comments on the proposed wording of the bi-lateral agreements**	1. *We would emphasise the importance that the content takes account of the potential implementation of BSC modifications P375 and P376* 2. *We note the requirement for DSR operators to be manned and ready for communication with National Grid on a 24/7 basis, given that several entities operating in this space intend only to offer balancing services for part of the day we would suggest that it would be more appropriate for the requirement to reflect the need to manned and ready for communication during any periods that providers are offering balancing services* 3. *We would request further information as to why there is a requirement for +/-1% metering accuracy which appears to be at a higher accuracy than settlement metering.*

CUSC Workgroup Consultation Response Proforma

CMP295 'Contractual Arrangements for Virtual Lead Parties (Project TERRE)'

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

Please send your responses by **8 February 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup report which is submitted to the CUSC Modifications Panel.

Respondent:	*Saskia Barker, 0131 221 2241, saskia.barker@flexitricity.com*
Company Name:	*Flexitricity Limited*
Do you believe that the proposed original better facilitate the Applicable CUSC Objectives? Please include your reasoning.	*Yes, the original better facilitates Applicable CUSC Objectives (b) – because implementing the TERRE solution will open the BM to new parties, facilitating competition. It also better facilitates objective (c) as it implements TERRE in GB, which is part of the EBGL.*
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	*Yes. It is important that implementation is aligned with the BSC introduction of VLPs and TERRE go-live in late 2019. The implementation should ensure that VLPs have enough time to accede to the CUSC before TERRE go-live.*
Do you have any other comments?	*As noted in the consultation report, it would improve the solution if the Workgroup looked to make sure that in future some members of the workgroup were potential VLPs or at least non-BM balancing services providers.*
Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	*No*

Specific questions for CMP295

Q	Question	Response

Q	Question	Response
5	**Do you have any specific comments on the proposed wording of the bi-lateral agreements**	*In Appendix F5 – Schedule 2, the reference to 1% meter accuracy will mean in some cases that the operational metering accuracy requirement is greater than that of the settlement metering. That doesn't seem proportionate for small sites. I would suggest aligning the accuracy requirements with those in the metering codes of practice.* *In Appendix F5 - Schedule 1, it says the operator must use PTSN facilities. BT looks to be shutting down the PTSN network in the next few years, asking providers to use a communication network that is soon to be discontinued is not practical or future proof.* *Since VLPs may offer balancing services during parts of the day, rather than being required to offer the services 24/7 is the requirement that the VLP be manned and ready for communication from National Grid 24/7 necessary? Would a requirement that the VLP be manned and ready for communication at any time they are offering balancing services make more sense?*

CUSC Workgroup Consultation Response Proforma

CMP295 'Contractual Arrangements for Virtual Lead Parties (Project TERRE)'

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

Please send your responses by **8 February 2019** to cusc.team@nationalgrid.com. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup report which is submitted to the CUSC Modifications Panel.

Respondent:	Paul Troughton 07470 430018 paul.troughton@enel.com
Company Name:	Enel X
Do you believe that the proposed original better facilitate the Applicable CUSC Objectives? Please include your reasoning.	We believe that CMP295 is better than the baseline at facilitating objectives (a), (c), and (d), to the extent that it is necessary to allow participation by Virtual Lead Parties (VLPs) in the Balancing Mechanism and Project TERRE.
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	Yes. If this modification is necessary to allow VLPs to participate, then it should be implemented as soon as possible, so that potential VLPs can complete all the necessary processes in time for the go-live of Project TERRE.
Do you have any other comments?	This process was not well publicised amongst potential VLPs – many of whom do not have regulatory staff sufficiently large to follow all CUSC, Grid Code, and BSC activity. We recommend that more intensive outreach efforts be undertaken for future modifications that are similarly important to parties who are not yet participants.
Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider?	No.

Specific questions for CMP295

Q	Question	Response
5	**Do you have any specific comments on the proposed wording of the bi-lateral agreements**	• Clause 3.2: There is no mention in this agreement of the process for the User to maintain their portfolio by adding or removing Boundary Point Metering Systems. This is a routine part of the business of an aggregator as customers' capabilities change, or different aggregators succeed in competing for their business. To be practicable, this must be a quick and simple process – not something that requires a variation to the agreement. • Clause 4.1: The word "relevant" is mis-spelled. • Appendix F5, Item 5 and Schedule 1: In this day and age, is it really appropriate to require the provision and maintenance of fax machines? If an additional mode of communication besides EDL, System Telephony, and Control Telephony, then email would seem an obvious choice. • Appendix F5, Schedule 2: It may be worth considering whether 1.0% accuracy is actually necessary for operational metering. We cannot see any justification for requiring operational metering to be more accurate than settlement metering. It would be prudent to consider what degree of metering error could actually make a material difference to the ESO's dispatch decisions, and to set the accuracy requirements to be just slightly better than that. Any tighter accuracy requirements would be needlessly expensive, undermining efficiency. We suspect that this exercise would find that 2.5% accuracy would suffice, particularly when dealing with small sites. • It would be prudent to carry out the final drafting with BSC modifications P375 and P376 in mind, to avoid having to revise the agreements to accommodate submetering and baselining.

Annex 4: CMP295 Legal Text

Schedule 2 Exhibit 7

DATED [ ]

NATIONAL GRID ELECTRICITY TRANSMISSION plc (1)

and

[ ] (2)

THE CONNECTION AND USE OF SYSTEM CODE

VLPA

VIRTUAL LEAD PARTY AGREEMENT

Reference: [ ]

CONTENTS

THIS **VIRTUIAL LEAD PARTY AGREEMENT** is made on the [ ] day of [ ] 20[XX]

BETWEEN

(1) **NATIONAL GRID ELECTRICITY TRANSMISSION plc** a company registered in England with company number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and

(2) **[ ]** a company registered in [ ] with number [ ] whose registered office is at [ ] (the "**User**", which expression shall include its successors and/or permitted assigns).

WHEREAS

(A) Pursuant to the **Transmission Licence**, **The Company** is required to prepare a Connection and Use of System Code ("**CUSC**") setting out the terms of the arrangements for connection to and use of the **National Electricity Transmission System**.

(B) The **User** has applied to **The Company** in the capacity of a **Virtual Lead Party** who intends to operate one or more **Secondary BMU Units**.

(C) As at the date hereof, **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).

(D) This **Virtual Lead Party Agreement ("VLPA")** is entered into pursuant to the **CUSC** and shall be read as being governed by it.

NOW IT IS HEREBY AGREED as follows:

13.1 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** have the same meanings, interpretations or constructions in this **VLPA.**

13.2 CONDITION PRECEDENTS AND COMMENCEMENT

2.1 This **VLPA** shall commence on the date hereof.

2.2 It is a condition of this **VLPA** that the **VLP Assets** operated by the **User** are associated to a **SMRS** registered **Boundary Point Metering System** as per the **Balancing and Settlements Code**.

13.3 OUTAGES & NETWORK MANAGEMENT

3.1 Subject to the provisions of the **Grid Code**, **The Company** and the **User** shall be entitled to plan and execute outages on parts of, in the case of **The Company**, the **National Electricity Transmission System** or **Transmission Plant** or **Transmission Apparatus** and in the case of the **User**, its **VLP Assets**, at any time and from time to time.

13.4 GRID CODE MATTERS

13.4.1The User is required (as per paragraph 6.3.1 of the CUSC**) to comply with the relevant parts of the** Grid Code **which apply in respect of the relevant** Boundary Point Metering Systems **associated with the** VLP Assets**, as amended in accordance with the following provisions of this Clause 4.**

4.2 The provisions in BC1 and BC2 of the Grid Code **provide that compliance is required with such provisions in respect of those** VLP Assets **in this** VLPA**.**

13.5 COMPLIANCE WITH TECHNICAL CONDITIONS

5.1 The Company **and the** User **shall operate respectively the** National Electricity Transmission System **and the** User System **with the special automatic facilities and schemes set out in Appendix F5 to this** VLPA.

5.2 The User **shall ensure that the** VLP Assets **which it operates for the purposes of this** VLPA **complies with the technical conditions set out in Appendix F5 to this** VLPA.

5.3 The User **shall use all reasonable endeavours to ensure that the** VLP Assets **shall continue to comply with the technical conditions set out in Appendix F5 of this** VLPA**.**

13.6 TERM

6.1 Subject to the provisions for earlier termination set out in the **CUSC**, this **VLPA** shall continue until;

i) the **User** notifies **The Company** in writing, providing no less than 28 days notice, of its wish to terminate this **VLPA,** or;

ii) the **User** has no **VLP Assets** registered to a **Secondary BMU** and so **The Company** may give notice of termination in writing to the **User** whereupon this **VLPA** shall terminate 28 days from such notice.

6.2 Once an **Event of Default** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **VLPA** shall forthwith terminate.

13.7 VARIATIONS

13.7.1 Subject to 7.2 no variation to this VLPA **shall be effective unless made in writing and signed by or on behalf of both** The Company **and the** User**.**

13.7.2 The Company **and the** User **shall effect any amendment required to be made to this** VLPA **by the** Authority **as a result of a change in the** CUSC, Grid Code **or the** Transmission Licence, **an order or direction made pursuant to the** Act **or a** Licence**, or as a result of settling any of the terms hereof. The** User **hereby authorises and instructs** The Company **to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.**

13.8 GENERAL PROVISIONS

Paragraph 6.10 and Paragraphs 6.12 to 6.26 of the **CUSC** are incorporated into this **VLPA** *mutatis mutandis*.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY

……..……..……..……..……..

for and on behalf of

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SIGNED BY

……..……..……..……..……..

for and on behalf of

[User]

APPENDIX F5

TECHNICAL CONDITIONS

OTHER TECHNICAL REQUIREMENTS

Annex 5: CUSC Exhibit F

CUSC - EXHIBIT F

THE CONNECTION AND USE OF SYSTEM CODE
USE OF SYSTEM APPLICATION

SUPPLIER

INTERCONNECTOR USER

INTERCONNECTOR ERROR ADMINISTRATOR

VIRTUAL LEAD PARTY

PLEASE STUDY THE FOLLOWING NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM.

Please note that certain expressions which are used in this application form are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold. If the **Applicant** has any queries regarding this application or any related matters then the **Applicant** is recommended to contact **The Company**[1] where our staff will be pleased to help.

1. **The Company** requires the information requested in this application form for the purposes of preparing an **Offer** (the "**Offer**") to allow the **Applicant** to use the **National Electricity Transmission System**. It is essential that the **Applicant** supplies all information requested in this application form and that every effort should be made to ensure that such information is accurate.

2. Where **The Company** considers that any information provided by the **Applicant** is incomplete or unclear or further information is required, the **Applicant** will be requested to provide further information or clarification. The provision/clarification of this information may impact on **The Company's** ability to commence preparation of an **Offer**.

3. Should there be any change in any information provided by the **Applicant** after it has been submitted to **The Company**, the **Applicant** must immediately inform **The Company** of such a change.

4. The effective date upon which the application is deemed to have been received by **The Company** shall be the date when **The Company** is reasonably satisfied that the **Applicant** has completed Section A and paid **The Company** the application fee set out in the Statement of Use of System Charges[2]. **The Company** shall notify the **Applicant** of such date.

5. **The Company** will make the **Offer** in accordance with the terms of Paragraph 3.7 or 9.21 (**Use of System Application**) of the **CUSC** and the **Transmission Licence**.

6. **The Company** will make the **Offer** as soon as is reasonably practicable and in any event within 28 days of the effective date of the application or such longer period as the **Authority** agrees to.

7. If the **Applicant** is not already a **CUSC Party** the **Applicant** will be required as part of this application form to undertake that he will comply with the provisions of the **Grid Code** for the time being in force. Copies of the **Grid Code** and the **CUSC** are available on **The Company's**

[1] Electricity Connections, National Grid Electricity System Operator, Farraday House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA
[2] https://www.nationalgrideso.com/node/120336

Website[3] and the **Applicant** is advised to study them carefully. **Data** submitted pursuant to this application shall be deemed submitted pursuant to the **Grid Code**.

8. **The Company's Offer** will be based to the extent appropriate upon its standard form terms for **Use of System Offer** and the **Charging Statements** issued by **The Company** under Standard Conditions C4 and C6 of the **Transmission Licence**. The **Applicant** should bear in mind **The Company's** standard form terms of offer when making this application.

9. Please complete this application form in black print and return it duly signed to ~~**The Company**~~Electricity Connections, National Grid Electricity System Operator, Farraday House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA. In addition to returning the application to the Customer Services Manager an electronic form may be e-mailed to **The Company.**

10. For the most up to date contact details applicants are advised to visit **The Company Website**[4].

[3] https://www.nationalgrideso.com/codes
[4] https://www.nationalgrideso.com/connections

APPLICATION FOR USE OF SYSTEM

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

SECTION A. DETAILS OF APPLICANT (in respect of this application)

1. **Registered Company**

Name:……...

Address (of Registered Office in the case of a Company):

.....

.....

.....

Company Number:.....

VAT Number (if applicable):……

Parent Company Name (if applicable):……..……..

2. **UK Address if company is registered outside the UK**

Name:……...

Address:…….

Email:…….....

Telephone:……

3. **Company Secretary or person to receive CUSC notices**

Name:……...

Email:…….

Telephone:……...

Fax:……...

APPLICATION FOR USE OF SYSTEM

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

4. **Commercial Contact/Agent (person to receive application fee invoice and Offer if different from Company Secretary or person to receive CUSC notices identified in 2 above)**

   Name:……....

   Title:……

   Address:……....

   ……

   ……

   Email:……..

   Telephone:……....

   Fax:……....

5. Please confirm whether you agree to us sending the **Offer** in electronic form instead of hard copy and, if so, confirm the address for this as follows.

   Yes [ ]

   No [ ]

   Email address ……..

APPLICATION FOR USE OF SYSTEM

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

USE OF SYSTEM APPLICATION

1. We hereby apply to use the **National Electricity Transmission System**.

2. We will promptly inform **The Company** of any change in the information given in this **Application** as quickly as practicable after becoming aware of any such change.

3. If we are not already a **CUSC Party** we undertake for the purposes of this **Application** to be bound by the terms of the **Grid Code** from time to time in force and to sign a **CUSC Accession Agreement**.

4. We confirm that we are applying in the category of:

Supplier	**[ ]**
Interconnector User	**[ ]**
Interconnector Error Administrator	**[ ]**
Virtual Lead Party	[ ]

5. Where applying in the category of a Supplier, we confirm that we:

meet the Approved Credit Rating	**[ ]**
do not meet the Approved Credit Rating	**[ ]**

APPLICATION FOR USE OF SYSTEM

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

6. Where applying in the category of a Supplier, without prejudice to our right to provide security by other means, we can confirm that we intend to provide security via:

Qualifying Guarantee	**[ ]**
Letter of Credit	**[ ]**
Cash in **Escrow Account**	**[ ]**
Bilateral Insurance Policy	**[ ]**
Insurance Performance Bond	**[ ]**
Independent Security Arrangement	**[ ]**

SIGNED BY:

.....
For and on behalf of the **Applicant**

Date:.....

END OF EXHIBIT F

Annex 6: CUSC Section 1 Revisions

Section 1 - Revisions

1.2.4 In relation to Sections 2, 3, 9 and 15 the following table sets out the applicability of those Sections in addition to those Sections referred to in Paragraph 1.2.3:

	Categories	Applicable Sections
1	Power Station directly connected to the GB Transmission System (including in the case of OTSDUW Build, a Power Station connected prior to the OTSUA Transfer Time by means of OTSUA)	2 and 3 and 15
2	Non-Embedded Customer Site	2 only
3	Distribution System directly connected to the GB Transmission System	2 only and, where a Construction Agreement is associated with Distributed Generation, 15
4	Suppliers	3 only
5	Embedded Power Station except those which are the subject of a BELLA	3 only and, where the subject of a BEGA, 15
6	Small Power Station Trading Parties	3 only
7	Interconnector User	9 Part II only
8	Interconnector Error Administrator	9 Part II only
9	Interconnector Owner	9 Part I only and 15
10	Distribution Interconnector Owner	3 only
11	Embedded Exemptable Large Power Stations whose Boundary Point Metering System is either SMRS registered or is registered in CMRS by a User who is responsible for the Use of System Charges associated with the BM Unit registered in CMRS	None
12	Virtual Lead Party (VLP)	3 only

1.3.1 Bilateral Agreements

(a) Each **User** in respect of each category of connection and/or use with a direct connection to the **National Electricity Transmission System** shall enter into and comply with a **Bilateral Connection Agreement** in relation to such connection and/or use as identified in Paragraph 1.3.1(e).

(b) Each User in respect of each category of connection and/or use with an **Embedded Power Station** (except those which are the subject of a **BELLA** or **VLPA**) and/or in relation to a **Small Power Station Trading Party** and/or a **Distribution Interconnector** shall enter into and comply with a **Bilateral Embedded Generation Agreement** in relation to such use as identified in Paragraph 1.3.1(e).

(c) Each **User** in respect of its **Embedded Exemptable Large Power Station** whose **Boundary Point Metering System** is registered in **SMRS** or is registered in **CMRS** by another **User** who is responsible for the **Use of System Charges** associated with the **BM Unit** registered in **CMRS** (except where the subject of a **VLPA**) shall enter into and comply with a **BELLA** as identified in Paragraph 1.3.1(e).

(d) Each **User** with a **Secondary BM Unit** shall enter in to and comply with a **Virtual Lead Party Agreement** in respect of the **VLP Assets** as identified in Paragraph 1.3.1(e).

(e) Exhibits 1, 2, 5 and 7 in Schedule 2 to the **CUSC** contain the forms of **Bilateral Agreements** contemplated to be entered into pursuant to this Paragraph 1.3, being:

(i) Exhibit 1 – **Bilateral Connection Agreement**: direct connection to the **National Electricity Transmission System** (**Power Station** directly connected to the **NETS**, **Distribution System** directly connected to the **NETS**, **Non-Embedded Customer Site** and/or **Interconnector**);

(ii) Exhibit 2 – **Bilateral Embedded Generation Agreement**: embedded use of system (**Embedded Power Station** (except those which are the subject of a **BELLA**) and/or in relation to a **Small Power Station Trading Party** and/or **Distribution Interconnector**);

(iii) Exhibit 5 – **BELLA**: provisions associated with such **Embedded Exemptable Large Power Stations** who have no rights and obligations under Section 3 of the **CUSC**.

(iv) Exhibit 7 – **Virtual Lead Party Agreement**: embedded use of system in relation to **VLP Assets**

Section 3 - Revisions

3.1 INTRODUCTION

This Section 3 deals with use of the **National Electricity Transmission System** and certain related issues. Part I of this Section sets out general provisions (split into Parts A, B and C respectively dealing with generation, supply and VLP), Part II sets out charging related provisions and Part III sets out the credit requirements related to **Use of System**. Depending on the category of connection and/or use of a **User**, the Section dealing with **Connection** (Section 2) may also be applicable.

3.7.3 The **Use of System Offer** shall in the case of an application relating to an **Embedded Power Station** or to a **Small Power Station Trading Party** or to a **Distribution Interconnector** be in the form of a **Bilateral Embedded Generation Agreement** together with any **Construction Agreement** relating thereto. In the case of a **Virtual Lead Party**, it shall be in the form of a **Virtual Lead Party Agreement**. In the case of a **Supplier**, it shall be in the form of a **Use of System Supply Offer Notice**. The provisions of Standard Condition C8 shall apply to an application by a **Supplier** as if the **Use of System Supply Offer** and **Confirmation Notice** was an agreement for the purposes of that condition.

3.7.5 Upon acceptance of the **Use of System Offer** (as offered by **The Company** or determined by the **Authority**) by the **User** and execution by **The Company** of the **Bilateral Embedded Generation Agreement** or **Virtual Lead Party Agreement** or the issuing by **The Company** of a **Use of System Supply Confirmation Notice**, as the case may be, the **User** shall have the right to use the **National Electricity Transmission System**. Such right shall continue until the **Bilateral Embedded Generation Agreement** or **Virtual Lead Party Agreement** is terminated or a **Use of System Termination Notice** is submitted pursuant to Paragraph 3.8.

3.8.1 Provisions relating to **Disconnection** relating to **Users** who have **Bilateral Embedded Generation Agreements** are dealt with in Section 5.

3.8.1(A) Provisions relating to **Users** who have **Virtual Lead Party Agreements** are dealt with in Section 5.

Section 3 – New text

PART IC - GENERAL – VIRTUAL LEAD PARTIES

This Part IC deals with rights and obligations relating to **Virtual Lead Parties**. References to "**User**" in this Part IC should be construed accordingly.

3.8A RIGHTS TO USE THE NATIONAL ELECTRICITY TRANSMISSION SYSTEM

3.8A.1 Virtual Lead Party

Subject to the other provisions of the **CUSC**, the **Grid Code** and the relevant **Virtual Lead Party Agreement**, and subject to there continuing to be a **Distribution Agreement** with the owner/operator of the **Distribution System** in respect of the **VLP Assets**, each **User**, as between **The Company** and that **User**, may in relation to each of its **VLP Assets** transmit (or put, as the case may be) supplies of power on to and/or take supplies of power from the **National Electricity Transmission System** as the case may be.

3.8A.2 Virtual Lead Party Conditions

(a) The rights and obligations of a **User**, and **The Company** in connection therewith, are subject to the following conditions precedent having been fulfilled before such rights and obligations arise:

(i) the **User** having provided (in a form reasonably satisfactory to **The Company**) proof of having entered into a **Distribution Agreement** with the owner/operator of the **Distribution System** in respect of the **VLP Assets**; and

(ii) **The Company** having received satisfactory confirmation from the owner/operator of the **Distribution System** as to the running arrangements within the **Distribution System**;

(iii) **The User** having successfully registered **VLP Assets** to a **Secondary BMU** with **The Company**.

(b) If the conditions precedent of 3.8A.2(a)(i) to (iii) have not been fulfilled within 6 months of the date of the relevant **Virtual Lead Party Agreement**, **The Company** or the relevant **User** may rescind the relevant **Virtual Lead Party Agreement** by giving to the other notice to that effect in which event all rights and liabilities of the parties thereunder and under the **CUSC** in relation to the **VLP Assets** shall cease.

3.8A.3 Outages and Constraints

(a) Subject to the other provisions of the **CUSC** and the **Grid Code** and any relevant **Virtual Lead Party Agreement**, **The Company** shall, as between **The Company** and that **User**, accept into the **National Electricity Transmission System** power from each **User** except to the extent (if any) that **The Company** is prevented from doing so by transmission constraints which could not be avoided by the exercise of **Good Industry Practice** by **The Company**.

3.8A.4 TECHNICAL CONDITIONS FOR VIRTUAL LEAD PARTIES

3.8A.4.1 Each **User** shall use all reasonable endeavours to ensure during the period of the relevant **Virtual Lead Party Agreement** that the **VLP Assets** shall comply with the technical conditions set out in Appendix F5 to the relevant **Virtual Lead Party Agreement**.

3.8A.4.2 If a **User** or **The Company** wishes to modify, alter or otherwise change the technical conditions or the manner of their operation under Appendix F5 to the relevant **Virtual Lead Party Agreement** this shall be deemed to be a **Modification** for the purposes of the **CUSC**.

Section 5 - Revisions

5.1.5 Embedded Exemptable Large Power Station and Virtual Lead Parties

A **User** in respect of an **Embedded Exemptable Large Power Station** or **Virtual Lead Party** shall (unless **The Company** agrees otherwise in writing, such agreement not to be unreasonably withheld or delayed), once it has acceded to the **CUSC Framework Agreement** continue to remain a **CUSC Party** and shall not be treated as a **Dormant CUSC Party** notwithstanding the provisions of Paragraph 5.1.1.

Section 11 – Definition Changes

"Bilateral Agreement"	in relation to a User, a **Bilateral Connection Agreement** or a **Bilateral Embedded Generation Agreement**, or a **BELLA** or a **Virtual Lead Party Agreement** between **The Company** and the **User**;
"Secondary BM Unit"	as defined in the **Balancing and Settlement Code**
"Use of System Offer"	an offer (or in the case of a use of system generation offer and where appropriate, offers) made by **The Company** to a **User** pursuant to Paragraph 3.7 or 9.19 substantially in the form of **Exhibit G** (Use of System Supply Offer) or **Exhibit E** (**Use of System Generation Offer**) or **Exhibit H** (**Use of System Interconnector Offer**) or Exhibit 7 Schedule 2 (**Use of System Virtual Lead Party Offer**) to the **CUSC**;
User's Equipment	Means; 1) the **Plant** and **Apparatus** owned by a **User** (ascertained in the absence of agreement to the contrary by reference to the rules set out in Paragraph 2.12) which: (a) is connected to (or in the case of **OTSDUW Build** will, at the **OTSUA Transfer Time**, be connected to) the **Transmission Connection Assets** forming part of the **National Electricity Transmission System** at any particular **Connection Site** to which that **User** wishes so to connect, or (b) is connected to a **Distribution System** to which that **User** wishes so to connect but excluding for the avoidance of doubt any **OTSUA**; 2) **VLP Assets**
"Virtual Lead Party (VLP)"	as defined in the **Balancing and Settlement Code**
"Virtual Lead Party Agreement (VLPA)"	an agreement entered into pursuant to Paragraph 1.3.1 a form of which is set out in Exhibit 7 to Schedule 2;
"VLP Assets"	equipment owned or operated by a **Virtual Lead Party** which is part of a **Secondary BM Unit**

Virtual Lead Party Application Form

Updated Exhibit F of CUSC to include Virtual Lead Parties in the application form