

Modification proposal:	Connection and Use of System Code (CUSC) CMP322: Updating the CUSC section 4 “Balancing Services” to ensure Ofgem have the appropriate authority to approve Ts and Cs, relevant to EBGL Article 18, held within the Standard Contract Terms (SCTs) (CMP322)		
Decision:	The Authority ¹ directs that this modification be made ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	05 February 2020	Implementation date:	04 April 2020

Background

On 8 October 2019 we confirmed, upon satisfaction of certain conditions, that the provisions in the GB codes formed the national terms and conditions (T&C) related to balancing.³ One of the conditions for approval of the T&C is the completion of CMP322.

Once all conditions are met, the proposed T&C take effect and are the T&C for balancing as required by Article 18 of the EBGL Regulation.⁴ Any future changes to the T&C related to balancing must be made in accordance with Articles 4 to 7 and Article 10 of the EBGL Regulation. This process requires that proposed amendments to the T&C are subject to approval by the relevant regulatory authority.

The T&C include sections of a number of the GB industry codes as well as sections of the Electricity System Operator’s (ESO) Standard Contract Terms (SCTs). However, at present, there is no mechanism in the GB codes for the Authority to approve changes to the SCTs. As a result, any changes to the T&C related to balancing that are captured in the SCTs which follow the current process would not be aligned with the EBGL Regulation.

The modification proposal

This modification proposal was raised by NGESO on 11 September 2019. CMP322 seeks to amend the CUSC to create a mechanism for Ofgem to approve changes to the ESO SCTs when those changes include amendments to the T&C related to balancing. Upon implementation of CMP322, all changes to the SCTs that amend the T&C related to balancing will be subject to approval by the Authority following the consultation period required by the EBGL Regulation.

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

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

³ Our 8 October 2019 decision is accessible at: <https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing>

⁴ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The EBGL came into force on 18 December 2017. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2195&from=EN>

CMP322 updates Section 4.2B of the CUSC by inserting a paragraph on Article 18 of the EBGL Regulation. This paragraph states that any amendment to the T&C related to balancing is subject to necessary consultation and prior approval by the Authority.

The original proposer determined that CMP322 would have a positive impact on applicable CUSC objectives (a)⁵ and (c)⁶. The proposer reasoned that CMP322 better facilitated these objectives by ensuring that the process to amend terms and conditions related to balancing that are held in the SCTs is compliant with the EBGL Regulation.

CUSC Panel⁷ recommendation

At the CUSC Panel meeting on 29 November 2019, the CUSC Panel unanimously considered that CMP322 would better facilitate the CUSC objectives and the Panel therefore recommended its approval. The panel unanimously agreed that CMP322 better facilitated CUSC objective (c). The panel were split on whether CMP322 better facilitated or had neutral impact on the remaining objectives.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR)⁸ dated 24 December 2019. There were no responses to the industry consultation on the modification proposal. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the CUSC;⁹ and
- directing that the modification be made is consistent with our principal objective and statutory duties.¹⁰

Reasons for our decision

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

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

While a majority of panel members felt that CMP322 has a positive impact on CUSC objective (a), we believe that the modification has a neutral impact on this objective. The Panel based its view on CMP322 ensuring compliance with the EBGL Regulation should the T&C related to balancing held in the SCTs require amendment. However, upon review, we believe that this benefit is better captured by CUSC objective (c). Accordingly, we consider this modification proposal to have a neutral impact on CUSC objective (a).

⁵ CUSC objective (a) is the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence

⁶ CUSC objective (c) is compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency

⁷ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

⁸ CUSC modification proposals, modification reports and representations can be viewed on NGENSO's website at: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/> and the FMR for CMP322 is available at <https://www.nationalgrideso.com/document/159531/download>

⁹ As set out in Standard Condition C10(1) of the Electricity Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹⁰ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

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

The panel unanimously agreed that CMP322 better facilitated CUSC objective (c). We agree with the assessment of the panel. CMP322 aligns with the EBGL Regulation by ensuring any modification of the SCTs that would constitute an amendment to the T&C related to balancing is subject to approval by the Authority. We therefore consider CMP322 to have a positive impact on CUSC objective (c).

Decision notice

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that modification proposal CMP322: Updating the CUSC section 4 “Balancing Services” to ensure Ofgem have the appropriate authority to approve T&Cs, relevant to EBGL Article 18, held within the Standard Contract Terms (SCTs) be made.

Leonardo Costa
Senior Manager SO/DSO

Signed on behalf of the Authority and authorised for that purpose