

## CUSC Code Administrator Consultation Response Proforma

### CMP323 – Updating the CUSC governance process to ensure we capture the EBGL change process for Article 18 T and Cs

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 April 2020** to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Garth Graham (garth.graham@sse.com)</i>
<b>Company Name:</b>	<i>SSE Generation</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>For reference, the Applicable CUSC objectives are:</p> <p>Standard (Non- Charging) Objectives</p> <ul style="list-style-type: none"> <li><b>(a)</b> The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence</li> <li><b>(b)</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</li> <li><b>(c)</b> Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</li> <li><b>(d)</b> Promoting efficiency in the implementation and administration of the CUSC arrangements</li> </ul> <p>*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).</p>

	<p>We believe that CMP323 is neutral in terms of Applicable Objectives (a) and (b).</p> <p>In terms of Applicable Objective (c) we believe that the CMP323 Original is better in terms of ensuring compliance with European law and in terms of the efficiency in implementation and application of the CUSC (therefore better in terms of Applicable Objective (d)).</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>Notwithstanding our other comments in this response concerning the legal status of the 8<sup>th</sup> October 2019 Ofgem ‘decision’ letter (and thus what are the terms and conditions related to balancing in GB); we support the proposed implementation approach if this CMP323 modification is legally permissible.</p>
<p><b>Do you have any other comments?</b></p>	<p>We note that the 25 detailed questions of a legal nature that we raised with NGESO and Ofgem in early November (and which we shared with the GCRP in early December) in respect of the legal status of Ofgem’s 8<sup>th</sup> October 2019 ‘decision’ letter have still not been answered.</p> <p>Therefore, absent of the legal answers to those 25 questions, the legal status of that ‘decision’ remains in doubt and, accordingly, so does the legal status of any subsequent decision(s) in respect of code modifications (including, but not limited to, CMP323, GC0132 and P392) that are predicated on the Ofgem 8<sup>th</sup> October 2019 ‘decision’ letter being the NRA instrument to have approved, according to Article 6(1) of the EBGL, the Article 18 required terms and conditions related to balancing in GB.</p> <p>This legal status uncertainty will also be the case if, in due course, any future Article 6(3) amendment(s) to the Article 18 required ‘terms and conditions related to balancing’ in GB are brought forward in their own right (by the TSO or NRA) or if any GB code modifications to the CUSC, Grid Code or BSC are raised to do likewise.</p> <p>In addition to the above, we are also mindful of the discussions held in the Grid Code, as recorded in the GC0132 Code Administrator Consultation document (page 10):</p> <p>“The Proposer believes that the date in-train modifications are affected from is 4th April 2020 when the GC0132 modification is implemented. A Workgroup member disagreed, noting that the</p>

TSO's proposal (of the Article 18 terms and conditions related to balancing) to the Authority was based on the Grid Code (and other documentation) at that date (4th August 2019). The Workgroup member therefore believes that the in-train modifications that are affected are those approved (by the Authority or the GCRP) from 4th August 2019 onwards."

Notwithstanding the above, and for the avoidance of doubt, we believe that as the TSO's 4<sup>th</sup> August 2019 proposal to the NRA could only have included the baseline version of the CUSC at that time (including any code modification(s) approved by the NRA prior to that date, but due to implemented after 4<sup>th</sup> August) it could not have included any subsequent GB industry code changes that impact on parts of those codes (such as the CUSC) listed in Annex 1 of the 4<sup>th</sup> August 2019 TSO proposal.

Furthermore, we understand from the P392 Workgroup meeting on 24<sup>th</sup> March 2020 that the 4<sup>th</sup> August 2019 (rather than 4<sup>th</sup> April 2020 or 25<sup>th</sup> June 2020) date is now accepted in terms of the BSC equivalent change (P392) to this CMP323 modification (as well as GC0132).

Given this, it will be necessary, in our view, to ensure that changes to the CUSC approved / implemented after 4<sup>th</sup> August 2019 (up to and including 25<sup>th</sup> June 2020) will; if they concern parts of the CUSC listed in Annex 1 of the 4<sup>th</sup> August 2019 letter; need to be subject to the EBGL change process in order to have legal effect in GB.