

Workgroup Vote – Stage 2

CMP317 and CMP327: Workgroup Vote

Please note: To participate in any votes, Workgroup members need to have attended at least 50% of meetings.

Stage 2 - Workgroup Vote

2a) Assess the original and WACMs (if there are any) against the CUSC objectives compared to the baseline (the current CUSC).

2b) If WACMs exist, vote on whether each WACM better facilitates the Applicable CUSC Objectives better than the Original Modification Proposal.

2c) Vote on which of the options is best.

The Applicable CUSC Objectives (Charging) 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).

Workgroup Vote

Stage 2a – Assessment against objectives

To assess the original and WACMs against the CUSC objectives compared to the baseline (the current CUSC).

You will also be asked to provide a statement to be added to the Workgroup Report alongside your vote to assist the reader in understanding the rationale for your vote.

Y = Yes, N = No, (-) = Neutral

ACO = Applicable CUSC Objective

| Workgroup Member | Better facilitates ACO (a) | Better facilitates ACO (b) | Better facilitates ACO (c) | Better facilitates ACO (d) | Better facilitates ACO (e) | Overall (Y/N) |
|------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|---------------|
| | Name – Company | | | | | |
| Original | N | N | N | N | N | N |
| WACM 1 | N | N | N | N | N | N |
| WACM 2 | N | N | N | N | N | N |
| WACM 3 | N | N | N | N | N | N |
| WACM 4 | N | N | N | N | N | N |
| WACM 5 | N | N | N | N | N | N |
| WACM 6 | N | N | N | N | N | N |
| WACM 7 | N | N | N | N | N | N |
| WACM 8 | N | N | N | N | N | N |
| WACM 9 | N | N | N | N | N | N |
| WACM 10 | N | N | N | N | N | N |
| WACM 11 | N | N | N | N | N | N |
| WACM 12 | N | N | N | N | N | N |
| WACM 13 | N | N | N | N | N | N |
| WACM 14 | N | N | N | N | N | N |
| WACM 15 | N | N | N | N | N | N |
| WACM 16 | N | N | N | N | N | N |
| WACM 17 | N | N | N | N | N | N |
| WACM 18 | N | N | N | N | N | N |
| WACM 19 | N | N | N | N | N | N |
| WACM 20 | N | N | N | N | N | N |
| WACM 21 | N | N | N | N | N | N |
| WACM 22 | N | N | N | N | N | N |
| WACM 23 | N | N | N | N | N | N |
| WACM 24 | N | N | N | N | N | N |
| WACM 25 | N | N | N | N | N | N |
| WACM 26 | N | N | N | N | N | N |
| WACM 27 | N | N | N | N | N | N |

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|---------|---|---|---|---|---|---|
| WACM 28 | N | N | N | N | N | N |
| WACM 29 | N | N | N | N | N | N |
| WACM 30 | N | N | N | N | N | N |
| WACM 31 | N | N | N | N | N | N |
| WACM 32 | N | N | N | N | N | N |
| WACM 33 | N | N | N | N | N | N |
| WACM 34 | N | N | N | N | N | N |
| WACM 35 | N | N | N | N | N | N |
| WACM 36 | N | N | N | N | N | N |
| WACM 37 | N | N | N | N | N | N |
| WACM 38 | N | N | N | N | N | N |
| WACM 39 | N | N | N | N | N | N |
| WACM 40 | N | N | N | N | N | N |
| WACM 41 | N | N | N | N | N | N |
| WACM 42 | N | N | N | N | N | N |
| WACM 43 | N | N | N | N | N | N |
| WACM 44 | N | N | N | N | N | N |
| WACM 45 | N | N | N | N | N | N |
| WACM 46 | N | N | N | N | N | N |
| WACM 47 | N | N | N | N | N | N |
| WACM 48 | N | N | N | N | N | N |
| WACM 49 | N | Y | Y | Y | - | Y |
| WACM 50 | N | Y | Y | Y | - | Y |
| WACM 51 | Y | Y | Y | Y | - | Y |
| WACM 52 | Y | Y | Y | Y | - | Y |
| WACM 53 | Y | Y | Y | Y | - | Y |
| WACM 54 | Y | Y | Y | Y | - | Y |
| WACM 55 | Y | Y | Y | Y | - | Y |
| WACM 56 | N | Y | Y | Y | - | Y |
| WACM 57 | N | Y | Y | Y | - | Y |
| WACM 58 | Y | Y | Y | Y | - | Y |
| WACM 59 | Y | Y | Y | Y | - | Y |
| WACM 60 | Y | Y | Y | Y | - | Y |
| WACM 61 | Y | Y | Y | Y | - | Y |
| WACM 62 | Y | Y | Y | Y | - | Y |
| WACM 63 | N | N | N | N | N | N |
| WACM 64 | N | N | N | N | N | N |
| WACM 65 | N | N | N | N | N | N |
| WACM 66 | N | N | N | N | N | N |
| WACM 67 | N | N | N | N | N | N |
| WACM 68 | N | N | N | N | N | N |
| WACM 69 | N | N | N | N | N | N |
| WACM 70 | N | Y | Y | Y | - | Y |
| WACM 71 | N | Y | Y | Y | - | Y |
| WACM 72 | Y | Y | Y | Y | - | Y |
| WACM 73 | Y | Y | Y | Y | - | Y |
| WACM 74 | Y | Y | Y | Y | - | Y |

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|---------|---|---|---|---|---|---|
| WACM 75 | Y | Y | Y | Y | - | Y |
| WACM 76 | Y | Y | Y | Y | - | Y |
| WACM 77 | N | Y | Y | Y | - | Y |
| WACM 78 | N | Y | Y | Y | - | Y |
| WACM 79 | Y | Y | Y | Y | - | Y |
| WACM 80 | Y | Y | Y | Y | - | Y |
| WACM 81 | Y | Y | Y | Y | - | Y |
| WACM 82 | Y | Y | Y | Y | - | Y |
| WACM 83 | Y | Y | Y | Y | - | Y |

Voting Statement:

In considering my voting for each of the 84 options (the Original and 83 WACMs) I have found it necessary (as with CMP213/Project Transmit previously) to look individually at the component elements that are then included (or not, as the case may be) within each of the 84 proposals.

In so doing I'm mindful of the intent of the CMP317 and CMP327 proposals as expressed by the Proposer (the ESO) which is to ensure CUSC legal compliance with Regulation 838/2010 as, for example, was set out within the 'purpose of the modification' on the first page of the CMP317 proposal and in particular its reference to establishing a methodology for maintaining compliance:

- “To define, for the purposes of EU regulation 838/2010, which specific elements of generator TNUoS pertain to assets required for connection, which specific elements should therefore be excluded when considering whether generator TNUoS charges fall within the stipulated range of €0-2.50/MWh and to establish a methodology for maintaining compliance in charge setting on an ex ante and an ex post basis.”*
[emphasis added]

Similarly, with respect to CMP327, the Proposer noted¹ the direction from the Authority in the following terms:

- “To achieve this the Authority, on 21st November 2019, directed the ESO to “....modify the Use of System Charging Methodology, Section 14 of CUSC to set the TGR to £0, subject to ensuring ongoing compliance with EU Regulation No 838/2010 (in particular, the requirement that average transmission charges paid by producers in each Member State must be within prescribed ranges – which for Ireland, Great Britain and Northern Ireland is 0 to 2.50 EUR/MWh).”* [emphasis added]

Given the stated objective of CMP317 and CMP327, I consider Applicable Objective (d) to be the *primus inter pares* of the Applicable CUSC Objectives for CMP317 and CMP327 - each of the 84 proposals needs to meet this requirement first and foremost.

In my view if “Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency” is not achieved in respect of any of the 84 proposals then (for each such proposal) this:

¹ Under the 'What' section on page 4.

- does not facilitate competition (as GB generators pay higher than legally permissible charges which, with Project TERRE / Project MARI / EBGL etc., affects not just cross border trade but also within GB and UK electricity trading) so is not better in terms of Applicable Objective (a);
- does not result in cost reflective charges (as GB generators pay higher than legally permissible annual average transmission charges) so is not better in terms of Applicable Objective (b);
- does not facilitate a use of system charging methodology that takes account of developments (as the GB charging methodology is incompatible with the legal requirements for the level of annual average transmission charges) so is not better in terms of Applicable Objective (c); and
- does not promote efficiency in the implementation and administration of the CUSC (as the code includes elements that are incompatible with the law, which cannot be efficient) so is not better in terms of Applicable Objective (e).

Equally, if any of the 84 proposals do better facilitates Applicable Objective (d) then they do, in principle, better facilitate the other Applicable Objectives (a), (b), (c) and (e) for the equal and opposite reason noted under the respective bullet point(s) above.

In respect of ensuring legal compliance with Regulation 838/2010 it is (as the Workgroup has identified) important, in particular, to take account of (i) the annual average transmission charges paid by generators in GB and (ii) the exclusions listed in paragraph 2 of Part B concerning charges paid by generators in GB for physical assets required for connection to the system as well as charges paid by generators in GB related to ancillary services.

There are, accordingly, two core elements contained (or not, as the case may be) within each of the 84 proposals which are highly relevant to EU law compliance; namely (i) the treatment of the charges paid for physical assets required for connection to the system; and / or (ii) the treatment of congestion management costs in terms of the exclusion of charges paid for ancillary services.

In respect of the treatment of physical assets required for connection to the system it is clear from the CMA's decision² of February 2018, at paragraph 5.82, that a European law interpretation must be applied to what is the 'transmission system' for the purposes of determining the '*annual average transmission charges paid by generators in GB*' and that, in this respect, as the CMA noted:

- "The parties [GEMA, National Grid, SSE and EdF] agreed that the interpretation of an EU instrument could not ordinarily depend on the approach taken in domestic law. We were referred to the Monsanto judgment of the CJEU, in which it was said that:

The need for the uniform application of Community law and the principle of equality require that the terms of a provision of Community law which...makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation

² <https://www.gov.uk/cma-cases/edf-sse-code-modification-appeal>

throughout the Community, which must take into account the context of that provision and the purpose of the legislation in question (see, to that effect, in particular Case C287/98 Linster [2000] ECR I-6917, paragraph 43).” [emphasis added]

Given this, along with the case made by the Authority (supported by National Grid as an intervenor) to the CMA as to (1) the ‘but for test’ and (2) what are ‘generator only spurs’ it therefore follows, in my view, that the ‘transmission system’ for the purposes of determining the ‘annual average transmission charges paid by generators in GB’ is the NETS (and not, for the avoidance of doubt, the MITS) as this is the only definition that conforms with the *Monsanto* legal principle.

The use of a solution which is based on the GB charges paid for the physical assets required to connect to the system being ‘All Local Circuits and Substations Charges’³ is thus incompatible with the *Monsanto* legal principle as it does not recognise the system as being the NETS, but rather the MITS.

On the other hand ‘Local Charges which relate to a Generator Only Spur’⁴ or ‘Charges that relate to all local circuits & local substations except for pre-existing assets and shared assets’⁵ are solutions which are based on the GB charges paid for the physical assets required to connect to the system being the NETS (not MITS) and thus are compatible with the *Monsanto* legal principle.

In respect of the treatment of congestion management in terms of the ancillary services exclusion I’m mindful, in particular, of the Workgroup deliberations as set out in paragraphs 9.3.8-9.3.15 along with the associated papers presented to the Workgroup by RWE.

Given the changes introduced recently by the Clean Energy Package in respect of the Third Package (including in regards to Regulation 714/2009, as set out in Regulation 838/2010) I am of the view that the component parts within the current (GB) BSUoS charge that could be considered to be “congestion management”, according to the Clean Energy Package, should not be excluded (according to paragraph 2(2) of Part B of Regulation 838/2010) when determining the annual average transmission charges paid by generators in GB.

Accordingly, any of the 84 proposals that does not conform with (i) the ‘but for test’ / ‘generator only spurs’ requirement concerning charges paid for physical assets required to connect to the transmission system in GB; and / or (ii) the treatment of congestion management costs paid by generators in GB (in the context of the application of the ancillary services exclusion in GB) therefore fails to better facilities Applicable Objective (d) and, as noted above, therefore does not better facilitate the other Applicable Objectives (a), (b), (c) and (e).

Conversely, any of the 84 proposals that conforms with (i) the ‘but for test’ / ‘generator only spurs’ requirement concerning charges paid physical assets required to connect to the transmission system in GB; and / or (ii) the treatment of congestion management costs paid by generators in GB (in the context of the application of the ancillary services exclusion in GB)

³ The first of the three options for potential definitions of physical assets required for connection of generators to the system identified by the Workgroup (at paragraph 2.1.4).

⁴ The second of the three options identified by the Workgroup (at paragraph 2.1.4).

⁵ The third of the three options identified by the Workgroup (at paragraph 2.1.4).

therefore does better facilities Applicable Objective (d) and, as noted above, therefore does better facilitate the other Applicable Objectives (a), (b), (c) and (e).

In conclusion the above has guided my voting in terms of each of the 84 proposals (the Original and the 83 WACMs).

Stage 2b – WACM Vote (If required)

Where one or more WACMs exist, does each WACM better facilitate the Applicable CUSC Objectives than the Original Modification Proposal?

| Workgroup Member (Insert Name) | |
|--------------------------------|-----------------------------|
| WACM | Better than Original Yes/No |
| WACM 1 | N |
| WACM 2 | N |
| WACM 3 | N |
| WACM 4 | N |
| WACM 5 | N |
| WACM 6 | N |
| WACM 7 | N |
| WACM 8 | N |
| WACM 9 | N |
| WACM 10 | N |
| WACM 11 | N |
| WACM 12 | N |
| WACM 13 | N |
| WACM 14 | N |
| WACM 15 | N |
| WACM 16 | N |
| WACM 17 | N |
| WACM 18 | N |
| WACM 19 | N |
| WACM 20 | N |
| WACM 21 | N |
| WACM 22 | N |
| WACM 23 | N |
| WACM 24 | N |
| WACM 25 | N |
| WACM 26 | N |
| WACM 27 | N |
| WACM 28 | N |
| WACM 29 | N |
| WACM 30 | N |

| | |
|---------|---|
| WACM 31 | N |
| WACM 32 | N |
| WACM 33 | N |
| WACM 34 | N |
| WACM 35 | N |
| WACM 36 | N |
| WACM 37 | N |
| WACM 38 | N |
| WACM 39 | N |
| WACM 40 | N |
| WACM 41 | N |
| WACM 42 | N |
| WACM 43 | N |
| WACM 44 | N |
| WACM 45 | N |
| WACM 46 | N |
| WACM 47 | N |
| WACM 48 | N |
| WACM 49 | Y |
| WACM 50 | Y |
| WACM 51 | Y |
| WACM 52 | Y |
| WACM 53 | Y |
| WACM 54 | Y |
| WACM 55 | Y |
| WACM 56 | Y |
| WACM 57 | Y |
| WACM 58 | Y |
| WACM 59 | Y |
| WACM 60 | Y |
| WACM 61 | Y |
| WACM 62 | Y |
| WACM 63 | N |
| WACM 64 | N |
| WACM 65 | N |
| WACM 66 | N |
| WACM 67 | N |
| WACM 68 | N |
| WACM 69 | N |
| WACM 70 | Y |
| WACM 71 | Y |
| WACM 72 | Y |
| WACM 73 | Y |
| WACM 74 | Y |

| | |
|---------|---|
| WACM 75 | Y |
| WACM 76 | Y |
| WACM 77 | Y |
| WACM 78 | Y |
| WACM 79 | Y |
| WACM 80 | Y |
| WACM 81 | Y |
| WACM 82 | Y |
| WACM 83 | Y |

Stage 2c – Workgroup Vote

Which option is the best? (Baseline, Proposer solution (Original Proposal), WACM1 or WACM2)

| Workgroup Member | Company | BEST Option? | Which objective(s) does the change better facilitate? (if baseline not applicable) |
|------------------|----------------|--------------|--|
| Garth Graham | SSE Generation | 72 | (a), (b), (c) and (d). |