Final Modification Report

CMP373: Deferral of BSUoS billing error adjustment

Overview: On 9 April 2021, the ESO informed industry parties that they had underbilled BSUoS by ~£44m of Balancing Services costs incurred in 2020/21 made up of costs associated with trading activities and the Accelerated Loss of Mains Change Programme (ALoMCP). The Proposer is content with the approach for recovery of ALoMCP (~£10m)[1]. However, the ESO have proposed to recover the cost associated with trading activities (~£34m) through the Reconciliation Final run (RF) for 2020/21, which the Proposer believes will cause significant problems for Suppliers, Generators and Consumers.

Modification process & timetable

1. **Proposal Form** – 20 April 2021
2. **Workgroup Consultation** – 28 April 2021(9am) - 04 May 2021(12pm)
3. **Workgroup Report** – 10 May 2021
4. **Code Administrator Consultation** – 11 May 2021 (9am) - 13 May 2021(12pm)
5. **Draft Final Modification Report** – 13 May 2021
6. **Final Modification Report** – 14 May 2021
7. **Implementation** – 01 October 2021

Have 5 minutes? Read our Executive summary
Have 20 minutes? Read the full Final Modification Report
Have 30 minutes? Read the full Final Modification Report and Annexes.

Status summary: Final Modification Report. This Report has been submitted to the Authority for them to decide whether this change should happen.

Panel Recommendation: The Panel has recommended by majority that the Proposer's solution is implemented.

This modification is expected to have a: High impact on Suppliers, Generators and Consumers.

Governance route	Urgent modification to proceed under a timetable agreed by the Authority (with an Authority decision)	
Who can I talk to about the change?	**Proposer:** Simon Vicary Simon.Vicary@edfenergy.com 07875110961	**Code Administrator Contact:** Paul Mullen Paul.J.Mullen@nationalgrideso.com 07794537028

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[1] Note that when the Proposer raised CMP373 it was unclear how the costs associated with ALoMCP would be recovered; this has since been clarified and therefore this aspect is no longer part of CMP373.

Executive summary

On 9 April 2021, the ESO informed industry parties that they had underbilled BSUoS by ~£44m of Balancing Services costs incurred in 2020/21 made up of costs associated with trading activities and the Accelerated Loss of Mains Change Programme (ALoMCP). The Proposer is content with the approach for recovery of ALoMCP (~£10m). However, the ESO have proposed to recover the cost associated with trading activities (~£34m) through the Reconciliation Final run (RF) for 2020/21, which the Proposer believes will cause significant problems for Suppliers, Generators and Consumers.

What is the issue?

On 9 April 2021, the ESO informed industry parties that they had underbilled BSUoS by ~£44m of Balancing Services costs incurred in 2020/21. This is made up of costs associated with trading activities and Accelerated Loss of Mains Change Programme (ALoMCP).

Following an ESO hosted webinar on 20 April 2021, the ESO proposes to:

- Recover £33,163,790.21 of costs associated with trading activities in the Financial Year (FY) 2020/2021 Reconciliation Final (RF) run[2]; and
- Recover the £9,855,009.14 of the ALoMCP under recovery across the SF run in FY21/22, smeared across all settlement days equally i.e. it will be volume weighted across the settlement day.

For the avoidance of doubt, this is the "Baseline" that the CMP373 Original is being assessed against. As set out in 14.31.5 of the CUSC, there is a requirement for the ESO to revise invoices once an error has been found, this process is being undertaken through the RF run for the trading under-recovery. This is a practical and proportionate solution based on the volume of impacted days.

Whilst the Proposer supports the approach for treatment of the ALoMCP costs, they believe that recovery of unforeseen trading costs through the RF run for 2020/2021 (i.e. retrospectively) will cause significant problems for Suppliers, Generators and Consumers.

What is the solution and when will it come into effect?

Proposer's solution:

This modification proposes to adjust BSUoS in the 2021/22 charging year to ensure stakeholders do not face retrospective costs, which they were unable to foresee, and to avoid an adverse impact on the Default Tariff Cap calculations, both past and future. In summary:

Recover the £33,163,790.21 of trading costs in the FY 2021/2022 Settlement Final (SF) Run	Recover the costs across the Settlement Day with the costs volume weighted across the day through each settlement period[3]	Recovery of the £33,163,790.21 of trading costs from 1 October 2021 to 31 March 2022 (Settlement Days)

[2] These costs were incurred between 30 September 2020 and 9 March 2021 settlement days. These costs will be invoiced through the RF run between 19 November 2021 and 4 May 2022.

[3] i.e. when volume is highest in the day, the largest proportion of costs are paid.

Implementation date: 1 October 2021 (with the 2020/2021 BSUoS Under-Recovery to be recovered between 1 October 2021 and 31 March 2022).

Summary of potential alternative solution(s) and implementation date(s):

No alternative solution(s) raised.

Workgroup conclusions: The Workgroup concluded by majority that the Original better facilitated the Applicable Objectives than the current CUSC (the Baseline).

What is the impact if this change is made?

The expectation is that there is a small adjustment between the SF and RF settlement runs. The ~£34m relates directly to the error in the trading costs. This would be in addition to the normal difference between the SF and RF runs. Historically this difference has been between £5.5m and £9.1m for 2017/18 and 2018/19 respectively[4]. By including the ~£34m error in the trading costs in the 2021/2022 SF run, this does not unexpectedly penalise (or reward) industry parties for this unforeseen cost recovery adjustment and allows Suppliers to retain the ability to recover these costs from consumers if they so wish to.

If the change is made to recover these costs through the SF runs, the impact of recovering over different lengths of time during SF runs could also impact parties in different ways e.g. a longer range of settlement days (1 June 21 – 31 March 2022) would result in lower costs to recover each day, with recovery over a shorter range (1 October 2021 – 31 March 2022) providing a longer notice period of the change being implemented.

If no change is made through this modification, the costs will be recovered through the RF run. This would ensure that those parties who incurred the costs for the applicable period would receive the invoice. It would also provide users with significant notice ahead of the first invoice being provided, supporting cash flow of some parties, albeit for a retrospective period (30 September 2020 to 6 March 2021).

Interactions

This modification has no interactions with other modifications, other codes/standards or other industry-wide work.

This modification has no interactions with EBGL Article 18 Terms and Conditions.

[4] The full year RF data for 2019/2020 is not yet available.

What is the issue?

The ESO is responsible for recovering the cost of balancing the electricity transmission system. They recover these costs via BSUoS charges and look to minimise the volatility of the charge wherever possible.

At the end of March 2021, ESO's internal control processes detected an under-recovery of ~£44m Balancing Services costs for FY 2020/2021. This is made up of:

- £33,163,790.21 of costs associated with trading activities. This was caused by a formatting change in ESO's 3rd party trading settlement system which led to data not correctly pulling through to the master file which is used for invoicing purposes; and
- £9,855,009.14 of costs associated with ALoMCP as following over recovery of scheme costs in a previous year, ESO had temporarily ceased cost recovery in FY20 and had not restarted charges at the correct point in time.

The ESO noted that this under-recovery did not have any effect on the BSUoS COVID19 cap introduced through CMP345 'Defer the additional Covid-19 BSUoS costs' and CMP350 'Changes to the BSUoS Covid-19 support scheme'. For clarity, there will be no additional deferrals under the Covid Support Scheme due to this error.

These mistakes occurred in the ESO's process which a Supplier, Generator or Consumers would not reasonably be expected to manage risk against.

The ESO Workgroup Member apologised for the error and outlined the steps they have taken/are taking since they identified the issue. These are:

- ESO have performed a full reconciliation of FY21 BSUoS Charges to ensure there is no further under recovery;
- ESO are confident that there are no broader implications outside of the revenue process;
- ESO are onboarding external consultants to expedite improvements in their internal control framework so that any such issues are picked up sooner; and
- ESO are expediting System enhancements as part of refreshing their Charging and Billing system.

Following an ESO hosted webinar on 19 April 2021, the ESO propose to:

- Recover £33,163,790.21 of costs associated with trading activities in the FY 2020/2021 RF run[5]; and
- Recover the £9,855,009.14 of the ALoMCP under recovery across the SF run in FY21/22, smeared across all settlement days equally i.e. it will be volume weighted across the settlement day. This will commence on settlement day 1 April 2021 (until 31 March 2022), which will be invoiced through the SF run from 28 April 2021 (until 27 April 2022).

Whilst the Proposer supports the approach for treatment of the ALoMCP costs, they believe that recovery of unforeseen trading costs through the RF run for 2020/2021 will cause significant problems for Suppliers, Generators and Consumers. The expectation is that

[5] These costs were incurred between 30 September 2020 and 9 March 2021 settlement days. These costs will be invoiced through the RF run between 19 November 2021 and 4 May 2022.

there is a small adjustment between the SF and RF settlement runs. The ~£34m relates directly to the error in the trading costs. This would be in addition to the normal difference between the SF and RF runs. Historically this difference has been between £5.5m and £9.1m for 2017/18 and 2018/19 respectively.

Why change?

If nothing changes, the ESO will use the standard RF invoicing timeline, which for the impacted Settlement Periods will take place from 19 November 2021 to 4 May 2022. This is the process as set out in the CUSC methodology today, it will assign costs to the relevant parties who incurred them during FY 2020 / 2021, and due to the 14 month notice of the RF run, it provides visibility of the charges to parties in advance of the payment date, supporting some parties cash flow, albeit for a retrospective period (30 September 2020 to 6 March 2021).

The Default Tariff Cap calculation methodology specifically uses the SF Settlement Runs. Any adjustments to BSUoS costs made to the RF billing, which occurs after the SF run, cannot be reflected in the Default Tariff Cap.

The failure to recover these costs in the SF runs (profiled to when these costs were incurred) is due to errors made solely by the ESO. Furthermore, no transparency of any potential problem was given until the announcement to recover all of these costs in the RF run until 9 April 2021. The ESO previously indicated that RF invoicing would start from 25 May 2021. However, the ESO has since clarified that this is just the standard RF invoicing timeline and the actual impact of the increase from the SF to RF as a result of under-recovery would not be recovered in the November 2021 to February 2022 period.

The Proposer believes it will be better for the industry and consumers if the recovery of these costs is through the 2021/22 SF runs rather than the 2020/21 RF run as it does not unexpectedly penalise (or reward) industry parties for this unforeseen cost recovery adjustment.

Historically costs recovered from the RF Settlement Run have being fairly low, and industry processes and contracts have been designed around this assumption continuing.

What is the Proposer's solution?

Recover the £33,163,790.21 of trading costs in the FY 2021/2022 Settlement Final (SF) Run	Recover the costs across the Settlement Day with the costs volume weighted across the day through each settlement period[6]	Recovery of the £33,163,790.21 of trading costs from 1 October 2021 to 31 March 2022 (Settlement Days)

Workgroup considerations

The Workgroup convened twice to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Code Objectives.

Workgroup consideration of Proposer's solution prior to Workgroup Consultation

Recover the £33,163,790.21 of trading costs in the FY 2021/2022 Settlement Final (SF) Run

There was majority agreement for this view across the Workgroup that it was more appropriate to defer these costs to the FY 2021/2022 SF run to ensure that stakeholders do not face retrospective costs, which they were unable to foresee, and to avoid an adverse impact on the Default Tariff Cap calculations, both past and future.

There was an alternative view that using the FY 2020/2021 RF run is the current way to accurately assign these costs to the exact parties that would have been incurred those charges in the applicable period. This would also support cash flow with payments not due until between 19 November 2021 and 4 May 2022, albeit that the charges are for a retrospective period (30 September 2020 to 6 March 2021).

Recovery period and mechanism

The Workgroup supported:

- Recovering an identical amount per day that is allocated to Settlement Periods on a chargeable volume weighted basis; and
- Treating Trading costs as Fixed BSUoS costs and recovering those costs across all Settlement Periods rather than targeting the same Settlement Periods in 2021/22 as those impacted in 2020/21.

The main reasons are:

- Appears to be fairer as this is the process as set out in the charging methodology in CUSC today for costs which are not incurred in a specific settlement period. However, the Workgroup acknowledged that this wasn't the approach used for the BSUoS COVID costs (as introduced by CMP345 and CMP350);
- Provides more certainty for BSUoS payers as to what they will be charged; and

[6] i.e. when volume is highest in the day, the largest proportion of costs are paid

- Smearing the costs across FY 2021/22 is in line with the conclusions of the first BSUoS Task Force - the Workgroup noted that, when assessing the current BSUoS charge, the first Task Force concluded that it "does not currently provide any useful forward-looking signal which influences user behaviour to improve the economic and efficient operation of the market" and concluded that BSUoS should be treated as a cost-recovery charge[7].

However, a Workgroup Member representing Suppliers proposed to calculate what each party were due to pay in FY 2020/2021 and then apply the deferred costs evenly across the settlement periods i.e. the costs for 30 September 2020 to 6 March 2021 would be applied to the settlement periods within 30 September 2021 to 6 March 2022 and then factor these into the 2021/2022 SF runs for each Individual Party. The recovery would be over less Settlement Periods than if recovered from 1 June 2021 until 31 March 2022 and therefore the amount they would incur per day would be higher; however, the Workgroup Member argued that this would target cost at those who incurred them in the same Settlement period so is a fairer division of costs. Additionally, this mirrors the same winter period when the costs were incurred and may avoid any seasonal distortions. The majority of the Workgroup believed that this desire for accuracy vs a flat amount applied per day adds more complexity and would introduce a manual billing process as ESO's current billing system doesn't allow them to assign historical costs directly to settlement periods. Other Workgroup members pointed out that this proposed approach would not address the impact on the Default Tariff Cap calculations, which use published SF run values.

A Workgroup Member also challenged that this assumption that it would be more accurate and argued that that using these dates actually implies a degree of accuracy that isn't there ("Spurious accuracy") – i.e. it wouldn't necessarily be the same parties, the weather won't be the same and parties would consume differently. This could potentially introduce a distortive impact and some Workgroup members noted that spreading costs more thinly was preferable to smooth out any such distortion. However, the Supplier Workgroup Member believed that by recovering via a flat profile would unfavourably impact those customers generating over the summer. Workgroup member noted that Users would forecast BSUoS costs and take these into account in their Balancing Services. It's important therefore to minimise any distortion by spreading them across as many Settlement Periods as possible as Balancing Services feed into Imbalance costs. We don't want Users to be charged for being out of balance based on the previous years' costs. By not weighting costs for low volume Settlement Periods, the distortion will be bigger.

The ESO noted that the current way to accurately assign these costs to the exact parties that would have been incurred those charges in the applicable period would be to use the RF run for FY 2020 / 2021.

<u>Recovery of the £33,163,790.21 of trading costs from 1 October 2021 to 31 March 2022</u>

The Proposer originally sought Implementation from 24 May 2021 just before the RF run was due to commence.

[7] For more details see: https://www.ofgem.gov.uk/system/files/docs/2020/12/response_to_the_second_bsuos_task_force_report.pdf

This was slightly moved to recovery from 1 June 2021 to end of charging year (i.e. 31 March 2022), making 1 June 2021 the first Settlement Day. However, after further discussion (see above), primarily to give a longer notice period to consumers and industry parties the Proposer has amended this to a recovery of the trading costs from 1 October 2021 to 31 March 2021. This also more closely aligns the cost recovery across the anniversary of the period impacted (namely 30 September 2021 to 6 March 2022),

The Workgroup discussed the viability of these implementation approaches and these are summarised in the table within the "Implementation Approach" section of this document.

Urgency

The modification was originally proposed, and granted Urgency, against the impact of recovery of £33,163,790.21 from the RF run beginning 24 May 2021, which is the ESO's current stated intent. Without a clear decision on implementation (or not) for this modification, parties will be expecting to receive higher RF invoices and parts of this solution become irrelevant.

When the Workgroup agreed that the implementation of the modification is not required until 1 October 2021, the need for Urgency was reviewed. It was agreed that, in order to affect the solution and give parties clarity over the recovery, a decision from the Authority is still requested by 21 May 2021 and therefore the Urgent timetable is necessary.

Workgroup Consultation summary

The Workgroup held their Workgroup Consultation between 28 April 2021 (9am) and 4 May 2021 (12pm) and received 19 responses, two of which were confidential. The full responses and a summary of the responses can be found Annexes 6 and 7.

The majority of respondents (14 out of 17 respondents) supported the Original proposal (recovery via the SF run in 2021/2022). The main reasons expressed were that this allows parties to recover such "unforeseen costs" over a reasonable timeframe and allows for the costs to be reflected in the Default Tariff Cap methodology.

- 13 of these 14 respondents supported socialisation of these costs across all Users in 2021/2022 rather than targeting these costs. The other respondent didn't comment. The main arguments were that socialisation is simpler, smooths out any distortions and is in line with current practice whilst targeting introduces complexity in terms of identifying who is liable and the need for a manual billing process.
- 11 of these 14 respondents supported cost recovery from 1 October 2021 to 31 March 2022. In summary they argued that this provides additional notice to liable parties, it is more likely that the same or similar parties will face the deferred costs as would have been the case in 2020/2021 and aligns with Default Tariff Cap dates. Other respondents noted that having the cost recovery over a longer period 1 June 2021 to 31 March 2022 smooths out any potential distortions and the assumption that the same or similar parties will face the deferred costs as would have been the case in 2020/2021 presents a false level of accuracy.

For the other 3 respondents who did not support the Original proposal.

- 2 respondents supported recovery via the RF. 1 respondent noted that this provides parties with most visibility of their upcoming charges and support for cash flow and follows the existing CUSC methodology. The other respondent noted that pushing recovery into 2021/2022 will affect competition negatively as they would be charged differently to what they would have incurred in 2020/2021; and

- The other respondent believed that the Original proposal would benefit Suppliers and not Consumers and noted that the consumer impact needs to be explored further (they noted that the Workgroup Consultation only discusses consumers on pass through contracts). The Workgroup considered this further at the Workgroup held on 5 May 2021 and this commentary is set out in the "Workgroup assessment of Impacts" section.

Other

- 1 respondent noted the number of high priority or Urgent BSUoS changes and argued that this evidences that BSUoS is no longer fit for purpose and needs reform. Although this is not within the scope of this change, the Ofgem representative on the Workgroup agreed to feed this back.

Legal text

The Legal text for this change can be found in Annex 5.

In CUSC 14.30.19 and 14.30.20, the ESO Workgroup Member proposed the introduction of the concept of a 2020/21 BSUoS under-recovery.

A Workgroup Member asked if a "sunset clause" could be added to the CUSC (i.e. a specific date when the 2020/21 BSUoS under-recovery shall cease to have effect; however, the ESO Workgroup Member proposed it was more appropriate to raise a housekeeping change in March 2022 to remove any reference to 2020/21 under-recovery specific changes and the Covid Support Scheme.

What is the impact of this change?

Proposer's assessment against CUSC Charging Objectives	
Relevant Objective	**Identified impact**
(a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;	**Positive** Does not unexpectedly penalise (or reward) industry parties for this unforeseen cost recovery adjustment. It also avoids the adverse impact on the Default Tariff Cap calculations, both past and future, which would have an anti-competitive differential discriminatory effect on suppliers that are more focussed on the domestic market.
(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;	**Neutral**
(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;	**Neutral**
(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	**Neutral**
(e) Promoting efficiency in the implementation and administration of the system charging methodology.	**Neutral**
*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 assessment of Impacts

General - Generators, Suppliers and Consumers

- While this amount can be recovered via normal RF timescales, the industry had no reasonable warning of the SF and RF costs being significantly different, as this increase is materially higher than would have been expected in a typical year. Therefore, BSUoS-liable parties had not had sufficient opportunity to manage their trading positions and commercial arrangements to mitigate this risk and recover the increase in BSUoS costs.

- A Workgroup Member expressed an alternative view that had the error not been made, then parties would have in the main simply incurred a larger exposure to BSUoS in 2020/2021 than they actually did. Their ability to trade out of the position to mitigate this would have been limited, as they would have committed to prices through the wholesale and retail contracts they had already entered into. Therefore, the status quo proposal to recover through the RF run for 2020/2021 would be the correct course of action to return parties to the position they should have been in had the error not been made.
- By including the additional costs in the 2021/2022 SF run, this does not unexpectedly penalise (or reward) industry parties or consumers for this unforeseen cost recovery adjustment. However, as these costs were incurred between 30 September 2020 and 9 March 2021 settlement days, the ESO Workgroup Member noted that these costs would only be invoiced through the RF run between 19 November 2021 and 4 May 2022, which provides visibility of the charges ahead of RF invoices and arguably supports companies' cash flow.
- A Workgroup Member expressed an alternative view that CMP373 would arbitrarily expose parties to different costs than they would have been liable for if the error had not been made, which, would provide a benefit for some and disadvantage others unfairly, undermining investor confidence and competition.
- The expectation is that there is a small adjustment between the SF and RF settlement runs. The ~£34m relates directly to the error in the trading costs. This would be in addition to the normal difference between the SF and RF runs. Historically this difference has been between £5.5m and £9.1m for 2017/18 and 2018/19 respectively.

Suppliers only

- If the costs are attributed via the RF as currently proposed by the ESO then these are attributed to the 2020/2021 volumes and hence "back-billing" or reconciliation is a problem, as is change of supplier. Suppliers still retain the ability to recover these costs from these consumers if they are able to. It could also be argued that consumers on a fixed contract for FY20/21 already had costs priced in to their fixed tariff for expected trades over this period, and therefore they had already "paid their share.

- By including in the 2021/2022 SF run then change of supplier and reconciliation does not apply because this is forward looking.

- Without this change, the Default Tariff Cap Methodology will not include the unexpected extra 2020/21 costs. This is due to the Default Tariff cap calculation methodology specifically using the SF Settlement Runs. Any adjustments to BSUoS costs made to the RF billing, which occurs after the SF run, is not reflected in the Default Tariff Cap. If included in the SF run between 1 October 2021 and 31 March 2022, the additional costs will be included in the Default Tariff price caps for the periods 1 April 2022 – 30 September 2022, 1 October 2022 – 31 March 2023 and 1 April 2023 to 30 September 2023.

- Risk that if Suppliers can't recover these costs, it could drive a number of suppliers to leave the market, thereby reducing competition and therefore competitive forces which keep prices low for customers. Some Workgroup Members believed this is a minimal risk given the size and timings of payments to be made.

- If the costs are attributed to the RF run, then Suppliers with differing portfolios of customers will be impacted differently. Suppliers with a high percentage of default tariff customers will experience more of an adverse impact and hence this will distort competition.

- If recovery was through the RF run, Suppliers would have to make a decision between taking a profit hit as a consequence of the ESO's error or to smear the costs over other customers. There were counter views that the profit hit was the most likely consequence for suppliers as they are subject to market conditions, such as competitor behaviours, changing Supplier market shares and customer mixes, and therefore changing charges unexpectedly to customers is not a choice that Suppliers can make to remain competitive.

Consumers

The Workgroup noted that in Ofgem's State of the Energy Market 2019 Report, Ofgem stated that Domestic retail energy markets account for 35% of total electricity demand and ~ 50% of these are consumers are on price caps. Non-Domestic markets account for the remaining 65% of total electricity demand.

The Workgroup noted that the proposed BSUoS under-recovery is ~£34m (which would be recovered for simplicity approximately 50% from Suppliers and 50% from Generators). Therefore ~£17m would be additionally recovered from Suppliers. Using this figure of ~£17m the Workgroup calculated the approximate amount that each consumer category would be liable for. This is summarised in the table below:

Consumer Categories	Market Share and under-recovery through RF
Domestic – on Default Tariff Cap	17.5% of £17m = ~ £3m
Domestic – not on Default Tariff Cap	17.5% of £17m = ~ £3m
Non-Domestic – BSUoS cost pass through	65% of £17m = ~ £11m
Non-Domestic – Not BSUoS cost pass through	

The Workgroup considered the impact on each Consumer group, noting that there is also a direct impact to Suppliers, which are summarised above in the "Suppliers only" section above.

- **Domestic – on Default Tariff Cap**
    - Domestic Consumers on a fixed price cap would benefit from not having to pay these previously unbilled costs if recovery is via the RF run and as already explained above in the "Suppliers only" section, Suppliers would be unable to recover these costs from these consumers.

- **Domestic – not on Default Tariff Cap** and **Non-Domestic – Not BSUoS cost pass through**
    - It is less clear what the impact would be for domestic consumers, who are not on the default tariff cap or non-domestic consumers, who are not on BSUoS cost pass through contracts. How or whether these costs are to be recovered will depend on Suppliers' business decisions and depends on a number of factors including risk of bad debt and competitive market factors/pressures.

- **Non-Domestic consumers on BSUoS cost pass through contracts**

    If these costs are recovered through the 2020/2021 RF run, Consumers on BSUoS cost pass through contracts may face additional unexpected bills from Suppliers looking to recover any shortfall noting that cost pass through contracts may be yearly or multi-year. It was however noted that these non-domestic consumers could have several months' notice of the additional RF run charges, if visibility is provided from the Supplier to the users. Additionally, costs may be experienced more acutely by these customers as costs for other consumers are smeared over a number of days. If Suppliers are unable to recover costs from a subset of customers on cost pass through contracts i.e. where RF runs are not included in pass-through or where retrospective invoices are not paid, then suppliers will experience a loss/bad debt. An alternative may be to pass through this loss/bad debt to other customers if the competitive market allows.

    If these costs are put into the 2021/2022 SF run, then the costs can be passed to current customers.

ESO

- Minimal impact on ESO cashflow anticipated of deferring costs to be FY 2021/2022 Settlement Final (SF) Run. Under both the ESO's proposed route of recovery and the Original Proposal, the ESO will fully recover the BSUoS costs.

- If costs are targeted through the SF run in FY 2021/2022 at those who incurred the costs in 2020/2021, it adds complexity in billing arrangements because there would need to be a manual billing process as ESO's current billing system doesn't allow them to assign historical costs directly to Settlement Periods in a new financial year.

Other

- The Proposer believes that the deferred recovery of 2020/21 costs that were not known of or forecastable prior to 9 April 2021, as they were solely due to ESO errors, will avoid damage to investor confidence and thereby keep costs down through effective and economic competition. The ESO has taken this error very seriously, and as set out in this report has put a number of additional measures in place.

Workgroup Vote

The Workgroup met on 5 May 2021 to carry out their Workgroup Vote. The full Workgroup vote can be found in Annex 8.

The table below provides a summary of the Workgroup members view on the best option to implement this change.

The Applicable CUSC (charging) Objectives are:

CUSC charging objectives

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 *; and*
e) To promote efficiency in the implementation and administration of the system charging methodology

**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 Member	Company	BEST Option?	Which objective(s) does the change better facilitate? (if baseline not applicable)
Paul Mott	EDF	Original	a
Jenny Doherty	National Grid ESO	Baseline	n/a
Paul Jones	Uniper	Baseline	n/a
Matthew Cullen	E.ON	Original	a and e
Lauren Jauss	RWE	Original	a
Paul Youngman	Drax	Original	a

Phil Broom	Engie	Original	a
Grace March	Sembcorp	Original	a
Gareth Evans	Waters Wye	Original	a
Kamila Nugumanova	ESB	Original	a
Damian Clough/Garth Graham	SSE	Original	a and b
George Moran	Centrica	Original	a

The Workgroup concluded by majority (10 out of 12 votes) that the Original better facilitated the Applicable Objectives than the current CUSC (the Baseline).

Code Administrator Consultation Summary

The Code Administrator Consultation was issued at 5pm on 10 May 2021 and closed at 12pm on 13 May 2021. 11 responses were received with all of these being non-confidential. A summary of these responses can be found in Annex 9 and the full responses can be found in Annex 10.

The majority of respondents (10 out of 11 respondents) supported the Original proposal (recovery via the SF run in 2021/2022) and re-iterated arguments previously set out in the Workgroup Consultation and/or the Workgroup Report The main reasons for support expressed were that this allows parties to recover such “unforeseen costs” over a reasonable timeframe and allows for the costs to be reflected in the Default Tariff Cap methodology.

The 1 respondent who wasn’t supportive raised a concern that the Original proposal enables suppliers to increase the price to customers in a future period.

Panel Recommendation Vote

The Panel met on the 14 May 2021 to carry out their recommendation vote.

They assessed whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

Vote 1: Does the Original facilitate the objectives better than the Baseline?

Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Neutral	No	Neutral	Neutral	Neutral	No
Voting Statement						
This modification is looking to delay the recovery of a proportion of BSUoS costs which were not recovered in 2020-21 due to an error by the ESO. We have assessed this modification against the CUSC charging objectives as negative against objective (b) and neutral against the remaining objectives. Delaying the recovery of the BSUoS cost effectively transfers the cost to parties that did not contribute towards the cost and therefore results in an unfair allocation of BSUoS between Parties. This is a reduction in cost reflectivity and the mod therefore does not better meet objective (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). We recognise that there may be an issue with the default tariff cap calculation not accounting for RF billing. However, this is an issue for Ofgem that should be resolved outside of the CUSC. Ofgem will need to assess the impact on the default tariff cap calculation in the round rather looking at this one issue in isolation to ensure a fair solution.						

Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Neutral	Yes
Voting Statement						
I believe that CMP373 better facilitates the Applicable CUSC Objectives for the same reasons as provided by the Proposer.						

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Neutral	Neutral	Yes

Voting Statement

Having examined the Proposal, together with the Workgroup Report along with all the comments provided by stakeholders in the Code Administrator Consultation I have concluded that CMP373 will better facilitate Applicable Objectives (a) and (b) whilst being neutral with respect to (c), (d) and (e).

The general reasoning for this has been expressed eloquently by ten (out of 11) of the respondents to the Code Administrator Consultation and I'll avoid therefore repeating that reasoning here; except to say that I concur with that general reasoning in support of the CMP373 change.

I would also add, in considering this case of how to treat a substantial, and unexpected, '*under recovery*' what, if the shoe was on the other foot, would be expected if this was actually a substantial, and unexpected, '*over recovery*' situation.

Put another way, if BSUoS paying parties, such as Suppliers are, in the case of an '*under recovery*', expected to absorb this cost then presumably those that support this approach (by opposing CMP373) will be expecting, in the case of an '*over recovery*', that those Suppliers will benefit in that contrary situation: to coin a phrase, '*what is sauce for the goose is sauce for the gand*er' – we should treat both under and over recovery in the same principled way.

Panel Member: **Grace March**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Neutral	Yes

Voting Statement

The proposed solution allows all suppliers to recover the costs from consumers, whereas the ESO's proposed actions within the baseline would create differences based on the suppliers' contractual relationship with their customers. As the cost is socialised over a longer period, there will little market distortion, so will not adversely affect competition.

Panel Member: **Joe Dunn**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Neutral	Yes
Voting Statement						
The Original Proposal better facilitates ACO (a) (effective competition) since it will avoid industry parties being unfairly advantaged or penalised as a result of the error. In particular, the original will allow for the costs to be reflected in the Default Tariff Cap methodology, which would have been the case if the error had not occurred. The proposal is neutral to ACOs (b), (c), (d) and (e).						

Panel Member: **Jon Wisdom**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	No	Neutral	Neutral	Neutral	No	No
Voting Statement						
CMP373 will not better facilitate competition. Using the existing RF run ensures parties who were liable for the charges, will pay them. The RF run also provides the most visibility of upcoming charges, therefore companies can make the necessary business decisions around how to recover these charges, as well as supporting cash flow for suppliers who may need it. Introducing another time-limited element to Section 14 also negatively impacts the administration of CUSC arrangements, due to its short-term nature and will need to be removed at a future point.						

Panel Member: **Mark Duffield**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	No	No	Neutral	Neutral	Neutral	No
Voting Statement						
The fundamental principal underpinning the current CUSC baseline is that half hourly BSUoS charges reflect as far as possible that balancing services costs incurred by the ESO in that half hour. Moving them to different half hours or still further to different charging years inevitably redistributes the burden of such charges between users. This						

has the potential to negatively impact competition and so in my view the hurdle of justification to do so is large.

I am not of the view that this hurdle has been passed in this case. The existing CUSC process with multiple settlement and reconciliation runs is designed precisely to allow for within year errors to be identified and reflected in the current year's charges. In this regard the existing CUSC baseline is doing exactly what it should be doing. The remaining question is whether the specific circumstances of this case justify a different approach.

In my view they do not. There are two categories of consumer for which this RF run has an impact on the supplier-customer billing relationship - those on BSUoS pass-through terms and those on the Standard Variable capped tariff. Of those on pass through contracts there is an inevitable risk/reward balance for both the supplier and customer in using the SF run to determine pass through of BSUoS rather than the RF run. Some years RF reconciliation will mean the supplier over recovers BSUoS, in other years such as this, an under-recovery. While historically total BSUoS under/over-recovery has been less than £10m per annum and this £33m trading charge is therefore significantly larger it is not an unforeseeable risk that could not have been anticipated.

On the second customer type on the default tariff cap, the defect here again is with the use of SF rather than RF in determining the default tariff cap, and it is that methodology rather than the CUSC methodology that seems if anything to be where a defect lies.

Given this my view is that the amendment does not better facilitate either objective (a) or (b) and that overall the existing CUSC baseline is the best option.

Panel Member: **Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	No	No	No	Neutral	Neutral	No
Voting Statement						

In general, the baseline would leave parties in the same position they would have been in had the mistake not been made. These costs should have been incurred by BSUoS payers in the autumn/winter 2020/21, and the result of the failure to do so is simply that they were under charged. Prices for generators will have already been set in all products relating to the periods concerned by the time the costs were incurred by NGESO and this will have also been the case in the majority of supply contracts with customers too. There are two exceptions to this on the supply side: suppliers with customers on price cap arrangements and suppliers with customers on pass through contracts. However, these will represent a modest subset of all BSUoS payers and the proportion of the £33.1m which will be allocated to these suppliers will be limited.

As Citizens Advice correctly identifies in its response, CMP373 will allow suppliers to recoup additional money from customers who were on fixed price contracts and tariffs in 2020/21, which they would not have had the opportunity to recover had the mistake not

been made in the first place. Effectively, money will be moved from customers to shareholders. Additionally, parties would be exposed to different recovery of costs to that which would have occurred in absence of the error. This retrospective redistribution would undermine competition. The status quo treatment is unlikely to lead to any change in supplier response to BSUoS, such as increased risk premiums being attached to forecasts, as the additional cost is low compared with normal BSUoS volatility (representing a 1.7% increase in the amount originally recovered in 2020/21).

Panel Member: **Paul Mott**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Neutral	Yes
Voting Statement						
The CMP373 Original avoids the adverse impact that the original (status quo) has on the Default Tariff Cap calculations, both past and future. Status quo would have an anti-competitive discriminatory, differential, effect on domestic-sector-biased Suppliers that are more focussed on the domestic market. The original version of the mod does not unexpectedly penalise (or reward) industry parties for this unforeseen cost recovery adjustment. I think that’s fair and that’s why the original better facilitates CUSC Charging Applicable Objective (a), than baseline. The original is neutral as to the other CUSC Charging Applicable Objectives.						

Vote 2 – Which option is the best?

Panel Member	**BEST Option?**	**Which objectives does this option better facilitate? (If baseline not applicable).**
Andy Pace	Baseline	n/a
Cem Suleyman	Original	a
Garth Graham	Original	a, b
Grace March	Original	a
Joe Dunn	Original	a
Jon Wisdom	Baseline	n/a
Mark Duffield	Baseline	n/a
Paul Jones	Baseline	n/a

Paul Mott	Original	a

Panel conclusion

The Panel, by majority recommended that the Proposer's solution should be implemented.

When will this change take place?

Implementation date

1 October 2021 (with the 2020/2021 BSUoS Under-Recovery to be recovered between 1 October 2021 and 31 March 2022 Settlement Days)

Date decision required by

As soon as possible but no later than 21 May 2021.

Implementation approach

The Proposer's preferred solution is to recover the -£34m of trading costs in the FY 2021/2022 SF Run between 1 October 2021 and 31 March 2022 rather than the FY 2021/2022 RF Run. Another option that was considered in the Workgroup considerations prior to the issue of the Workgroup Consultation was to recover these costs in the FY 2021/2022 SF Run between 1 June 2021 and 31 March 2022 and the attached table summarises the pros and cons with these options.

2020/21 BSUoS under-recovery period	Pros	Cons
1 June 2021 to 31 March 2022 Settlement Days	Lower daily recovery amounts Industry will the get the clarity they need earlier In line cost recovery, rather than providing a signal	Limited notice for BSUoS parties
1 October 2021 to 31 March 2021 Settlement Days	Provides extended notice for BSUoS parties Broadly mirrors the Settlement periods in 2020/2021 FY which were underbilled	Higher daily recovery amounts

Although 4 of the 17 non-confidential responses indicated a preference for the BSUoS under-recovery from 1 June 2021 to 31 March 2022, no request for a Workgroup Alternative was raised by the industry nor by the Workgroup. Therefore, the Original solution includes BSUoS under-recovery from 1 October 2021 to 31 March 2022.

Interactions

☐Grid Code	☐BSC	☐STC	☐SQSS
☐European Network Codes	☐ EBGL Article 18 T&Cs[8]	☐Other modifications	☐Other

No interactions identified.

Acronyms, key terms and reference material

Acronym / key term	Meaning
ALoMCP	Accelerated Loss of Mains Change Programme
BSC	Balancing and Settlement Code
BSUoS	Balancing System Use of System Charges
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
Default Tariff Cap	The default tariff cap sets maximum prices that reflects the estimated costs of supplying electricity and gas to homes in the next six-month summer or winter period
EBGL	Electricity Balancing Guideline
II	Interim Initial Settlement Run
SF	Settlement Final Settlement Run
RF	Reconciliation Final Settlement Run
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions

Reference material

- No additional reference material

Annexes

Annex 1	Proposal Form
Annex 2	Urgency Letters
Annex 3	Terms of Reference
Annex 4	Workgroup 1 Slides
Annex 5	Legal Text
Annex 6	Summary of Workgroup Consultation Responses
Annex 7	Workgroup Consultation Responses
Annex 8	Workgroup Vote
Annex 9	Summary of Code Administrator Consultation Responses
Annex 10	Code Administrator Consultation Responses

[8] If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the European Electricity Balancing Guideline (EBGL – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.