

## CUSC Modification Proposal Form

# CMP391: Definition of 'Charges for Physical Assets Required for Connection

**Overview:** Section 11 modification proposal amending the definition of 'Charges for Physical Assets Required for Connection' per Regulation 838/2010

## Modification process & timetable



**Status summary:** The Proposer has raised a modification and, as the Proposer is the Authority, has directed the timetable and process.

### This modification is expected to have a: Low impact

Generator Users liable for TNUoS, consequential effect on Supplier Users.

#### Proposer's recommendation of governance route

Standard CUSC Modification Proposal to proceed under a timetable directed by the Authority (with an Authority decision)

#### Who can I talk to about the change?

##### Proposer:

Harriet Harmon

[Harriet.harmon@ofgem.gov.uk](mailto:Harriet.harmon@ofgem.gov.uk)

##### Code Administrator Contact:

Paul Mullen

[Paul.j.mullen@nationalgrideso.com](mailto:Paul.j.mullen@nationalgrideso.com)

07794 537 028

**Contents**

<b>Contents</b> .....	<b>2</b>
<b>What is the issue?</b> .....	<b>3</b>
Why change? .....	4
<b>What is the proposer's solution?</b> .....	<b>4</b>
Legal text.....	4
<b>What is the impact of this change?</b> .....	<b>4</b>
Proposer's assessment against CUSC Non-Charging Objectives .....	4
<b>When will this change take place?</b> .....	<b>5</b>
Implementation date .....	5
Date decision required by .....	5
Implementation approach .....	5
Proposer's justification for governance route .....	5
<b>Interactions</b> .....	<b>6</b>
<b>Acronyms, key terms and reference material</b> .....	<b>6</b>
Reference material .....	6

## What is the issue?

- On 17 December 2020, the Authority approved the Original Proposal in CMP339, inserting new definitions into Section 11, in conjunction with another CUSC modification proposal: CMP317/327.
- SSE Generation Ltd (and others related entities, 'SSE') appealed to the Competition and Markets Authority (the 'CMA') against the CMP317/327 and CMP339 decisions. The CMA dismissed all grounds of appeal.
- SSE subsequently applied for judicial review of the CMA decision. Judgment in the judicial review proceedings ('the Judgment') was handed down on 11 April 2022 with the claim allowed on one ground (of three) only.
- The relief granted by the court was to direct the CMA to partially quash one element of the modification made by CMP339, specifically to remove a definition: "Charges for Physical Assets Required for Connection".
- At the hearing to consider relief, the Authority indicated to the court that, if relief was granted in that form (i.e. striking through of the definition "Charges for Physical Assets Required for Connection"), the Authority would ensure that the CUSC definition of "Charges for Physical Assets Required for Connection" was amended over the coming weeks, either through the implementation of CMP368 and CMP369 (collectively "CMP368/369"), or through another modification if no solutions under CMP368/369 were appropriate.
- The Authority has now rejected CMP368/369.
- On 20 May 2022, the CMA updated and re-issued its Decision and Order to reflect the terms of the Judgment, including the quashing of the definition of "Charges for Physical Assets Required for Connection".
- Following this partial quashing, and our rejection of CMP368/369, we are raising this modification to ensure there is a definition of "Charges for Physical Assets Required for Connection" which reflects the Limiting Regulation, in light of the conclusions in the Judgment about what is required to achieve compliance.
- The Judge held at paragraphs 42-45 of the Judgment that the Limiting Regulation requires more than just that "annual average transmission charges" fall within the Permitted Range, and that the Authority cannot lawfully approve a proposal that does not fully and correctly reflect the Connection Exclusion. Further, the Judgment states at paragraph 57 that which charges fall within the Connection Exclusion "*will self-evidently depend on the facts of any specific case*" and accordingly: "*[a]ttempts at generic definition are necessary and useful, but only up to a point. The possibility will always remain that any generic definition might need to yield in the face of the circumstances of the case in hand.*"
- In light of this, we consider that the Connection Exclusion is unlikely to be capable of prescriptive definition within the CUSC (beyond the words of the Limiting Regulation itself), without some provision that enables further case-by-case assessment when required.
- Given our commitment to the court, we currently consider that in order to ensure the CUSC correctly reflects the Limiting Regulation, the words of the Limiting Regulation should be transposed into the CUSC. As such, the sole scope of this CUSC Modification Proposal is to define the term "Charges for Physical Assets Required for Connection" by inserting the provision of the Limiting Regulation, specifically such that "Charges for Physical Assets Required for Connection" shall mean, "*charges paid by producers for physical assets required for connection to the system or the upgrade of the connection*".

- Absent a prescriptive definition, The Company is expected to interpret the new definition inserted by this CUSC Modification Proposal in light of the Judgment, and the CMA Decisions in CMP317/327/339 and CMP261 appeals.

## Why change?

The Limiting Regulation requires that annual average transmission charges paid by producers in GB shall be within the range €0-2.50/MWh. It provides:

“Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of GB.

For the calculation set out [above], transmission charges shall exclude:

- (1)charges paid by producers for physical assets required for connection to the system or the upgrade of the connection; [‘the Connection Exclusion’]
- (2)charges paid by producers related to ancillary services;
- (3)specific system loss charges paid by producers.”

As a result of the partial quashing of the CMP339 solution, the current iteration of CUSC Section 11 does not define the expression ‘Charges for Physical Assets Required for Connection’, which appears in the calculation in CUSC 14.14.5. This modification will provide a definition.

## What is the proposer’s solution?

### Legal text

See below:

“**Charges for Physical Assets Required for Connection**” shall mean charges paid by producers for physical assets required for connection to the system or the upgrade of the connection.

## What is the impact of this change?

Proposer’s assessment against CUSC Non-Charging Objectives	
Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	<b>Neutral</b> Whilst this change is required to correctly reflect the Limiting Regulation within the CUSC, it creates no new obligation on the Licensee.

(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;	<b>Neutral</b>
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	<b>Positive</b> This is required to correctly reflect the Limiting Regulation within the CUSC. The Limiting Regulation is a relevant legally binding decision of the European Commission.
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	<b>Positive</b> The Proposal aligns the wording of the CUSC to that of the Limiting Regulation and ensures that the term “Charges for Physical Assets Required for Connection” as used in Section 14 carries an appropriate definition.
*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

## When will this change take place?

### Implementation date

The same Business Day as the Authority approval

### Date decision required by

N/A – The Authority will reach its decision on receipt of the Final Modification Report which should be submitted by 30 May 2022.

### Implementation approach

This CUSC Modification Proposal gives proper effect to the Limiting Regulation within the CUSC (per the view of the High Court) and makes no changes to the obligations faced by The Company under the status quo.

### Proposer’s justification for governance route

Governance route: This is an Authority Raised CUSC Modification Proposal under CUSC 8.17.A1 - The Proposer has raised a modification and, as the Proposer is the Authority, has directed the timetable and process under CUSC 8.17.A3.

The Proposal is not raised as a CUSC Modification Fast Track Proposal. We therefore do not consider the provisions of 8.29 to apply.

We also consider that it is not appropriate for the Proposal to proceed via the Self-Governance route and therefore do not expect to receive a Self-Governance Statement in respect of it. Rather, given the nature of the proposal and its role in securing compliance with the Limiting Regulation, it is our view that the Proposal will be subject to decision by the Authority. Were the Panel to determine that the Proposal should be treated as a Self-Governance Modification Proposal, it would be open to the Authority, under 8.25.2 CUSC, to direct the Panel to follow a different process.

We appreciate that CUSC Parties may want the CUSC to indicate principles (beyond the words of the Limiting Regulation itself) which may be relevant to identifying whether particular charges fall within the Connection Exclusion. We consider that any proposed change brought forward to do so would need to take into consideration what is said in the Judgment. Any such proposed changes should be progressed through a separate CUSC Modification Proposal.

## Interactions

- |   |   |  |                                |
|---|---|--|--------------------------------|
| <input type="checkbox"/> Grid Code              | <input type="checkbox"/> BSC                              | <input type="checkbox"/> STC                 | <input type="checkbox"/> SQSS  |
| <input type="checkbox"/> European Network Codes | <input type="checkbox"/> EBR Article 18 T&Cs <sup>1</sup> | <input type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

N/A

## Acronyms, key terms and reference material

Acronym / key term	Meaning
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions

## Reference material

- None

<sup>1</sup> 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 Electricity Balancing Guideline (EBR – 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.