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Date: 20 May 2022

**Authority Direction to the CUSC Modifications Panel in respect of the
accompanying Connection and Use of System Code Modification Proposal**

Dear Trisha,

We¹ are today raising the enclosed Connection and Use of System Code ("CUSC")² Modification Proposal ("the Proposal") pursuant to 8.17A.1 and directing its timetable in accordance with 8.17A.3. Further details and the reasons for our decision are provided below.

Background

In December 2020, we approved the original proposal ("Original Proposal") in both CMPs 317/327³ and 339⁴. These modifications related to the provisions of the CUSC that seek to set charges in such a way as to achieve compliance with Commission Regulation (EU) No. 838/2010 (the "Limiting Regulation")⁵; specifically that annual average transmission charges paid by producers in Great Britain ("GB") must fall within €0-2.50/MWh ("the Permitted Range"). In particular, these modifications sought to update Section 14.14.5

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 Unless otherwise stated, capitalised terms in this letter bear the definition afforded to them in the CUSC.

³ https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp317327_decision_171220.pdf

⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp339_decision_171220.pdf

⁵ Following the end of the post-Brexit Transition Period, the relevant parts of the Limiting Regulation continue to apply in GB as retained EU law, pursuant to s.3 of the European Union (Withdrawal) Act 2018 (subject to non-material amendments).

("the CUSC Calculation") to reflect the correct interpretation of the so-called Connection Exclusion.⁶⁷

Within our CMP317/327 decision, we indicated that further changes were required to the CUSC Calculation to fully reflect the Limiting Regulation, including specifically the Connection Exclusion.⁸ As a result, NGESO raised CMP368 and CMP369 (collectively referred to as CMP368/369 in this letter).

SSE Generation Ltd (and others related entities, referred to in this letter as "SSE") appealed to the Competition and Markets Authority ("the CMA") against the CMP317/327 and CMP339 decisions. The CMA dismissed that appeal.⁹ SSE subsequently applied for judicial review of the CMA Decision. Judgment in the judicial review proceedings¹⁰ (the 'Judgment') was handed down on 11 April 2022 with the claim allowed on one ground (of three) only.¹¹

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", which sought to define the Connection Exclusion. At the hearing to consider relief, the Authority indicated to the Court that, if relief was granted in that form, 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 CMP368/369, or by raising another modification if no solution under CMP368/369 was appropriate.

We have today published our decisions to reject CMP368/369. We are therefore raising the enclosed CMP and directing a timetable for its implementation.

The CUSC Modification Process

Under paragraph 8.17A.1 of CUSC, the Authority may raise a CMP where it reasonably considers that such a proposal is *"necessary to comply with or implement the Electricity Regulation and/or any relevant Legally Binding Decisions of the European Commission and/or The Agency"*.

⁶ The Limiting Regulation provides that, in calculating annual average transmission charges paid by producers, *"transmission charges shall exclude...charges paid by producers for physical assets required for connection to the system or the upgrade of the connection"*. We refer to this as the 'Connection Exclusion'.

⁷ Our CMP317/327 decision letter provides a detailed overview of the background to these proposals and the provisions of the Limiting Regulation.

⁸ This is more fully explained in our CMP317/327 and CMP368/9 decisions.

⁹ https://assets.publishing.service.gov.uk/media/60632cd6d3bf7f0c8c97d9f2/SSE_v_GEMA_-_pdf

¹⁰ <https://www.bailii.org/ew/cases/EWHC/Admin/2022/865.pdf>

¹¹ See our statement here <https://www.ofgem.gov.uk/sites/default/files/2022-04/Statement%20re%20JR%20conclusion.pdf>

8.17A.3 of CUSC further provides that, where the Authority raises a CMP under 8.17A.1, the CUSC Modification Panel (the “Panel”) shall comply with any timetable directed by the Authority for the completion of all relevant steps of the CUSC Modification Process. We therefore direct that the following timetable be followed:

- In the circumstances, we consider that the above timetable is appropriate for the following reasons:

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Fast-Track Criteria, Self-Governance Criteria

8.17A.7 of CUSC provides that where the Authority raises a CMP, that CMP shall still be assessed by the Panel against the Fast-Track Criteria and Self-Governance Criteria.

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.

Other Matters

We do not currently expect a mid-year change of Transmission Network Use of System tariffs during the current (2022/23) charging year either under current arrangements or as a result of the Proposal.

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.

Yours faithfully,

Harriet Harmon

Head of Transmission Charging Policy

Signed on behalf of the Authority and authorised for that purpose