

Final Modification Report

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



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 Vote: The CUSC Panel held their recommendation vote on 27 May 2022. The Panel unanimously recommended that CMP391 should be implemented.

This modification is expected to have a: Low Impact on Generator Users liable for TNUoS, consequential effect on Supplier Users.

Governance route	Authority Directed CUSC Modification Proposal (8.17A.1) with an Authority decision
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Who can I talk to about the change?	Proposer: Harriet Harmon Harriet.harmon@ofgem.gov.uk	Code Administrator Contact: Paul Mullen Paul.j.mullen@nationalgrideso.com 07794 537 028
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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 the Authority's rejection of CMP368/369, the Authority have raised 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, the Authority 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 the Authority's commitment to the court, the Authority 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;	Neutral 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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Positive 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.	Positive 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.	

Panel Recommendation Vote

The Panel met on 27 May 2022 and 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: Andrew Enzor

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Neutral	Yes
Voting Statement					
ACO(c): better facilitated by enabling compliance with the limiting regulation.					
ACO(d): neutral. In itself CMP391 does not introduce any greater or lesser efficiency in CUSC arrangements.					

Panel Member: Andy Pace

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This modification better meets applicable objectives (c) and (d) by correctly reflecting the Limiting Regulation in CUSC.					

Panel Member: Binoy Dharsi

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
A judgement passed requires that the CUSC reflects a definition to 'Charges for Physical Assets Required for Connection'. I would expect that given the lack in visibility in the methodology this modification provides, due to the urgency of the change required, it would be prudent that a follow up modification address this.					

Panel Member: Cem Suleyman

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
I believe that CMP391 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)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
<p>Noting that it was not possible, due to the Direction, for a Code Administrator Consultation to be undertaken to seek stakeholder views (which was regrettable, but understandable in the circumstances) and taking into account the position set out by the Authority as to the reason for the Modification I believe, for the reasons set out in the proposal form, that it is better in terms of Applicable Objectives (c) and (d) whilst being neutral with regards to (a) and (b). I would add that whilst the proposal is a step forward in clarifying the legal position as regards compliance with the Limiting Regulation I'm mindful of the Authority's wording (in the CMP391 direction and CMP368 decision) in terms of 'Next Steps' as to the need for putting this into practical effect for the benefit of stakeholders.</p>					

Panel Member: Grace March

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	No	Yes
Voting Statement					
<p>The Proposal does put in place a suitable definition that satisfies the Judgement and is therefore an improvement to align the CUSC with the court's interpretation of the relevant Regulation. It is therefore positive against ACO(c).</p> <p>It is, in my view, negative against ACO(d) as the path by which the charges are calculated is not clear and users will not be able to understand or predict the ESO's interpretation based on the CUSC alone. Given the wording of the Judgement, this seems largely unavoidable, and so the proposals is positive overall. Published guidance on how the ESO interprets the definition would be</p>					

welcome by industry - this could include main criteria or principles that would be taken into account, whilst still leaving space for case-by-case analysis. That would negate the lack of clarity within in the CUSC without forcing an incorrect interpretation of the Regulation.

Panel Member: Joe Dunn

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Neutral	Yes
Voting Statement					
I agree that ACO (c) is better met as a result of the proposal and that it enables the CUSC to align with the Limiting Regulation per 838/2010.					

Panel Member: Karen Thompson – Lilley

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This change better facilitates Applicable Objective (c) as it will ensure the CUSC correctly reflects and therefore complies with the Limiting Regulation.					
It is also positive in relation to Applicable Objective (d) as it will provide for, albeit at a high-level, a definition of ‘Charges for Physical Assets Required for Connection’ within Section 11 of the CUSC that will reflect the recent decision of the court (in relation to the CMP339 solution) and aligns with the wording within the Limiting Regulation.					
As a result, this change would overall better facilitate the relevant objectives and as such I support this proposal as drafted.					

Panel Member: Paul Jones

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	No	Yes
Voting Statement					
Simply transcribes the limiting regulation without being more specific in terms of how this would apply to actual network assets. Therefore, it perfectly meets the limiting regulation, but does not provide guidance or transparency to Users or the ESO on what that means in practice.					

Vote 2 - Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andrew Enzor	Original	(c)
Andy Pace	Original	(c) & (d)
Binoy Dharsi	Original	(c) & (d)
Cem Suleyman	Original	(c) & (d)
Garth Graham	Original	(c) & (d)
Grace March	Original	(c)
Joe Dunn	Original	(c)
Karen Thompson – Lilley	Original	(c) & (d)
Paul Jones	Original	(c)

Panel conclusion

The Panel unanimously recommended that the Proposer's solution should be implemented.

When will this change take place?

Implementation date

The same Business Day as the Authority approval

Date decision required by

Up to 2 working days from receipt of the Final Modification Report

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.

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 ¹ | <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

Annexes

Annex	Information
Annex 1	Proposal Form

Reference material

- CMP368 & CMP369: Updating Charges for the Physical Assets Required for Connection, Generation Output and Generator charges for the purpose of maintaining compliance with the Limiting Regulation & 'Consequential changes to Section 14 of the CUSC – Authority Decision Letters
 CMP368 - <https://www.nationalgrideso.com/document/258406/download>
 CMP369 - <https://www.nationalgrideso.com/document/258411/download>

¹ 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.